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June 30, 2017

SENT VIA EMAIL

U.S. Department of Education
Office of Management
Regulatory Information Management Services
400 Maryland Avenue, SW, LBJ 2W220
Washington, DC 20202-4536
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear Chief Information Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the National Consumer Law Center (“NCLC”). NCLC seeks the disclosure of communications between the United States Department of Education (“ED”) officials and representatives of the California Association of Private Postsecondary Schools (“CAPPS”), a for-profit school trade group.

This request seeks information regarding ED’s delay of the effective date of two final rules designed to protect student borrowers from the predatory practices of schools receiving federal student aid. *See* 82 Fed. Reg. 27,621 (June 16, 2017) (delaying the final “Borrower Defense Regulations,” 81 Fed. Reg. 75,926 (Nov. 1, 2016) and 82 Fed. Reg. 6253 (Jan. 19, 2017)). As grounds for the delay, ED cited a lawsuit filed by CAPPS challenging the Borrower Defense Regulations. *Id.* The filing of CAPPS’s lawsuit coincided with ED Secretary Betsy DeVos’s statement that ED was “studying [the Borrower Defense Regulations] carefully” and would “have something further to say on that within the next few weeks.” David Halperin, *For-Profit Colleges Sue to Block Protections for Defrauded Students and Taxpayers*, Huffington Post (May 25, 2017), http://www.huffingtonpost.com/entry/for-profit-colleges-sue-to-block-protections-for-defrauded_us_59276417e4b0d2a92f2f4274.

I. Requests

In the following requests, the term “communications” refers to, without limitation, letters, notes, documents, reports, emails (both official ED.gov accounts and personal email accounts where business was discussed), voicemails, logs, and database entries, whether in paper, electronic, or other format.

I request any and all communications between the dates of January 21, 2017 to June 15, 2017, that discuss, describe, refer to, or otherwise reference the lawsuit, *California Association of Private Postsecondary Schools v. Betsy DeVos*, No. 1:17-cv-00999 (D.D.C. May 24, 2017), or any potential litigation regarding the Borrower Defense Regulations, including, without limitation, those originating from, directed to, or referring to any one or more of the following people:

Department of Education employees:

1. James Manning
2. Robert Eitel
3. Justin Reamer
4. Andrew Kossack
5. Lynn Mahaffie
6. Kathleen Smith
7. Josh Venable
8. Steven Menashi
9. Phil Rosenfeld
10. Elizabeth McFadden
11. Jenny Prescott

CAPPS employees:

1. Robert Johnson
2. Keith Zakarin

CAPPS attorneys:

1. Boris Bershteyn
2. Gregory Bailey
3. Clifford Sloan
4. Caroline Van Zile
5. Robert L. Shapiro

Career Education Colleges and Universities employees:

1. Steve Gunderson
2. Michael Dakduk
3. Melanie Young
4. Allison Brown

II. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). Expedited processing is warranted because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II).

Indeed, the need for public information about the Department's communications with and about CAPPS is acutely urgent right now, as the Department has announced that it is delaying the implementation of rules that were scheduled to go into effect on July 1, 2017 and has cited the lawsuit initiated by CAPPS as the justification for the delay. *See* 82 Fed. Reg. 27,621 (June 16, 2017). Moreover, the Department has scheduled hearings on July 10, 2017, at which NCLC is scheduled to testify, and comments are due to the Department on July 12, 2017 on the Department's decision to revise the delayed rules through negotiated rulemaking. *See* 82 Fed. Reg. 27,640 (June 16, 2017). There is a vital need for informed public debate about the reasons for decisions to delay and revise the rules, and whether delay or revision is in the interest of the public and the student loan borrowers who were victims of predatory fraud and abuse at the hands of their schools.

Second, Requesters are "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). The National Consumer Law Center ("NCLC") easily meets the statutory standard.

NCLC, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability.

The National Consumer Law Center regularly issues reports, blog posts, books, and newsletters on consumer issues, including student loan law, which are distributed to consumers, lawyers, academics, and other interested parties. These publications, which are listed on our website, www.nclc.org and www.studentloanborrowerassistance.org, often include information obtained through FOIA. NCLC expects to publish information received pursuant to this FOIA request because to do so would contribute significantly to the public's understanding of the Department's reasons for delaying and revising the borrower defense rules.

Courts have found organizations with missions similar to NCLC and that engage in information-dissemination activities similar to NCLC's to be "primarily engaged in disseminating information." *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding Leadership Conference—whose mission is "to serve as the site of record for relevant and up-to-the minute civil rights news and information" and to "disseminate[] information regarding civil rights and voting rights to educate the public [and] promote effective civil rights laws . . ."—to be "primarily engaged in the dissemination of information"); *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2013) (finding non-profit, public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and

distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation omitted)).

III. Application for Waiver or Limitation of Fees

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. Given the ongoing and widespread public attention to issues student debt and the borrower defense regulations that were delayed, the records sought by the Request will significantly contribute to public understanding of the operations and activities of the government. As noted above in Section II, protecting students and taxpayers from harm by predatory schools has generated significant media coverage, and the Department is proposing to revise the rules intended to both prevent predatory practices and provide relief for students who were the victim of fraud and abuse. The records sought in this request would inform that public debate by illustrating the federal government’s role in protecting student loan borrowers who have been taken advantage of by predatory and abusive schools and its reasoning for delaying those protections.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

* * *

Pursuant to applicable statutes and regulations, we expect a determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

If the request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish the applicable records to:

Ms. Persis Yu
National Consumer Law Center,
7 Winthrop Square, 4th Floor
Boston, MA 02110

If you have any questions regarding this request, please contact me at (617) 542-8010. Thank you very much for your attention to this matter.

Sincerely,
/s/
Persis S. Yu