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Comments of

The Project on Predatory Student Lending and

The National Consumer Law Center (on behalf of our low-income clients)

to the Department of Education on

Intent to Establish Negotiated Rulemaking Committee
Docket ID: ED–2014–OPE–0214

Submitted: November 4, 2014

These Comments are submitted in response to the Department of Education's (the "Department") request for comments regarding the upcoming negotiated rulemaking concerning the Pay As You Earn Repayment Plan ("PAYE"), 79 Fed. Reg. 52273-02 (Sept. 3, 2014).[1]

The Project on Predatory Student Lending is dedicated to helping low-income student loan borrowers. Working in collaboration with other social service providers, community groups, and non-profits, we help and advise student loan borrowers throughout Massachusetts who are struggling with student loans they cannot pay and financial and legal systems they cannot navigate alone. Our clients come to us with crushing and unaffordable student loan debt, often in the form of federal student loans. Many have unknowingly signed enrollment agreements containing sweeping arbitration clauses purporting to waive their right to seek relief in court. They are frequently unaware that they are eligible to enroll in more affordable income-driven repayment plans. Those who are already enrolled in income-driven repayment plans still struggle to afford monthly payments. Consequently, many default on their loans and are left to face dire consequences, including wage garnishments, harassing collection practices, benefit offsets and adverse credit reports. These comments are submitted on behalf of these clients, and based on their experiences.

These comments are also submitted on behalf of the National Consumer Law Center's low-income clients. The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work 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. We work with other advocates across the country

[1] These comments were written by attorneys Deanne Loonin and Persis Yu of the National Consumer Law Center, and attorney Toby Merrill of the Project on Predatory Student Lending, with help from Maxwell Ball.

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.[2]

The Department can help low-income borrowers like our clients by making several sensible changes to expand the reach and relief provided by PAYE. Furthermore, the Department should use the upcoming negotiated rulemaking to address several issues outside the scope of PAYE, such as eliminating the use of harmful arbitration clauses in private student loans and school enrollment agreements and improving relief for borrowers harmed by abusive school practices. Our recommendations are summarized in the list below.

1. Improve the benefits and targeting of PAYE by:
    - Removing time restrictions on PAYE eligibility;
    - Simplifying the repayment process to allow borrowers to make better-informed choices about repayment;
    - Lowering payments for very-low-income borrowers by calculating payments based on income above 200% of the federal poverty guideline;
    - Ensuring that Parent PLUS borrowers are aware that they are eligible for income-contingent repayment if they consolidate their Parent PLUS loans, and maintaining that option for them;
    - Continuing to treat married borrowers fairly by refusing to impose additional financial penalties for filing taxes separately; and
    - Allowing borrowers who consolidate to retain time earned toward forgiveness.

2. Ensure access to PAYE by making operational improvements, including:
    - Providing assistance for delinquent borrowers in danger of defaulting by reaching out to provide solutions prior to default and testing programs to identify and target services to borrowers at greatest risk of default;
    - Taking a more active and aggressive approach to oversight and enforcement of servicing regulations and contracts, and allowing borrowers to protect themselves from harmful servicing by creating enforceable consumer rights;
    - Limiting collectors to fees that are reasonable, bona fide, and actually incurred, and ending the practice of allowing collectors to charge borrowers costs unrelated to collection of their defaulted loans; and
    - Piloting in-house collection of defaulted student loans.

3. Make other important changes to the federal student loan program to help distressed borrowers, including:
    - Improving the operation of the rehabilitation program by clarifying protections for borrowers under recent regulatory changes;
    - Prohibiting binding arbitration clauses in private student loan contracts and school enrollment agreements;
    - Expanding the relief for students who are harmed by fraudulent practices at for-profit schools by expanding eligibility for false certification discharges;
    - Expanding the relief for students who are harmed by fraudulent practices at for-profit schools by shifting the burden to the Department of investigating facts beyond those in the borrower's sworn affidavit;

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[2] *See* the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including STUDENT LOAN LAW (4th ed. 2010 and Supp.).

- Expanding the relief for students who are harmed by fraudulent practices at for-profit schools by expanding and clarifying regulations allowing borrowers to assert school fraud as a defense to loan repayment;
- Treating borrowers at least as well as schools when adjusting schools' Cohort Default Rates; and
- Taking steps to address increasingly common abuses committed by predatory "student debt relief" companies.

IMPROVE PAYE'S BENEFITS AND TARGETING

Remove the time restrictions on PAYE eligibility.

We are encouraged to see that the Administration is taking steps to expand the PAYE program and hope that the Secretary will eliminate the time restrictions on eligibility. The limitations on eligible borrowers under the current PAYE regulations are unfairly restrictive and foreclose the benefits of PAYE to millions of borrowers. The only borrowers currently eligible are those who had no outstanding Direct or FFEL loans as of October 1, 2007 and who have received a Direct Loan disbursement on or after October 1, 2011.[3] Unfortunately, many of our clients, who desperately need the relief provided by PAYE, have outstanding loans that pre-date 2007. PAYE has been estimated to reach only 1.6 of the 40 million borrowers with outstanding federal student loans.[4]

Seven million borrowers had over 100 billion dollars of outstanding Direct loans in 2007.[5] By eliminating the time restriction on PAYE, the Department will be providing much-needed relief to these borrowers, many of whom are still paying back those loans. Their exclusion from the program is not statutorily required, and fails to target PAYE's benefits to borrowers who need them the most. The Department should eliminate these time restrictions in order to extend relief to the millions who borrowed before 2007 or stopped borrowing before 2011.

Simplify the repayment process.

The current federal student loan regulatory scheme is far too complex for borrowers to understand. Numerous repayment plans exist, and each plan has slightly different features and eligibility restrictions, making it challenging for even the most sophisticated borrowers to understand their options. Very few of our clients are even aware of the basic features of the existing repayment plans.

The complexity of the various repayment plans makes it hard for borrowers to make an informed decision when choosing a plan. Understanding and distinguishing among these terms requires a level of interpretation and financial literacy that few borrowers possess, and few servicers are capable of or willing to provide.

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[3] *See* 34 C.F.R. § 685.209(a).
[4] *See Education Department Launches 'Pay As You Earn' Student Loan Repayment Program*, U.S. DEPARTMENT OF EDUCATION (Dec. 21, 2012), http://www.ed.gov/news/press-releases/education-department-launches-pay-you-earn-student-loan-repayment-plan (estimating PAYE would reach 1.6 million borrowers); U.S. DEPARTMENT OF EDUCATION OFFICE OF FEDERAL STUDENT AID, FEDERAL STUDENT LOAN PORTFOLIO SUMMARY, https://studentaid.ed.gov/about/data-center/student/portfolio (reporting nearly 37 million borrowers with outstanding FFEL and Direct loans).
[5] *See* U.S. DEPARTMENT OF EDUCATION OFFICE OF FEDERAL STUDENT AID, FEDERAL STUDENT LOAN PORTFOLIO SUMMARY, https://studentaid.ed.gov/about/data-center/student/portfolio.

The complexity of the terms of the repayment plans masks the consequences of certain provisions to borrowers. For example, both IBR and PAYE allow some borrowers to pay a monthly amount that is lower than the interest that accrues on their loans each month.[6] The balance on these borrowers' loans increases over the repayment term of the loans. However, the two programs treat interest differently. For example, PAYE limits the amount of interest that will be capitalized. Borrowers are required to make accurate predictions about future earnings in order to determine which of the plans' treatment of interest will be the most beneficial. Most borrowers do not understand this trade-off, and yet borrowers are expected to identify the plans for which their loans are eligible and determine which plan has the most favorable terms for them; this is a heroic task for the savviest of borrowers.

The Department should consider ways to reduce the existing complexity facing borrowers without curtailing the benefits available to them. Complexity harms borrowers by making it more difficult to differentiate and choose among available options, and harms taxpayers by raising the price of implementation.

Lower payments for very low-income borrowers.

Although current income-driven repayment plans are more affordable for our clients than the standard ten-year repayment plan, many of our clients still struggle to afford these reduced payments, especially in combination with payments on private student loans. The Department should adjust how payments are calculated under PAYE to ease the burden of student loan repayment for low-income borrowers. Specifically, it should increase the percentage of the federal poverty guideline used to calculate a borrower's monthly payments.

150% of the current federal poverty guideline is too low to meet our clients' basic needs. Research suggests that families need an income of at least twice the current federal poverty guideline to afford basic living expenses.[7] One study determined that a single parent with two children living in a moderate-cost city must make about $41,000 a year to pay for basic living expenses.[8] If that parent has an income of $40,000, barely covering basic living expenses, and outstanding federal student loans, she will pay up to $86 per month under PAYE. Diverting nearly $100 from this family's monthly budget is extremely harmful and can leave the family short on money for basic necessities, such as food or rent. To make matters worse, many of our clients also have private student loans, which are ineligible for income-driven repayment. These private loan payments end up stretching already thin budgets.

The Department should target PAYE relief to low-income borrowers by increasing from 150 to 200 the percentage of the federal poverty guideline reserved to meet borrowers' basic needs. Under this

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[6] *See* 34 C.F.R. § 685.209(a)(2).

[7] *See, e.g.*, KINSEY DINAN, NAT'L CTR. FOR CHILDREN IN POVERTY, BUDGETING FOR BASIC NEEDS: A STRUGGLE FOR WORKING FAMILIES, (2009), http://www.nccp.org/publications/pdf/text_858.pdf ("It takes an income of about 1.5 to 3.5 times the official poverty level . . . to cover the cost of a family's minimum day-to-day needs"); MARK GREENBERG, CENTER FOR AMERICAN PROGRESS, IT'S TIME FOR A BETTER POVERTY MEASURE (2009), http://cdn.americanprogress.org/wp-content/uploads/issues/2009/08/pdf/better_poverty_measure.pdf ("The dollar figures used to determine if families are in poverty are low and in many ways arbitrary."); NAT'L ACAD. OF SCIENCES, PANEL ON POVERTY AND FAMILY ASSISTANCE, MEASURING POVERTY: A NEW APPROACH 1 (Nat'l Acad. Press 1995) ("Our major conclusion is that the current measure needs to be revised: it no longer provides an accurate picture of the differences in the extent of economic poverty among population groups or geographic areas of the country"); INSIGHT CTR. FOR CMTY. ECON. DEV., 2011 CALIFORNIA FAMILY ECONOMIC SELF-SUFFICIENCY STANDARD (2011), www.insightcced.org (finding a family of four in California would need nearly triple the federal poverty guideline to cover basic needs).

[8] *See* KINSEY DINAN, NAT'L CTR. FOR CHILDREN IN POVERTY, BUDGETING FOR BASIC NEEDS: A STRUGGLE FOR WORKING FAMILIES, (2009), http://www.nccp.org/publications/pdf/text_858.pdf.

proposal, single borrowers earning between $17,505 and $23,340 per year would be relieved of the obligation to make small but painful monthly payments. This change would provide the most significant relative reduction in payments to the lowest-income borrowers, providing much-needed relief to those barely earning enough to get by. By making this change, the Department can target relief to low-income borrowers who suffer as a result of the federal poverty guidelines.

Parent PLUS borrowers need continued and improved access to their only income-driven repayment option.

Parents who seek our help with debts incurred for their children's education – especially Parent PLUS loans – are often in particularly dire circumstances. These PLUS loans have higher interest rates than other types of student loans, lack Department-imposed limits on amounts borrowed, are not eligible for the income-driven repayment plans, and can rarely be discharged in bankruptcy. As a result, low-income Parent PLUS borrowers come to us with much larger debts, and fewer options for averting or resolving defaults.

Unfortunately, the Department provides PLUS loans to parent borrowers who cannot afford them, saddling low-income families with debt they cannot repay. Although PLUS loans are the only type of federal educational loan to require any evaluation of the borrower's credit, the data the Department recently provided shows that almost 100,000 Parent PLUS borrowers were unable to make payments for nine or more months within their first three years of repayment.[9] Unlike other federal educational loans, Parent PLUS loans have no borrowing limits, and the Department does not evaluate applicants' ability to repay before granting access to nearly-unlimited credit. To make matters worse, the Department recently enacted changes to the PLUS Loan program that relaxed the minimal lending restrictions that had been in place, extending the program to even more parents who are already experiencing documented financial difficulties when they apply.[10] No evidence suggests that borrowers granted PLUS loans pursuant to these new regulations will be able to repay them without hardship.[11] Indeed, the Department's analysis suggests the opposite.[12]

If the Department is not willing to consider Parent PLUS borrowers' ability to repay their loans, it must at least continue to provide the limited relief currently available to parents whom it has so heavily indebted. Parent PLUS loans are not currently eligible for PAYE, IBR or ICR.[13] The only way for over-indebted parent borrowers to obtain any relief is by consolidating into a Direct Consolidation Loan, which can be repaid in ICR.[14] While this option is often insufficient to meet the needs of many of our clients, it is better than no income-driven option at all. Therefore it is essential that the Department keep this option available in order to preserve relief for parents to whom the Department has lent too much under the PLUS loan program.

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[9] *See PLUS Borrowers 3-Year Cohort Default Rate*, *available at* http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/pii2-plusborrowers-cdr.xls.

[10] *See* Direct Loan Program Proposed Rules, 79 Fed. Reg. 46640 (Aug. 8, 2014).

[11] *See id.* at 46645 ("The Department . . . does not have data to determine if borrowers who would have been considered to have an adverse credit history in the absence of the proposed regulations have a greater incidence of default or repayment difficulty."). The Department announced in October 2014 that, for the first time, it will begin collecting and, where appropriate, publishing information about the performance of PLUS loans, including default rate information based on credit history characteristics of PLUS loan borrowers and individual institutional default rates.

[12] *Id.* (noting that, "if a subsidy rate were available for this subgroup of PLUS borrowers, it would likely differ from the overall PLUS subsidy rate").

[13] *See* 34 C.F.R. § 685.209(a)(1)(ii); 20 U.S.C. § 1087e; 20 U.S.C. § 1098e.

[14] *See Income-Driven Repayment*, Federal Student Aid, https://studentaid.ed.gov/about/announcements/interest-rate (last visited Oct. 27, 2014).

The Department must also ensure that loan servicers inform Parent PLUS borrowers that ICR may be available through a Direct Consolidation Loan. ICR is currently underutilized by parent borrowers because many of them do not know it is available. None of our clients struggling to repay Parent PLUS loans have been notified by their servicers of this option, and many who have requested it have been told that their loans are ineligible. In its future oversight of student loan servicers, the Department should make sure that servicers consistently inform Parent PLUS borrowers that ICR is an option. Further, to the extent that the Department considers streamlining the income-driven repayment programs, it is essential to preserve this option in an equivalent form for Parent PLUS borrowers.

Continue to treat married borrowers fairly.

We urge the Department to continue to allow married borrowers to calculate their PAYE payment based upon the borrower's adjusted gross income, even if the borrower files a separate tax return from their spouse. The ability to file separately is critical for certain vulnerable borrowers. Current proposals to eliminate this option will have the unintended consequence of materially harming borrowers who may be estranged from their spouses, are victims of domestic violence, or otherwise do not have access to their spouse's income or assets.

Allow borrowers who consolidate to retain time earned toward forgiveness.

We join The Institute for College Access and Success (TICAS) in urging the Department to allow borrowers who consolidate their loans to get appropriate credit for what may be years of qualifying payments toward loan forgiveness under PAYE, IBR, or public service loan forgiveness (PSLF). Under current regulations, qualifying payments are not counted toward forgiveness in any of these programs if the loans are later consolidated. This can and should be changed through regulations for PAYE and IBR, as well as for PSLF.

There are multiple precedents for tracking payments made on loans before consolidation. For example, the Department and FFEL lenders already track pre-consolidation payments on subsidized loans in order to provide a three-year period of interest subsidy on negatively amortized loans in PAYE and IBR.[15] Additionally, for discharges of consolidation loans due to a closed school, false certification, or unpaid refund, only the amount of the underlying loans that were used to pay for the affected program of study are considered for discharge.[16]

OPERATIONAL IMPROVEMENTS TO ENSURE ACCESS TO PAYE

Provide assistance for delinquent borrowers in danger of defaulting.

Many of our clients are financially distressed, and default on their federal student loans. They are often unaware that they could have enrolled in an income-driven repayment ("IDR") plan to avoid default. Default rates for federal student borrowers have exploded in recent years,[17] and low-income

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[15] *See* 34 C.F.R. § 685.209(a)(2)(iii); 34 C.F.R. § 682.215(b)(4); 34 C.F.R. § 685.221(b)(3).
[16] *See* U.S. Department of Education, *Loan Discharge Application: School Closure*, http://1.usa.gov/Zuy9vN. U.S.; Department of Education; *Loan Discharge Application: False Certification (Ability to Benefit)*, http://1.usa.gov/1tHDmIj; U.S. Department of Education, *Loan Discharge Application: Unpaid Refund*, http://1.usa.gov/Zuyaj6.
[17] *See* Michael Stratford, *Default Rates Rise Again,* INSIDE HIGHER ED (Oct. 1, 2013), https://www.insidehighered.com/news/2013/10/01/student-loan-defaults-hit-highest-level-1995.

borrowers are more likely to default than other borrowers.[18] Hundreds of thousands of borrowers defaulted on their federal student loans in recent years, despite being eligible for income-driven repayment plans.[19] The draconian consequences of defaulting on a federal student loan can haunt borrowers for decades.

Although the existence of income-driven repayment plans should help avoid some of these outcomes, borrowers are often unaware of or confused by their options, and fail to take advantage of plans like PAYE before defaulting. The Department does not consider a student to be in default until she has missed nine months of payments.[20] These nine months provide an extended window during which the Department can identify and help delinquent borrowers on the verge of default. The Department should be more aggressive in developing and adopting programs to identify distressed borrowers and help them take advantage of income-driven repayment options before they default.

For example, we support the proposal in Senator Harkin's Higher Education Act reauthorization proposal to create a presumptive IDR eligibility program for borrowers in late-stage delinquency. The Department can act earlier to develop this concept by proactively contacting borrowers in late-stage delinquency and stop the delinquency clock through forbearance or other means. The borrowers should then be eligible for a temporary, presumptive IDR program while the servicers provide targeted assistance to help these borrowers complete the IDR application. Among other programs, the Department should sponsor pilot initiatives to help servicers collect data to determine which borrowers are most at risk of default and target services and the presumptive IDR option to these borrowers.

Changes to PAYE will not benefit borrowers without quality loan servicing.

New PAYE regulations will provide little benefit to borrowers if federal student loan servicers do not provide quality service. The Department's recent changes to loan servicer contracts are a step in the right direction insofar as they better align servicers' financial incentives with borrower interests. There is more to be done to improve these incentives, but in any case, these changes fail to address larger structural issues.[21] The Department must improve oversight and enforcement and provide borrowers with basic rights to ensure borrowers receive quality service.

The Department's Inspector General reported in 2013 that the Department does not provide sufficient oversight to ensure student loan borrowers receive quality service.[22] This lack of oversight leaves borrowers powerless against harmful and common practices. Our clients routinely receive outdated and inaccurate information about their loans from servicers. As a result, they make duplicate payments and miss important opportunities and deadlines. When our clients who are Parent PLUS borrowers call their servicers to request more affordable payments, they are routinely told that they are ineligible for any of the income-driven repayment plans. They are not told that they can consolidate their Parent PLUS loans to become eligible for ICR.

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[18] *See* NATIONAL CONSUMER LAW CENTER, THE STUDENT LOAN DEFAULT TRAP: WHY BORROWERS DEFAULT AND WHAT CAN BE DONE 11 (June 2012), http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/student-loan-default-trap-report.pdf.
[19] Shahien Nasiripour, *Education Department Lets Borrowers Default on Student Loans, Ignoring Helpful Alternatives*, THE HUFFINGTON POST (Sept. 11, 2013), http://www.huffingtonpost.com/2013/09/11/income-based-repayment_n_3903208.html.
[20] *See* 34 CFR § 685.102.
[21] *See* Ben Miller, *Fixing the Finances, not the Structure, of Student Loan Servicing*, THE NEW AMERICA FOUND. (Sept. 2014), http://www.edcentral.org/student-loan-servicing/.
[22] *See* U.S. DEPARTMENT OF EDUCATION, OFFICE OF INSPECTOR GENERAL, ED-OIG/A02L0006, FEDERAL STUDENT AID'S AWARD AND ADMINISTRATION OF THE TITLE IV ADDITIONAL SERVICERS CONTRACTS FINAL AUDIT REPORT (2013).

Servicers also tend to push borrowers into the most readily available solutions, such as forbearance, instead of helping borrowers choose a plan that will be beneficial in the long term. Unfortunately, most borrowers are unaware that their loans accrue significant interest while in forbearance, or are unaware of viable alternatives like income-driven repayment plans, and are left much worse off. For example, we represent a client who is struggling to remain current on a federal student loan. She makes only $5,000 a year and had been living in a shelter for victims of domestic violence for an extended period before moving in with a friend. Her son is living with other family members while she tries to find work. When she called her federal loan servicer seeking relief, her loan was placed in short-term forbearance. She has continued to receive various forbearances and deferments over the last several years. Although she clearly qualifies for and would benefit from an income-driven repayment plan, her loan servicer has never mentioned or explained this to her. It took a phone call from an insistent attorney for the servicer to acknowledge that she is eligible for an income-driven plan.

Even if the Department acted more aggressively to police the contractors through termination or sanctions, this would not necessarily lead to relief for individual borrowers harmed by these servicers. The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages. In its October 2013 report, the Consumer Financial Protection Bureau ("CFPB") pointed to the need to examine whether the types of protections and reforms in the Real Estate Settlement Procedures Act (RESPA) for mortgages and the CARD Act for credit cards could apply to the student loan servicing market.[23]

While we believe that structural reform is the ultimate goal, there are many ways to protect borrowers more effectively within the current system. This includes specifying borrower protections in the regulations for all federal loan programs, enforcing servicer contracts more vigorously, sanctioning servicers that fail to provide quality service, and ensuring that borrowers have clear and effective ways to resolve complaints.

The Department should also make all contracts public, including modifications, and specify borrower rights in the regulations and contracts, including:

1. Timely and accurate information regarding loan balances, fees, payment histories and other account information;
2. Individualized and understandable information regarding affordable repayment plans, deferment options and income-driven repayment;
3. Timely and polite responses to borrower appeals and inquiries.
4. The right to switch servicers if they are dissatisfied;
5. The right to dispute errors made by servicers with a neutral third party; and
6. The right of a borrower who has been harmed by servicer misconduct to seek relief in court.

The Department should also monitor the current consolidation choice system for potential lessons to apply to other loans and for possible abuses.

Re-evaluate how debt collection fees are determined and allocated.

The Department has expansive powers to collect on the nearly $1.11 trillion in outstanding defaulted student loans, greatly exceeding those held by most unsecured creditors. It can garnish a borrower's wages without obtaining a judgment, offset a borrower's Social Security benefits, seize a borrower's tax refund, and deny a borrower new education loans in order to collect a defaulted student

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[23] CONSUMER FINANCIAL PROTECTION BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN (2013).

loan. Furthermore, student borrowers can rarely discharge their federal student loans in bankruptcy and there is no statute of limitations for the collection of federal student loans. In short, the Department can and does pursue borrowers in default for decades.

The Department refers every defaulted student borrower to one of twenty-two private collection agencies. Commissions to private debt collectors cost taxpayers over $1 billion dollars in 2011.[24] Collectors profit even more by the extraordinary amount they charge defaulted borrowers. The Higher Education Act requires student borrowers to pay "reasonable" collection costs, leaving the Department to define "reasonable."[25] The Department has created a definition of "reasonable" costs and developed a system to pay debt collectors that unfairly passes costs to borrowers. One of the most troubling aspects of the current collection fee system is that fees are not tied to actual collection costs, known as the "make whole" approach to fee allocation.

Collectors charge borrowers collection costs unrelated to the collection of their loans. Collection fees must be reasonable, bona fide, and actually incurred.

When the Department pays private collection agencies using a contingency fee, collectors are compensated based upon the amount collected. The Department sets the commission rate based on the average cost of collection activities per borrower, rather than the collection costs incurred in relation to the particular borrower. This is often referred to as a "make whole," or averaging approach. The cost of satisfying a student loan debt collected by the Department's contractors under this arrangement can be 25% higher than the borrower's principal and interest.[26]

In addition to charging borrowers for costs not incurred to collect their loans, the "make whole" approach unfairly burdens the small number of defaulting borrowers from whom recovery is made with the collection expenses for all of the defaulted loans serviced by that contractor. Furthermore, the high costs to borrowers under this system may actually discourage them from attempting to repay their loans.[27]

In light of these negative consequences, the Department should abandon the "make whole" approach and instead adopt a collection fee system based on actual costs, with a ceiling that limits collectors to charging fees that are reasonable, bona fide and actually incurred. Charging reasonable and bona fide fees will provide desperately-needed relief to borrowers and will ensure borrowers are not deterred from repaying their loans by excessive collection fees.

Capitalizing large collection fees discourages rehabilitation.

A recent statutory change reduced the maximum fees that can be added to rehabilitated FFEL loans from 18.5% to 16% of the loan's balance.[28] This change has yet to be incorporated into regulation.[29] The Department must incorporate this change into the FFEL loan regulations, and should make this limitation explicit in its Direct loan regulations as well.[30] Consolidations of defaulted Direct and FFEL loans may include fees limited to 18.5% of the loan balance.[31]

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[24] John Hechinger, *Obama Relies on Debt Collectors Profiting from Student Loan Woe*, BLOOMBERG NEWS (Mar. 26, 2012), http://www.bloomberg.com/news/2012-03-26/obama-relies-on-debt-collectors-profiting-from-student-loan-woe.html.
[25] *See* 20 U.S.C. § 1091a(b)(1), enacted in Pub. L. 99-272, April 7, 1986.
[26] *See* https://www.myeddebt.com/borrower/collectionCostsNavigate (Oct. 2014).
[27] *See* 61 Fed. Reg. 60482 (Nov. 27, 1996).
[28] *See* Act of Dec. 26, 2013, Pub. L. No. 113-67, 127 Stat. 1165 (codified at 20 U.S.C. § 1087-6(a)(1)(D)(i)(II)(aa)).
[29] *See* 34 C.F.R. § 682.405.
[30] *See* 34 C.F.R. § 685.211.
[31] *See* 34 C.F.R. § 685.220(f)(iii)

The Department has explained that these types of limitations on collection fees are intended to provide incentives for borrowers to get out of default.[32] Although the Department refers to this cap as a limit that helps borrowers, its benefit is offset by the fact that 16 or 18.5% of a loan's balance is often automatically added to a borrower's loan and then capitalized when the borrower consolidates or rehabilitates.[33] This often deters our clients from consolidating or rehabilitating their loans. Those who go ahead and consolidate or rehabilitate their loans are punished with large fees.

For example, we had a client who began rehabilitating her loan within sixty days of defaulting. She was charged 18.5% of the loan balance in exchange for one short phone call from the collector to set up her rehabilitation plan. That phone call cost her about $4,000. Charging and capitalizing large rehabilitation and consolidation fees, even in cases where collectors do little to help, neither incentivizes nor helps borrowers to get out of default. Charging excessive fees unjustly punishes borrowers who are struggling to get by and rewards collectors that expend minimal effort. Limiting collectors to bona fide, reasonable fees that they have actually incurred would produce a much fairer and more reasonable outcome for this client and for all defaulted borrowers. This limit must also include a lower, and reasonable, cap on fees.

The Department must make another conforming change to its regulations concerning loan rehabilitation by guaranty agencies. A statutory change now permits guaranty agencies to assign rehabilitated loans to the Secretary if they are unable to sell the loans.[34] The regulations do not yet reflect this change,[35] and should be updated.

Assess the Feasibility of In-House Collection of Defaulted Student Loans.

In addition to making the changes to the collection fee system discussed above, we join TICAS in urging the Department to conduct a pilot program to test whether continuing to spend over a billion dollars a year on commission-based contracts with private debt collectors is the most effective and efficient way to collect defaulted federal student loans. Under the current system, private debt collection agencies contract with the Department to act on behalf of lenders and guarantors in arranging rehabilitations, informing borrowers about discharges, and negotiating loan compromises.

Abusive practices within this system, including legal and contractual violations, have been widespread and well-documented.[36] Although the Department has made changes to both contracts and regulations in response, problems persist, and an examination of whether outsourcing is the most effective or appropriate approach is long overdue. We recommend that the Treasury Department or other appropriate federal agency staff be charged with collecting on a randomly selected number of defaulted federal student loans for the purpose of studying whether taxpayers' and borrowers' interests would be

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[32] *See*, *e.g.*, 59 Fed. Reg. 61424-01, 61426 (Nov. 30, 1994).
[33] *See* 20 U.S.C. § 1078-6(a)(1)(D)(i)(II); 34 C.F.R. § 682.405(b)(1)(vi).
[34] *See* Act of Dec. 26, 2013, Pub. L. No. 113-67, § 501, 127 Stat. 1165, 1186-87 (codified at 20 U.S.C. 1078-6(a)(1)).
[35] *See* 34 C.F.R. § 682.405(a)(2).
[36] *See, e.g.*, U.S. DEPARTMENT OF EDUCATION, OFFICE OF THE INSPECTOR GENERAL, FINAL AUDIT REPORT: HANDLING OF BORROWER COMPLAINTS AGAINST PRIVATE COLLECTION AGENCIES (2014), http://1.usa.gov/1jLRBxj; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL STUDENT LOANS: BETTER OVERSIGHT COULD IMPROVE DEFAULTED LOAN REHABILITATION (2014), http://www.gao.gov/assets/670/661437.pdf; NATIONAL CONSUMER LAW CENTER, POUNDING STUDENT LOAN BORROWERS: THE HEAVY COSTS OF THE GOVERNMENT'S PARTNERSHIP WITH DEBT COLLECTION AGENCIES (2014), http://www.nclc.org/issues/pounding-student-loan-borrowers.html; Andrew Martin, *Debt Collectors Cashing In on Student Loans*, N.Y. TIMES, Sept. 9, 2012 at A1; John Hechinger, *Obama Relies on Debt Collectors Profiting From Student Loan Woe*, BLOOMBERG NEWS, Mar. 25, 2012.

better served by collecting defaulted federal student loans by trained government employees rather than by private debt collectors.

OTHER IMPORTANT CHANGES TO HELP DISTRESSED BORROWERS

Improve operation of the rehabilitation program.

There has been considerable abuse over the years by collection agencies pressuring borrowers to pay higher amounts than is legally required during rehabilitation. These practices stemmed mainly from the Department's commission system that rewarded agencies much more lucratively only if the agencies got borrowers to make minimum monthly payments based upon the balance of the loan. If the rehabilitation agreement provided for payments in a lower amount, the collection contract treated this as an "Administrative Rehabilitation" and paid the collection agency a fee of just $150. This difference in payments often caused collectors to pressure borrowers to pay more than they could afford.[37]

We have seen significant improvements due to the regulatory changes effective July 1, 2014.[38] We applaud the Department for amending the regulations to help borrowers succeed in getting out of default and amending the commission system to help provide greater incentives to collectors to follow the law.

We urge the Department to closely monitor the new system and in particular clarify the following areas of concern if necessary through this regulatory process. However, we believe that many of these issues can be addressed operationally, in the following ways:

1. Clarify that borrowers who do not qualify for IBR, such as Parent PLUS borrowers, are eligible to use the 15% IBR formula to determine reasonable and affordable payments during rehabilitation.
2. Clarify that borrowers may, but are not required to, make payments before the reasonable and affordable amount is "officially" determined. Borrowers must understand that they are not required to make a "good faith" payment before beginning a rehabilitation plan.
3. Clarify that borrowers using the alternative income and expenses form to determine reasonable and affordable payments may include additional essential expenses other than those listed on the form.
4. Clarify that collectors may use expense standards such as the I.R.S. standards as guidance, but may allow higher expenses at their discretion.
5. Help facilitate transition into IDR for borrowers coming out of rehabilitation.
6. Clarify that borrowers are not required to authorize automatic electronic credit or debit from an account, and ensure that processes are in place to timely process physical payments such as checks and money orders.

Prohibit binding arbitration clauses in private student loan contracts and school enrollment agreements.

Many of our clients enroll in for-profit colleges and borrow private student loans, unaware that their enrollment contracts and promissory notes contain sweeping arbitration clauses, purporting to prevent clients from vindicating their rights in court and purporting to limit the rights which may be vindicated through arbitration. Forced arbitration clauses are becoming increasingly common in

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[37] *See generally*, NATIONAL CONSUMER LAW CENTER, POUNDING STUDENT LOAN BORROWERS: THE HEAVY COSTS OF THE GOVERNMENT'S PARTNERSHIP WITH DEBT COLLECTION AGENCIES (2014).
[38] 78 Fed. Reg. 65,768 (Nov. 1, 2013) (effective July 1, 2014).

enrollment agreements and private loan contracts,[39] where they are used to unfairly disadvantage borrowers by: (1) limiting discovery; (2) mandating an arbitration forum hand-picked by the lender; (3) allowing the lender to determine how arbitration costs will be allocated; and (4) waiving the borrower's right to appeal.[40]

Forced arbitration clauses also commonly prohibit class action proceedings. Pursuing individual claims in arbitration is prohibitively expensive and beyond the reach of most borrowers proceeding individually. Bans on collective action shield schools and lenders from liability nearly completely by functionally prohibiting individual actions and explicitly prohibiting class actions.

For example, one client's enrollment agreement at a for-profit college seeks to force arbitration of:

> Any disputes, claims, or controversies between me and School arising out of or relating to (i) this Agreement; (ii) any relationship resulting from this Agreement, or any activities in connection with the Agreement (including, without limitation, the Truth-in-Lending Disclosure Statement[s] or the underwriting, servicing or collection of the amounts financed under this Agreement); (iv) any claim, no matter how described, pleaded, or styled, relating, in any manner, to any act or omission regarding in any way the obligations of the parties to this Agreement; or (v) any objection to arbitrability or the existence, scope, validity, construction, or enforceability of this Arbitration Agreement.

Another large, publicly-held for-profit college entered into an enrollment agreement with a client that, contrary to Massachusetts law, purported to preclude incidental, special, consequential, or punitive damages. The agreement purports to require that any claim be brought within two years, which limitation is not permissible under Massachusetts law. The agreement also allows the school to recover its attorneys' fees from the student if the student brings an unsuccessful action in court to challenge the arbitration provision or to challenge or correct the arbitration award. The agreement makes "[a]ll aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator . . . strictly confidential," giving the school the right to go to court "to prevent any actual or threatened breach of this provision." Such unlawful and one-sided provisions are common in our clients' enrollment agreements at for-profit schools, and serve to suppress their rights to seek redress both through legal limitations and through intimidation.

In an ongoing case in Michigan, a group of former students sued a fraudulent and extremely expensive training program that shut down abruptly, leaving students heavily indebted and without the training promised to them. Sallie Mae made private loans to those students, with contracts containing both the FTC-mandated language that makes Sallie Mae liable for the students' claims against the school as well as an arbitration clause. Sallie Mae successfully moved to dismiss all claims against it because, it argued, the students had not only agreed to arbitrate claims, but had also agreed to a class action waiver.[41] With the class action against it dismissed, students are left to try to find attorneys to bring each of their claims individually and in arbitration in order to cancel their bogus debt.

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[39] *See* NATIONAL CONSUMER LAW CENTER, PAYING THE PRICE: THE HIGH COST OF PRIVATE STUDENT LOANS AND THE DANGERS FOR STUDENT BORROWERS (2008) (finding that of 28 private student loans examined, over 60% had forced arbitration clauses).

[40] *See Strengthening the Federal Student Loan Program for Borrowers: Hearing Before the S. Comm. on Health, Education Labor & Pensions* 113th Cong. (2014) (Statement of Deanne Loonin, National Consumer Law Center).

[41] *See Smith v. Computertraining.com Inc.*, 772 F. Supp. 2d 850 (E.D. Mich. 2011).

A 2013 report by the CFPB confirmed the harmful effects of forced arbitration clauses in consumer contracts.[42] Although the study examined credit card, checking account, pre-paid card, and payday loan disputes, the results and their implications are applicable to student loans and enrollment agreements. The CFPB reported that consumers brought fewer than 1,000 arbitration claims from 2010 to 2012, indicating that forced arbitration clauses frequently pose insurmountable barriers to consumers seeking relief.[43] Furthermore, 90% of the arbitration clauses examined for the CFPB study waived class action proceedings, practically eliminating any form of relief for most borrowers.[44]

Other federal agencies have acted to protect consumers from contracts containing mandatory pre-dispute arbitration clauses. For example, in a report to Congress, the Department of Defense ("DOD") noted that: "[s]ervice members should retain full legal recourse against unscrupulous lenders. Loan contracts to service members should not include mandatory arbitration clauses . . . and should not require the service member to waive his or her right of recourse, such as the right to participate in a plaintiff class."[45] To protect servicemembers, the DOD recently proposed to broaden its existing ban on forced arbitration clauses to significantly more credit products offered to servicemembers and their families.[46]

The Department should follow the DOD's lead by limiting participation in Title IV programs to institutions that prohibit mandatory pre-dispute arbitration clauses in enrollment contracts. The Department should also require schools to ensure that any private student loans offered to their students do not contain mandatory pre-dispute arbitration clauses. The Department has authority to do this as a condition of school participation in the federal aid programs.

Expand the relief provided by discharges for students who are harmed by fraudulent practices at for-profit schools by expanding eligibility for false certification discharge.

In addition to expanding eligibility for PAYE, the Department can greatly increase relief for the countless number of borrowers who have been harmed by fraudulent for-profit schools, who are not helped by recent changes to regulations designed to curb future abuses. The three main types of existing cancellations (or "discharges") that are intended to help such students – closed school, false certification, and unpaid refund cancellations – are narrowly defined and provide relief to only a small subset of harmed borrowers. These cancellations are not available to borrowers harmed by other kinds of deceptive practices, including practices that are prohibited by federal regulation. For example, a school may routinely pay admissions officers by commission, fail to provide educational materials or qualified teachers, or misrepresent a student's likelihood of finding a job or earning a particular salary after completion.[47] All of these are violations of federal and state law or regulations that harm students, but none of them is currently grounds for student loan discharge.

The limits in the law and in Department interpretations of the administrative discharge programs are particularly stark in the Corinthian school closure situation. At the time the regulations on closed school and other discharges were adopted, on-line education was hardly a reality and the concept of

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[42] *See* CONSUMER FINANCIAL PROTECTION BUREAU, ARBITRATION STUDY PRELIMINARY RESULTS 12-15 (2013), http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.
[43] *Id*.
[44] *Id*. at 13.
[45] *See* DEPARTMENT OF DEFENSE, REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 7-8 (2006).
[46] *See* Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed. Reg. 58601 (proposed Sept. 29, 2014) (to be codified at 32 C.F.R. § 232).
[47] See 34 C.F.R. § 668.14(b)(22) (prohibiting the payment of incentive compensation for securing enrollments); 34 C.F.R. § 668.71(b) (prohibiting substantial misrepresentations, including about the nature of a schools' educational programs and the employability of its graduates).

leaving schools open while school owners scrambled to find buyers was not even contemplated. The Department's current interpretation of possible relief for borrowers harmed by unscrupulous and abusive school practices is so narrow as to potentially deny relief to nearly all current Corinthian students and others like them. While we believe that there is ample room in existing regulations to provide greater relief, we also call on the Department to use this negotiated rulemaking to specifically broaden the scope of these programs.

The HEA permits borrowers to discharge federal student loans if their eligibility to borrow was falsely certified by a school.[48] False certification discharges are intended to provide relief to students who have been injured by school fraud and to discourage illegal and abusive school practices. We nonetheless have numerous clients who have been harmed by the fraudulent practices of for-profit schools but are not eligible for false certification discharges. This is because current regulations recognize only four bases for false certification discharges: (1) falsification of a non-high-school graduate's ability to benefit, (2) enrollment of students unable to meet the minimum state employment requirements for the job for which the student is being trained, (3) forging or alteration of a student loan note or check, and (4) identity theft.[49]

The Department should revise the false certification discharge regulations to help borrowers who have been harmed by other common and illegal practices. For example, recent investigations of and lawsuits against for-profit schools have revealed that some schools routinely falsify the academic progress of their students in order to keep them enrolled in school and eligible for certain types of federal student aid.[50] The current false certification regulations should be expanded to allow discharges when the Department discovers this type of abuse. Additionally, discharges should be granted when schools have violated other fundamental requirements under the HEA, including the incentive compensation ban and the gainful employment rules.

The Department should also loosen its interpretation of what constitutes a disqualifying status in order to benefit more students who should be entitled to false certification discharges.[51] The regulations regarding disqualifying status allow discharge if "the student would not meet the requirements for employment (in the student's state of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary."[52] The Department does not provide relief in several contexts where students are clearly enrolled in programs that will not permit them to obtain employment in the relevant field. For example, for-profit schools routinely enroll non- or minimally-English-proficient students in programs taught exclusively in English. It is then impossible for these students to obtain jobs that require the type of training they sought. The Department should expand its interpretation of disqualifying status to include relief for borrowers harmed in such situations.

Finally, the Department must stop imposing additional requirements on these discharges beyond the requirements explicit in the regulations, such as requiring a borrower to show that he made the school aware of the disqualifying status at the time of enrollment, that the school told the borrower that the condition would not be a hindrance to seeking employment, or that the disqualifying condition is long-

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[48] *See* 20 U.S.C. § 1087(c)(1) ("If a borrower['s] . . . eligibility to borrow . . . was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft . . . then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees)").
[49] 34 C.F.R. § 682.402(e).
[50] *See, e.g.,* Kelly Field, *Faculty at For-Profit Colleges Allege Constant Pressure to Keep Students Enrolled,* CHRONICLE OF HIGHER EDUC. (May 8, 2011), http://chronicle.com/article/Pawns-in-the-For-Profit/127424/.
[51] *See* 34 C.F.R. § 682.402(e)(13)(iii)(B); 34 C.F.R. § 685.215(a)(1)(iii).
[52] *Id.*

term and unchangeable. In a recent denial provided to NCLC by a legal aid attorney, the Department pointed to information on the school's web site that made it clear that individuals with a felony conviction "may find exceptional difficulty finding employment." The Department found it persuasive that the catalog advised students to do their own research. This is inaccurate first because disclosure is not sufficient, particularly in this case where the school aggressively marketed its courses even to those who could not work in the field due to state licensing requirements. Regardless, the Department is randomly creating an additional hurdle for borrowers beyond the legal requirements.

Place the burden on the Department to investigate false certification facts beyond the borrower's sworn statement.

The Department's process for investigating and adjudicating false certification discharge applications should be amended to shift the burden of proof from borrowers to the Department. Currently, borrowers may submit a sworn statement as evidence establishing their eligibility for a false certification discharge.[53] The Department, however, routinely requires borrowers to provide additional evidence. For example, the Department requires borrowers to present evidence of an oversight agency investigation that has uncovered fraud to supplement a borrower's sworn statement.[54] Often no such investigations have occurred, leaving injured borrowers with no way to seek redress. The Department unfairly treats an absence of oversight agency findings as sufficient to raise an inference that no improper practices took place.[55] When oversight agencies fail to undertake investigations, as they frequently do, such an absence of findings does not indicate that fraud did not take place, but nonetheless cripples borrowers' ability to prove that it did.

Once a borrower has submitted a sworn statement asserting eligibility for a discharge, the burden should shift to the Department to investigate facts beyond the existence of oversight agency findings to confirm eligibility. The text of the HEA states that the Department "shall discharge the borrower's liability on a loan" in situations where a school has falsely certified a student's eligibility to borrow.[56] This language plainly requires discharge even in the absence of agency findings, and the Department is in a far superior position to obtain the evidence it currently demands from applicants.

The Department should acknowledge that current regulations require it to look beyond the findings (or lack thereof) of oversight agencies when collecting evidence for a false certification discharge application, including by considering evidence of other false certification applications or complaints against a particular school.[57] Furthermore, the Department should expand its use of group discharges to students who attended a school at a time when the school has been found to have engaged in widespread fraud. The Department has superior access to information regarding school misconduct, and is therefore in the best position to protect groups of student borrowers who may be unaware they have been abused or unable to produce evidence to prove it.

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[53] *See,* 34 C.F.R. § 682.402(e)(3); 34 C.F.R. § 685.215(c).
[54] *See, e.g.*, *Gill v. Paige*, 226 F. Supp. 2d 366 (E.D.N.Y. 2002) (holding the Department's policy of requiring additional proof to supplement a borrower's sworn statement, such as a state or federal investigation into a school's fraud, as a reasonable interpretation of the HEA).
[55] *See* U.S. Department of Education, Dear Colleague Letter Gen-95-42 (Sept. 1995).
[56] *See* 20 U.S.C. § 1087(c)(1).
[57] *See* 34 C.F.R. § 682.402(e)(6)(iv).

Expand and clarify regulations allowing borrowers to assert school fraud as a defense to loan repayment.

Students harmed by school misconduct who are not eligible for a discharge under the current narrowly-defined cancellation regulations should at least be allowed to assert fraud as a defense to repayment of federal student loans. Direct Loan regulations permit borrowers to assert state law violations as a defense to loan repayment once a collection "proceeding," such as a wage garnishment of tax offset, has commenced.[58] Regulations should clarify that students may assert legal violations as a defense to repayment outside the context of collection proceedings. The Department should also recognize as valid defenses to repayment certain federal law violations, including violation of some student-protective provisions of the HEA, which do not give rise to a cause of action under state law.

It is time the Department filled in the gaps in these statutory cancellation programs. For too long, the risk of predatory school practices has fallen almost entirely on individual borrowers, who were not in a position to discover fraud and police schools before they enrolled. The Department should use its broad statutory authority to remedy the situations of all borrowers who were likely harmed by schools that engaged in illegal and deceptive practices.

Treat borrowers at least as well as schools when adjusting schools' Cohort Default Rates.

In September 2014, the Department announced it had adjusted the Cohort Default Rates (CDRs) of colleges that would otherwise be subject to sanctions, removing from the numerator of those colleges' CDRs "certain borrowers who defaulted on a loan but who had one or more other Direct or FFEL Program loans . . . that did not default."[59] This allowed some schools whose former students experienced high rates of default to avoid sanctions. The Department's explanation was that problematic "split servicing" made it inappropriate to hold the schools accountable for their students' high default rates.

We join TICAS and others in noting that, if the Department has determined that the servicing of some loans in recent years was so flawed that it was inappropriate to hold the schools accountable for their defaults, then it is equally inappropriate to hold the borrowers accountable for them. Neither schools nor borrowers can choose their loan servicers. Yet the Department left only borrowers in default, subject to high fees, damaged credit, and other penalties, while "bailing out" the schools from negative consequences. If borrowers' defaults are removed from schools' CDRs due to faulty servicing, they should be eliminated from borrowers' records as well.

We believe that doing so is well within the Department's existing authority. The Department has clear authority to provide forbearances to borrowers in default,[60] and servicers can and do provide borrowers with retroactive forbearances to erase prior delinquencies. Separate federal rules already provide precedent for reversing determinations of default, as well as for updating reports to consumer credit agencies to reduce the harm of an earlier default determination.[61] If the Department believes that current regulations do not permit the removal of borrowers' defaults where those defaults are removed from colleges' CDRs, then this issue should be added to the negotiated rulemaking panel's agenda.

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[58] *See* 34 C.F.R. § 685.206(c)(1).
[59] U.S. Department of Education, Federal Student Aid, *Adjustment of Calculation of Official Three Year Cohort Default Rates for Institutions Subject to Potential Loss of Eligibility* (Sept. 23, 2014), http://1.usa.gov/1r830tQ.
[60] *See* 20 U.S.C. § 1080.
[61] *See* 34 C.F.R. § 685.206.

Take steps to address increasingly common abuses committed by predatory "student debt relief" companies.

The recent growth in the number and complexity of federal student loan repayment plans has enabled a new industry of predatory "student debt relief" companies, which capitalize on borrowers' confusion and need for assistance with repayment. These scam companies utilize various deceptive practices to profit from borrowers, such as mischaracterizing their affiliation with the government, charging borrowers thousands of dollars in fees to enroll in federal repayment programs that are available for free, and providing borrowers with inaccurate information about their loans.[62]

Many of our clients experience the harm caused by these practices first-hand. For example, the Project on Predatory Student Lending represents a woman who, after becoming unemployed and falling behind on her student loans, agreed to pay one such company to consolidate her federal student loans. This company intended to charge her more than $30,000 over the life of her loans, without disclosing that she could consolidate them on her own for free. Worse yet, the company managed to duplicate her consolidation loans, doubling her student loan debt from $100,000 to $200,000.

Expanded PAYE regulations will be undermined if predatory companies are allowed to abuse borrowers. In coordination with other federal and state regulators, the Department must take action to protect vulnerable consumers from these unfair and deceptive companies.

We thank the Department for its consideration of these comments. Please feel free to contact Toby Merrill at 617-390-2576 or tomerrill@law.harvard.edu or Persis Yu at 617-542-8010 or pyu@nclc.org if you have any questions or comments.

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[62] *See* NATIONAL CONSUMER LAW CENTER, SEARCHING FOR RELIEF: DESPERATE BORROWERS AND THE GROWING STUDENT LOAN "DEBT RELIEF" INDUSTRY (2013).