



Testimony before the

U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

regarding

“Reauthorizing the Higher Education Act: Financial Aid Simplification and Transparency”

January 18, 2018

Joanna K. Darcus
Racial Justice Fellow
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
617-542-8010
jdarcus@nclc.org
www.nclc.org

Witness Biography

Joanna K. Darcus is the Massachusetts Legal Assistance Corporation Racial Justice Fellow at NCLC. Joanna represents low-income student loan borrowers of color, using advocacy and litigation to address predatory education and lending practices. Prior to joining NCLC, Joanna was a supervising attorney at Community Legal Services, Inc. of Philadelphia. While there, she represented hundreds of low-income consumers sued by debt collectors or struggling with student loans. She also trained other advocates and pursued policy reforms. Joanna is a graduate of Williams College and Duke University School of Law.

Summary of Testimony of Joanna Darcus, National Consumer Law Center
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The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. I joined NCLC after working at a civil legal aid organization in Philadelphia. At both organizations, I have represented student loan borrowers who are in distress and default.

In this testimony, I provide an overview of the barriers my clients face when accessing the important safeguards that the system offers. I then make recommendations about how to improve student outcomes in school and borrower outcomes in loan repayment because pursuing higher education should increase opportunity, and not restrict access to necessities of life.

Overview of Problems

For low-income individuals and families who do not have extra dollars in their budgets, getting off track and facing involuntary collection activities, such as reductions of their monthly Social Security benefits or withholding of their tax refunds, can be utterly devastating. Although many of our clients are among those who borrowed relatively less than other student loan borrowers, they find themselves, nonetheless, with low earnings or limited means. Far too many borrowers, like our clients, have struggled to access critical features of their federal loans after something went wrong. Common factors, include

- The school failed to deliver the education it advertised.
- The borrower got laid off or become disabled.
- The servicer misplaced paperwork or miscalculated the borrower’s monthly payment.
- The private collection agency (PCA) misinformed the borrower about options to get out of default.

Unfortunately, servicers and debt collectors fail to provide the help borrowers need to understand their options and repay their loans.

Overview of Solutions

The federal student aid programs should be easy for students and borrowers to understand and navigate. All students and borrowers who need federal aid should have an appropriate option available to them. As we seek to make student loan repayment as simple for borrowers to manage as possible, we should continue to explore ways to ensure that borrowers have important information at crucial intervals and the public has access to data sufficient to evaluate the performance of the federal aid system. This will help ensure its integrity and that it delivers on its promise of making higher education accessible to all.

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I. Introduction

Mr. Chairman, Ranking Member Murray, and Members of the Committee, the National Consumer Law Center (NCLC) thanks you for holding this hearing and for inviting us to testify today. We care deeply about making a financial aid system that is affordable and accessible to students and student loan borrowers. Prior to joining NCLC, I was an attorney at Community Legal Services of Philadelphia. While there, I provided free legal help to hundreds of low-income borrowers who struggled to repay their student loans. I continue that work at NCLC, as I represent individual clients, and work with the other members of the Student Loan Borrower Assistance Project to train and support consumer law practitioners, including legal aid attorneys who represent student loan borrowers. NCLC also publishes Student Loan Law (5th ed. 2015), a comprehensive practice manual for advocates representing student loan borrowers. We publish reports on student loans, participate in student loan rulemakings, and advocate for fair student loan policies at the state and national level. We offer this testimony on behalf of NCLC’s low-income clients.¹

At present, millions of students are enrolled in school and relying on grants, federal work-study, and federal student loans to cover the cost. Many millions more are working toward repaying student loans. Here, I will provide an overview of the barriers my clients face when accessing the current federal student aid system. I will then make specific recommendations about how to improve student outcomes in school and borrower outcomes in loan repayment.

II. Make Higher Education a Reality for All.

Title IV of the Higher Education Act (HEA) authorizes a financial aid program that promotes access to postsecondary education for all, especially students from low-income families.² It gives students and borrowers a number of safeguards, such as the right to loan

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC’s Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. Most of the clients we represent are low-income borrowers living in Massachusetts. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project’s web site at www.studentloanborrowerassistance.org. This testimony was prepared by Joanna Darcus and Persis Yu, with assistance from Carolyn Carter of NCLC.

² 20 U.S.C. 1070 (describing the purpose of grants).

cancellation in the event of death or disability and the right to repay loans through monthly installments based on the borrower's income rather than the total balance owed, when they take advantage of federal student aid programs. Pursuing higher education should increase opportunity, and not restrict access to necessities of life. Yet for far too many student loan borrowers, that is exactly the outcome that our federal student aid system produces. The system has failed these borrowers. We need to do better.

Many people contact us, sharing their stories, and asking for help. Last year, a borrower wrote to us, and described experience as follows (reproduced in her own words and unedited): "The 15% that is taken each month, BTW I'm 69 years old. I'm a widower on my own and s s is my only money, .I skip doctors and have taken meds on an every other day basis. ... It's very hard live so poorly. The 15% is an enormous burden." She was living on a fixed income of Social Security, and 15% of those funds were taken each month to repay her defaulted student loans. I have represented many older clients who are still repaying student loans and have lived this story, too. I have watched them cry as they have explained their desire to repay their student loans, and described what they have to sacrifice to make repayment possible: food, medication, and paying utility bills.

We have a chance to revisit what is working and what is not in our federal student aid system. This testimony is informed by our work with individual borrowers. Their experiences illustrate the problems that this Congress has the power to resolve through its reauthorization of the HEA. We need a system that works for the students it is supposed to serve. A highly-educated workforce is good for all of us. Taxpayers benefit the most when students complete their studies, get good jobs, and repay their loans.

III. Financial Aid: An Overview of Problems Stymying Student and Borrower Success

The federal student aid programs should be tailored to the needs of all students and borrowers, working seamlessly for their benefit. But our clients are often forced to navigate a number of frustrating, but common, issues in federal student loan repayment. The federal student aid system is quite complex. Complexity alone is not necessarily a problem. However, complexity becomes problematic when students and borrowers cannot access the aid or loan features they need to thrive. Many borrowers successfully select their repayment plans and are on track to manage their loans. However, other borrowers become derailed and have difficulty obtaining the complete, accurate information they need to assess their options and the path forward.

For low-income individuals and families who do not have extra dollars in their budgets, getting off track and facing involuntary collection activities, such as reductions of their monthly Social Security benefits or withholding of their tax refunds, can be utterly devastating. Though hardship programs are available to help borrowers through these situations, as the Government

Accountability Office (GAO) recently noted, borrowers are not routinely told about these programs and the application forms are buried deep in obscure websites.³

Families with young children are similarly impacted. Last year, we met with a client experiencing homelessness who was raising 5-month-old twins. She had paid her rent, but was evicted from her last apartment when the building was sold to a new owner who did not renew her lease. Her twins were less than a month old at that time. When she had filed her taxes, she was expecting a tax refund of approximately \$7000 – mostly from the Earned Income Tax Credit. However, she later found out that the entire tax refund was taken by the federal government to pay her defaulted student loan. She had not received the notice warning that her refund could be taken because it was mailed to her old address. NCLC helped her submit a request for the return of tax refund on the basis of extreme financial hardship. Her request showed that she was homeless and unable to meet her and her sons' basic living needs. She was planning on using her tax refund to secure stable housing. However, her request was denied because she had not experienced a foreclosure or eviction within 30 days of her tax refund being taken. Therefore, she could not meet the Department's narrow definition of extreme financial hardship.

Although many of our clients are among those who borrowed relatively less than other student loan borrowers, they find themselves, nonetheless, with low earnings or limited means.⁴ Far too many borrowers, like our clients, have struggled to access critical features of their federal loans just when they needed them. As a result, a large number experience distress and default. Those who need aid the most are often among those who struggle to obtain the benefits, protections, and safeguards that aid promises.

A distinct majority of the student loan borrowers we have worked with are people of color. Because of persistent, historical income and wealth disparities along racial and ethnic lines, people of color continue to rely on financial aid more than their white counterparts.⁵ If our

³ U.S. Gov't Accountability Office, Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief, GAO-17-45 (Dec 19, 2016).

⁴ Marshall Steinbaum & Kavya Vaghul, "An introduction to the geography of student debt," Washington Center for Equitable Growth (Dec. 1, 2015), available at <http://equitablegrowth.org/research-analysis/an-introduction-to-the-geography-of-student-debt/>. See also Adam Looney & Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributes to Rising Loan Defaults*, Brookings Papers, (Fall 2015), available at <https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/>.

⁵ *Id.* See also Scott A. Ginder, Janice E. Kelly-Reid & Farrah B. Mann, "Preliminary Data Report: Graduation Rates for Selected Cohorts, 2008–13; Outcome Measures for Cohort Year 2008; Student Financial Aid, Academic Year 2015–16; and Admissions in Postsecondary Institutions," Fall 2016 (NCES, Sept. 2017), available at <https://nces.ed.gov/pubs2017/2017150.pdf>; Ben Miller, "New Federal Data Show a Student Loan Crisis for African American Borrowers" (Center for American Progress, Oct. 2017), available at <https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american->

federal student aid system works well, it can help close gaps in higher education attainment, income, and familial wealth. However, if it performs poorly, then it may, instead, exacerbate long-standing inequities. Many of our clients are also the first in their families to pursue higher education. Others are veterans. And some are parenting students. We need a federal aid system that serves students from each of these groups—and others—well.

Because our clients are in distress and default before they meet with us, something or many things have already gone wrong before they make it to our office.

- The school may have failed to deliver the education it advertised.
- The borrower may have been laid off or become disabled.
- The servicer may have misplaced paperwork or miscalculated the borrower's monthly payment.
- The private collection agency (PCA) may have misinformed the borrower about options to get out of default.

Any one of these possibilities is sufficient to impede borrower success in repayment.

Navigating Loan Repayment

When we meet with a new client for the first time, our first challenge is to identify the type(s) of loans they have. Different loans have different rules and present borrowers with different options for getting and staying on track through repayment. For example, a borrower could have a Federal Family Education Loan Program (FFELP) Stafford loan eligible for the Income-Based Repayment (IBR) plan using the 15% formula, a Direct Stafford loan eligible for the Revised Pay as You Earn (REPAYE) plan using the 10% formula, and a Perkins loan with no income-driven repayment (IDR) option at all. We then have to figure out the history and the status of each loan, for instance whether the loan is current, delinquent, or defaulted, using the scant amount of information provided in the National Student Loan Data System (NSLDS) database. Only then can we begin to work on resolving the issue that prompted the borrower to seek legal assistance.

Of the borrowers who could benefit from the help of an attorney, far too few are likely to find such an attorney available to them. Few civil legal aid programs have sufficient resources to provide assistance to student loan borrowers, as they are grappling with meeting a wide range of legal needs for their low-income clients. Borrowers need help navigating repayment, and unfortunately, due to the void left by inadequate servicing, a number are preyed upon by

[borrowers/](#); Marshall Steinbaum & Kavya Vaghul, "How the student debt crisis affects African Americans and Latinos," Washington Center for Equitable Growth (Feb. 17, 2016), *available at* <http://equitablegrowth.org/research-analysis/how-the-student-debt-crisis-affects-african-americans-and-latinos/>.

See *also*, Letter from NCLC et al, to U.S. Secretary of Education, John B. King, Jr. (Aug. 17, 2016) available at <http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/ltr-sec-king-race-student-debt.pdf>.

illegitimate debt relief operations that siphon funds from borrowers without leaving those borrowers better off or delivering the services they claimed they would provide.⁶

Borrowers should not need the help of an attorney to understand how to meet their repayment obligations. This is exactly the function that servicers should be performing before borrowers default. Unfortunately, the servicing companies and then the debt collection companies to which we pay billions of dollars each year are not adequately ensuring that borrowers are able to easily access the programs that could ensure their success.

Accountability

Our system of financing higher education through debt is deeply flawed if we only hold students accountable for their degree of success in repayment. But that is exactly what is happening, in the experience of our clients, it is often the student or borrower who bears the brunt of the risk when an educational investment does not pay dividends of stable employment or decent wages. A fair system of financial aid would also hold the many institutions students interact with accountable for student outcomes, including borrower outcomes in repayment.

We have created a federal student aid system that enriches private companies who collect student loan debt from borrowers who have limited ability to repay. This collection activity often causes these borrowers even greater difficulty in repaying because collection costs and fees are added to the already daunting debt levels these borrowers face.

Servicing

The federal financial aid system relies on a complex patchwork of entities hired to provide loan servicing to borrowers. Few borrowers understand what loan servicing is or which company services their loans. Worse yet, some borrowers have more than one servicer for their loans. Different servicers have different practices and some are easier to reach or work with than others. Borrowers with more than one servicer often believe they have done their part to stay current on their loans by working with one servicer, and only learn otherwise when they begin facing debt collection activity on another batch of loans. Many borrowers (who generally do not get to choose their servicer) have had a dispute with their servicer or have concerns about their servicer's quality and effectiveness.

NCLC had one client whose eleven loans were held by three different lenders. When she tried to consolidate her loans, a single loan was left off despite the fact that she had included it on her consolidation application. The consolidation summary is challenging to read,

⁶ State and federal regulators are working together to protect borrowers from these predatory companies. See Federal Trade Commission, Press Release: FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams - Scammers made false promises and charged illegal upfront fees of more than \$95 million (Oct. 13, 2017), *available at* <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

and because some of the loans from that lender had been included, she believed all of them to be included. To confuse the matter more, the lender who held the one unconsolidated loan also held her private loans. Instead of helping her navigate this situation, her lender (which is also a Department of Education servicer) routinely told her that she had called the wrong part of the company.

To the extent that low-income individuals and families must borrow student loans to pay for college, those loans should come with protections, including high-quality servicing and affordable repayment plans, that will support borrowers throughout the life of their loans.

Default and Debt Collection

Currently, borrowers get stuck in default and do not understand their options for getting out or staying out. It should be hard to enter and easy to exit default. Particularly for low-income borrowers, defaults can be prevented by enrollment in income-driven repayment plans. Nonetheless, too many borrowers slip through the cracks of the current loan servicing system and find themselves in default. Borrowers should not have to suffer such onerous consequences from default. The negative credit reporting alone can impede access to housing, employment, and other credit. Further, default precludes access to additional federal financial aid, including grants and other non-loan aid. This is particularly problematic for borrowers who desire to continue their educations, especially those who did not obtain their degree or credential when they first attended school.

Unfortunately too few debt collectors adequately explain the options available to borrowers for getting out of default. NCLC served a 60-year old woman who was living on less than \$700 of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). The debt collector insisted that she had to rehabilitate her loans, and for reasons explained in greater detail below, insisted that her payments had to be \$200 per month. This client tried in earnest to follow the rehabilitation plan for over two years, but, because it was unaffordable, she was never able to successfully make the nine on-time payments the program required. She was never informed of consolidation as an option for curing default. Throughout this time, the debt collector, despite knowing the source of her income, never told her about the Total and Permanent Disability discharge program. It was not until she reached NCLC that she ever learned about this program, and we were able to help her cancel her loans.

Effective servicing and affordable monthly payments would leave fewer borrowers subject to default and its attendant debt collection.⁷ That would save taxpayers money because borrowers will be repaying their loans and the government will not have to spend money trying to collect outstanding loans.

⁷ National Consumer Law Center, *Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies* (Sept. 2014), available at <https://www.nclc.org/issues/pounding-student-loan-borrowers.html>.

IV. Future of Federal Student Aid: Implementing Changes for Student and Borrower Success

When students receive the benefits of the federal aid program, we all win. On the front end, we can prevent uncertainty and challenges in repayment by ensuring that the neediest students receive all of the grant and non-loan aid for which they are eligible. Grants are a vitally important component of a financial aid system designed to ensure affordable access to higher education. They help make higher education a reality for students from low-income backgrounds.

Increasing Access and Affordability Through Non-Loan Aid

The lowest-income students, those with the most need should not wind up mired in unaffordable debt. Smoothing access to grants and non-loan aid would allow more students to complete their programs and benefit from the credential they worked diligently to earn. When low-income students borrow less, then there is less risk on the back-end with loan repayment. This puts them on a path to achieving the financial independence that will support loan repayment success—if they have to borrow loans at all.

Increasing Affordability Throughout the Federal Loan Lifecycle

Income-driven repayment (IDR) offers many borrowers a sustainable way to ensure that their monthly loan payments are and remain affordable. Although there are a number of IDR plans, they share important features:

- 1) they require borrowers to pay only a reasonable percentage of their earned income toward their student loans,
- 2) they acknowledge that borrowers must cover basic living expenses by exempting a portion of income based upon the federal poverty levels for their family size,
- 3) they allow borrowers to report changes in their income at any time, and
- 4) they ensure that borrowers are not obligated to take their student loan debt to the grave by providing forgiveness after a fixed period of time.

No borrower should remain indebted forever, and IDR enables borrowers to meet their student loan obligations while also working toward retiring the debt, regardless of the borrower's means.

Without IDR, many borrowers have become delinquent and defaulted not because they are unwilling to repay their loans, but because they are unable. I have represented borrowers with decades-old outstanding federal student loans. Many of them exhausted their forbearances long ago and ran out of chances to cure default because their monthly payments were not affordable. As soon as they exited default through consolidation or rehabilitation, they were set up to fail when they were placed back on the Standard or another unaffordable, balance-based repayment plan. This issue is particularly prevalent among those who exit default through rehabilitation. Because there is no statute of limitations on the collection of federal student loans, any barriers to repayment only increase the risks of nonpayment and default for the borrower, taxpayers, and the government.

Loan repayment should be affordable for all borrowers: students and parents borrowing for undergraduate education, as well as students borrowing for graduate education. To make it through loan repayment, borrowers need to know that IDR plans are available. Further, they need to understand how to enroll and stay enrolled. Finally, borrowers for whom the existing IDR plans still pose a financial hardship should have options for further reductions in their payment obligations on a temporary and long-term basis.

Supporting Borrower Success

The federal financial aid programs should be easy for students and borrowers to understand and navigate. All students and borrowers who need federal aid should have an appropriate option available to them. Simplifying the current aid system can help achieve this goal, but only if it is designed to accomplish twin objectives. First, it must serve everyone who needs access to it. Second, it must make extra efforts to ensure that people for whom federal aid is a critical pathway to educational opportunity receive all the benefits of the program.

Income-driven repayment is at the heart of making student loan repayment affordable for borrowers like our clients. IDR can certainly be simplified, but our experience with borrowers has shown us that borrowers struggle to access these plans not necessarily because the plans are complicated, but because servicers consistently fail to inform borrowers of IDR as an option for managing their repayment obligations.

A current NCLC client went to a local for-profit school which was recently sued by the Attorney General of Massachusetts for false and deceptive enrollment practices. She completed a certificate in the medical assistant program, but she was unable to find a job in her field of study. She worked off and on but never enough to afford her student loan payments. She dutifully contacted her servicer every year and has submitted income documentation. She has never been enrolled in an IDR plan. Before coming to our office, she had never heard of IDR. Although she called her servicer every year to discuss her financial situation, she was always directed to a deferment or forbearance. She has been out of school since 2012 and is still in good standing due to her extreme diligence. Yet that time has been wasted because she could have been in an IDR plan making affordable qualifying payments. The capitalization of the interest alone during this time period has cost her hundreds if not thousands of dollars. Moreover, she will be paying on this loan for five more years than necessary. IDR—whether it consists of one repayment plan or twenty—will only work for borrowers when servicers fulfill their responsibility for properly administering it.

Two common-sense steps would help borrowers succeed in repayment. First, financial aid begins and ends with completing forms. The forms are long, confusing, complex, and not necessarily language-accessible. Submitting paperwork to servicers and debt collectors can result in delays or hassles that extend the repayment period and increase the amounts borrowers will pay over the life of their loans. And the costs of missing a paperwork deadline can be extraordinary. Therefore, forms should be more straightforward, translated into multiple

languages, including Spanish, and readily available to borrowers when they need them, including through www.studentloans.gov. Also, fewer forms should be required where the government already possesses the information it needs to determine that a borrower would benefit from a particular loan benefit.

Second, automatically enrolling or retaining borrowers in programs that will ensure their long-term success in repayment could reduce the cost of administering the federal aid program, while also ensuring that more borrowers are on track to succeed in repayment. Reauthorization of the HEA should prioritize moving forward with information-sharing agreements and coordination between the U.S. Department of Education (Department) and other agencies to ensure that borrowers remain on their IDR plans from one year to the next or are identified as eligible for Total and Permanent Disability Loan Discharges in a timely manner, for example.⁸ Further, if there is a mechanism to automatically enroll borrowers who are in the late stages of delinquency onto IDR plans, then those borrowers may be spared the consequences of default and also continue to move toward repayment of their loans.⁹

Supporting Borrower Success Through Transparency and Accountability

As we seek to make student loan repayment as simple for borrowers to manage as possible, we should continue to explore ways to ensure that borrowers have important information at crucial intervals and the public has access to data sufficient to evaluate the performance of the federal aid system. On the front end, before they borrow, individuals and families should know the cost of the educational program and their options for using federal aid to meet their needs. They should be informed of the outcomes of other students and borrowers while in that educational program and in loan repayment.

While it is important for loan and educational program details to be disclosed at the outset, information about student loan repayment options provided at entrance or exit counseling may grow stale before borrowers know whether they will need to act on it. The time at which the information is presented renders the information irrelevant. Borrowers may also

⁸ U.S. Dep't of Educ., Press Release, U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities (Apr. 12, 2016).

⁹ As the CFPB noted in its 2017 Student Loan Ombudsman annual report, following voluntary changes made by private lenders that automatically placed eligible servicemembers in interest rate reductions, one government study found that the number of servicemembers who received the interest rate cap on at least one of their private student loans more than doubled, from 14,970 to 33,309. The CFPB posited that policymakers and market participants may find this example instructive as they consider steps to strengthen policies or practices where invocation of other benefits and protections depends on a similar process. Because borrowers must self-identify their eligibility in order to invoke their various rights and servicers rely on manual processing to apply benefits and protections to borrowers' accounts, many borrowers fall through the cracks. This likely widens the gap between the total population of eligible beneficiaries for each of these protections and the segment of borrowers able to successfully invoke their rights. As the Bureau's research has noted in the past, it is often the most vulnerable student loan borrowers who fall through this gap.

See Consumer Fin. Prot. Bureau, 2017 Annual Report of the CFPB Student Loan Ombudsman 44-46 (Oct. 2017).

experience information overload and lack a sense of how to retain or track the information provided to them because they do not yet know whether they will need that information. Ultimately, those borrowers need a clear source of good information and comprehensive counseling when it is time for them to act.

A single, online loan-servicing portal could provide key benefits to those borrowers. Ensuring that borrowers always know where to go to get up-to-date, accurate loan information is essential to ensure that they can meet their loan repayment obligations. It would also ensure that borrowers know how to communicate with the entity responsible for guiding them through loan repayment. The portal should also help borrowers understand their rights and learn about the services they should be able to obtain during repayment.

Our experience representing borrowers has taught us that tasking a single servicer with responsibility for the federal student loan portfolio would not be a panacea. Without competition, adequate oversight, or accountability, our clients and those of the advocates with whom we work, continue to uncover repayment issues that arose when a single company serviced the Direct Loan portfolio.¹⁰ As a result, some borrowers who are working toward repaying their loans on an income-driven repayment plan will pay more than necessary and spend more time in repayment.

Our experience representing borrowers has also taught us that servicers often act to maximize their compensation in ways that do not necessarily correlate with borrower success in repayment. We believe borrowers will consistently receive high-quality servicing when financial incentives for servicers are closely aligned with optimizing borrower outcomes.

To ensure accountability, there must be appropriate, common servicing standards and real consequences when servicers underperform or violate borrower rights. Relative performance metrics, compliance with federal and state consumer protection laws, as well as borrower complaint data should be shared with the public and factored into decisions regarding sanctions and future contract awards and account allocations.

Over the past several years, an increase in public enforcement actions at the federal and state levels based upon violations of the rights of borrowers who were attempting to repay their federal loans has resulted in improvements in servicing. The Consumer Financial Protection Bureau (CFPB) has responded to borrower complaints and disputes by holding servicers and debt collectors accountable for depriving borrowers of the benefits and protections they are due.¹¹ Federal and state regulators and enforcement agencies, coupled with private

¹⁰ Danielle Douglas-Gabriel, "ACS's \$2.4 million settlement in Massachusetts highlights problems in student loan servicing," *The Washington Post*, Nov. 22, 2016, available at https://www.washingtonpost.com/news/grade-point/wp/2016/11/22/acss-2-4-million-settlement-in-massachusetts-highlights-problems-in-student-loan-servicing/?utm_term=.05fc565139ef.

¹¹ Consumer Financial Protection Bureau, Press Release: CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment - Navient, Formerly Part of Sallie Mae, Illegally Cheated Borrowers Out of Repayment Rights Through Shortcuts and Deception (Jan. 18,

enforcement, are needed to promote strong oversight of an effective servicing system that protects borrower rights

To ensure that borrowers receive consistently high quality service, borrowers and their advocates should have access to the guidelines and standards that the Department provides to contractors. Unfortunately, the recent past has shown us that some violations of borrower rights stemmed from the instructions that the Department provided to its contractors.¹² In 2012, Bloomberg News reported that the Department's contract with private collection agencies paid the PCAs 16 percent of the loan balance when a borrower completed a rehabilitation plan. However, it only paid this high commission rate if the borrower's monthly payments equalled between 0.75% to 1.25% of the entire loan balance despite the law requiring that the payment amount be reasonable and affordable based upon the borrower's circumstances. As the former debt collector quoted in the story said, "It would be "a cold day in Hades" before collectors would tell borrowers about options with lower payments."¹³

Also, providing this information to borrowers will help borrowers to distinguish between legitimate and illegitimate debt collection and debt relief companies. Borrowers are unlikely to willingly work with debt collection companies when they cannot be certain that those debt collectors are truthful. A few years ago, the Department fired five debt collectors because those companies were misleading borrowers about their default resolution options.¹⁴ It would be easier to identify problematic practices like those even sooner if borrowers have access to better information about their options apart from what the debt collectors say. It would also help if borrowers know what to expect from the debt collectors, including what authority and discretion the collectors have to help borrowers exit default and get back on track to repayment.

Recently, the Department of Education announced that it was rehiring a private collection agency (PCA) that has faced private litigation due to its refusal to allow borrowers to enter into reasonable and affordable loan rehabilitation agreements in violation of the

2017), available at <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/navient-corporation-navient-solutions-inc-and-pioneer-credit-recovery-inc/>; *CFPB v. Navient Corporation; Navient Solutions, Inc.; and Pioneer Credit Recovery, Inc.*, No. 3:17-cv-00101 (M.D.Pa. Jan. 18, 2017).

¹² Jack Remondi, Setting the Record Straight on SCRA, Medium.com (Mar. 13, 2016), <https://medium.com/@JackRemondi/setting-the-record-straight-on-scra-e642fa370d0a#.2lpfahni> (following U.S. Department of Justice enforcement action, CEO of Navient stated that Navient's violations of the Servicemembers Civil Relief Act were a result of its having followed the Department of Education's guidance).

¹³ John Hechinger, Obama Relies on Debt Collectors Profiting from Student Loan Woes, *Bloomberg News* (Mar. 26, 2012) available at <https://www.bloomberg.com/news/articles/2012-03-26/obama-relies-on-debt-collectors-profiting-from-student-loan-woe>.

¹⁴ U.S. Department of Education, Press Release: U.S. Department of Education to End Contracts with Several Private Collection Agencies - After finding high incidences of materially inaccurate representations, Department acts to protect consumers (Feb. 27, 2015): <https://www.ed.gov/news/press-releases/us-department-education-end-contracts-several-private-collection-agencies>.

Department of Education's regulations and the Fair Debt Collection Practices Act.¹⁵ Private enforcement will continue to be an important way to highlight issues before they become systemic and create greater risk for more borrowers and taxpayers.

The public should also have access to information about student and borrower outcomes. True oversight and accountability depend on collecting and sharing this kind of information. At present, little information about borrower outcomes, servicer performance, and debt collector behavior is publicly available. In its current iteration, the Department of Education's office of Federal Student Aid (FSA) resists disclosing the kind of information that could encourage real accountability, including public and private enforcement of the legal rights of borrowers. This is largely because the structure of the FSA produces some of the ongoing conflicts of interest within the Department. While FSA is supposed to act on behalf of its customers, there is no single priority group of customers. The priority group category includes not only students, but also financial institutions and schools. The FSA, by its very nature, has multiple constituencies, often with conflicting needs and goals.¹⁶ Thus, it often takes steps to protect financial institutions and schools to the detriment of students. Further, without access to information about borrower outcomes, future students and their families will continue to be deprived of the information that could help them determine which educational programs would be a good investment of their time and money.

V. Conclusion

Student success in school and borrower success in repayment depend on building a student aid system that allows students and borrowers to access the benefits and information they need to thrive. Simplification and transparency can help, but at this crucial moment, we can also design a federal aid system that maintains its integrity through real accountability.

Thank you for the opportunity to testify today. I would be happy to answer any questions.

¹⁵ *Love v. Windham Professionals, Inc.*, 1:13-cv-01649-BMC (E.D.N.Y.) (settled prior to rulings on cross motions for summary judgment); see Andrew Kreighbaum, "Debt-Collection Contracts Awarded to 2 Companies," *Inside Higher Ed*, Jan. 15, 2018, available at <https://www.insidehighered.com/quicktakes/2018/01/15/debt-collection-contracts-awarded-2-companies>.

¹⁶ NCLC, *Pounding Student Loan Borrowers*, *supra*, at 4.