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May 7, 2015

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 2E321
Washington, DC 20202-4536
Attn: FOIA Public Liaison
EDFOIAManager@ed.gov

Re: Request Under Freedom of Information Act

Dear FOIA Public Liaison:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* The Request is submitted by the American Civil Liberties Union and the American Civil Liberties Union Foundation (“ACLU”), and the National Consumer Law Center (“NCLC”) (collectively, the “Requesters”).¹

Requesters seek the disclosure of records relating to the Department of Education’s policies and practices for the collection of student debt.

* * *

Student debt presents a significant civil rights challenge. The federal student loan program grows out of a commitment to educational opportunities – and the enhanced social and economic opportunities that follow – for all

¹ The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

The National Consumer Law Center, a non-profit corporation founded in 1969, assists consumers, advocates, and public policymakers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability. The National Consumer Law Center regularly issues reports, books, and newsletters on consumer issues, including student loan law, which are distributed to consumers, lawyers, academics, and other interested parties.

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Americans. That vital programmatic goal, however, has spawned an increasingly onerous system of indebtedness. Student debt is a major driver of lifelong debt cycles that impair wealth-building and access to economic opportunity. Indeed, the student debt system can impose devastating consequences on borrowers, especially those who accumulated debt by enrolling in predatory for-profit educational programs that do not equip their students for economic success. These inherently harmful effects, moreover, appear to carry grave civil rights consequences. Social science research demonstrates significant racial disparities at all major inflection points of the student debt system, from the magnitude of the debt burden borrowers undertake to the chances of being victimized by predatory educational programs and exposure to some of the most harmful debt-collection practices.

There are several aspects of the student debt system that may expose student-borrowers to serious economic harm and that may result in racial disparities. The Department of Education (“the Department”) has the capacity to expose and ameliorate these negative outcomes. Unfortunately, some policies and practices of the Department may exacerbate unfair or racially disparate dimensions of the student loan system. The Department enjoys extraordinary collection powers, provided by statute and elaborated through the regulatory process. Among other things, the Department has authority to administratively garnish the wages of borrowers who default on their loans. It also has the power to intercept tax refunds and other payments from the government, including funds that tend to be directed toward economically vulnerable individuals, like the Earned Income Tax Credit and certain social security benefits. These authorities raise inherent concerns. They implicate the due process rights of borrowers and may have the most significant impact on low-income or low-wealth individuals. Yet the Department delegates much of that authority to private debt-collection agencies. By paying those agencies using a commission-based system, the Department may create incentives that stem from conflicts of interest and dramatically increase the risk of serious economic harm to student-borrowers.

This Request is intended to shed light on the Department’s student debt-collection practices and inform the public whether those practices result in unfair economic harm to student-borrowers or lead to racially disparate outcomes.

I. Records Requested

1. Any corrective action plan created by the Department in response to the Final Audit Report of the U.S. Department of Education Office of Inspector General issued in July 2014, *see* U.S. Dep’t of Educ. Office of Inspector General, ED-OIG/A06M0012, Handling of Borrower Complaints Against Private Collection Agencies, Final Audit Report 1-2 (2014) (“the OIG Report”).
2. Any report, correspondence, or other information submitted to Congress, including but not limited to any individual member of Congress or any Congressional committee or sub-committee, in response to the OIG Report or that references the OIG Report.
3. All correspondence with any private collection agency (“PCA”) regarding any interpretation, meaning, or proposed revisions of the Department’s regulations, guidance, policies, or manuals.

4. All policies, procedures, guidelines, or similar documents currently in effect concerning the calculation, assessment, or determination of collection fees charged to borrowers by the Department or any entity acting on behalf of the Department, including but not limited to factors used to determine whether collection fees will be added to loan balances and formulas used to calculate fee amounts.
5. All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the Department to initiate, administrative wage garnishment, pursuant to 20 U.S.C. § 1095a or any other authority.
6. All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the Department to initiate, an administrative offset, pursuant to 34 C.F.R. §§ 30.21-30.31, 682.410 or any other authority.
7. All policies, procedures, guidelines, or similar documents currently in effect concerning the circumstances under which a PCA may initiate, or cause the Department to initiate, a tax refund offset, pursuant to 34 C.F.R. § 30.33 or any other authority.
8. All documents indicating the number of borrowers subject to administrative wage garnishment, administrative offset, or tax refund offset between January 1, 2012 and the date of this Request. This should include but not be limited to all documents indicating the number of administrative wage garnishments, administrative offsets, or tax refund offsets undertaken on the Department's behalf by each PCA engaged by the Department.
9. All documents indicating the dollar amounts collected through administrative wage garnishment, administrative offset, or tax refund offset between January 1, 2012 and the date of this Request. This should include but not be limited to all documents indicating the dollar amounts collected through administrative wage garnishments, administrative offsets, or tax refund offsets undertaken on the Department's behalf by each PCA engaged by the Department.
10. All documents reflecting any analysis, investigation, or review of the collection methods used by any PCA, individually or in the aggregate, including but not limited to, decisions by PCAs to pursue any particular resolution with a borrower (e.g., rehabilitation, consolidation, cancellation, administrative wage garnishment, administrative offsets, or tax refund offsets) and the frequency with which those collection methods are used.
11. All policies, procedures, guidelines, or similar documents reflecting how the Department determines whether its collection policies result in an adverse impact to particular racial groups.
12. All data collected or maintained by the Department reflecting the absolute number or percentage, by race, of borrowers whose student loans become delinquent or are in default.

13. All data collected or maintained by the Department reflecting the absolute number or percentage, by race, of borrowers with delinquent or defaulted loans who are thereafter subject to the following collection methods:
 - a. Rehabilitation;
 - b. Consolidation;
 - c. Cancellation;
 - d. Administrative Wage Garnishment;
 - e. Administrative Offsets; or
 - f. Tax Refund Offsets.

14. All documents generated between January 1, 2012 and the date of this Request concerning the process through which the Department selects entities to engage as PCAs. This includes but is not limited to all documents used in the procurement of Default Collection Services (solicitation number: ED-FSA-13-R-0010) to select entities to advance to Phase II of the procurement process or for final award of the PCA contract.

15. Documents sufficient to show the number of administrative wage garnishments initiated between January 1, 2012 and the date of this Request, pursuant to 20 U.S.C. § 1095a and its implementing regulations or any other authority, whether initiated directly by the Department, a PCA, or any other entity acting on the Department's behalf.

16. All documents reflecting administrative wage garnishment proceedings initiated between January 1, 2012 and the date of this Request in which the borrower raised an objection to the wage garnishment, and all records of the resolution of the asserted objection.

17. Documents sufficient to show the number of administrative offsets and tax offsets initiated between January 1, 2012 and the date of this Request, pursuant to 31 C.F.R. §§ 30.20-30.35 or any other authority, whether initiated directly by the Department, a PCA, or any other entity acting on the Department's behalf.

18. All documents reflecting administrative offset proceedings initiated between January 1, 2012 and the date of this Request in which the borrower raised an objection to the offset, and records of the resolution of the asserted objection.

19. Documents sufficient to show the fees, commissions, or other forms of remuneration received by each PCA between January 1, 2012 and the date of this Request for each instance in which it resolved a purported default using the following methods:
 - a. Rehabilitation;
 - b. Consolidation;
 - c. Cancellation;
 - d. Administrative Wage Garnishment;
 - e. Administrative Offsets; or

f. Tax Refund Offsets.

20. All monthly “Contractor’s Management and Fiscal Report[s],” as provided for in the Department’s Default Collection Contract Statement of Work PCA Periodic Contract, containing borrower complaint information submitted by each PCA to the Department between January 1, 2012 and the date of this Request.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that all records be produced in their native electronic format or, if that is not possible, in a text-searchable, static-image format (PDF), in the best image quality in the Department’s possession.

II. Application for Expedited Processing

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

First, the information sought in this Request is urgently needed to inform the public about the government’s actions with respect to student debt. Skyrocketing rates of student debt pose potentially catastrophic risks for borrowers, and potentially for the entire economy. *See, e.g.,* Floyd Norris, *The Hefty Yoke of Student Loan Debt*, N.Y. TIMES (Feb. 20, 2014); Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES (May 12, 2012). The Department’s debt-collection practices may fundamentally shape those economic consequences, especially for the most financially vulnerable borrowers. *See* Nat’l Consumer Law Center, *Pounding Student Loan Borrowers: The Heavy Cost of the Government’s Partnership with Debt Collection Agencies* (2014), available at <http://www.nclc.org/issues/pounding-student-loan-borrowers.html>; Josh Mitchell, *155,000 Americans Had Social Security Benefits Cut in 2013 Because of Student Debt*, THE WALL STREET JOURNAL BLOG (Sept. 10, 2014). Numerous studies have found that, at each major inflection point of the student loan system, significant racial disparities appear that adversely affect minority student-borrowers. *See, e.g.,* Lance Lochner & Alexander Monge-Naranjo, *Student Loans and Repayment: Theory, Evidence and Policy* 36 (Nat’l Bureau of Econ. Research, Working Paper No. 20849, 2015) (studying several potential drivers of student loan default and finding that “only race is consistently important for all measures of repayment/nonpayment”); Brandon A. Jackson & John R. Reynolds, *The Price of Opportunity: Race, Student Loan Debt, and College Achievement*, SOC. INQUIRY (Aug. 2013); Sara Goldrick-Rab, Robert Kelchen & Jason Houle, Wisconsin HOPE Lab, *The Color of Student Debt* 11-12 (Working Paper, 2014); Caroline Ratcliffe & Signe-Mary McKernan, Urban Institute, *Forever in Your Debt: Who Has Student Loan Debt, and Who’s Worried?* (2013).

Indeed, the need for public information about the Department’s debt-collection practices is acutely urgent right now, as the Department has announced that it is preparing a new contract for PCAs. *See* U.S. Dept. of Educ., Combined Synopsis/Solicitation, Default Collection Services, Solicitation Number: ED-FSA-13-R-0010 (July 3, 2013). Given that the Department’s

own Inspector General has raised grave concerns about the Department's supervision of PCAs, *see* OIG Report at 1-2, there is a vital need for informed public debate about how those entities operate and how the Department ensures fair and lawful treatment of student-borrowers.

Second, Requesters are “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). Requesters easily meet the statutory standard.

Obtaining information about government activity, analyzing that information, and publishing and widely disseminating that information to the press and public (in both its raw and analyzed form) is a critical and substantial component of the ACLU's work and one of its primary activities. *See Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be primarily engaged in disseminating information” (internal citation omitted)).

The ACLU's principal mission is to preserve and defend the guarantees of the Bill of Rights and civil rights laws. Every aspect of the ACLU's work in furtherance of this mission – including litigation, policy advocacy, and public education – can fairly be described as information dissemination.

The ACLU also publishes newsletters, news briefings, and other materials that are disseminated to the public. Its materials are available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee. In recent years, ACLU national projects have published and disseminated dozens of reports, many of which include description and analysis of government documents obtained through FOIA requests.² The ACLU also regularly issues press releases to call attention to documents released through FOIA requests and other breaking news.³

² *See, e.g.,* Am. Civil Liberties Union & MFY Legal Services, *Here We Go Again: Communities of Color, the Foreclosure Crisis, and Loan Servicing Failures* (2015), available at https://www.aclu.org/sites/default/files/assets/aclumfy_mortgage_report.pdf; Am. Civil Liberties Union, *Mental Illness and the Death Penalty* (2009), available at http://www.aclu.org/pdfs/capital/mental_illness_may2009.pdf; Am. Civil Liberties Union, *Human Rights Begin at Home* (2009), available at https://www.aclu.org/files/pdfs/humanrights/udhr60_report_20090410.pdf; Am. Civil Liberties Union & Am. Civil Liberties Union of Mississippi, *Missing the Mark: Alternative Schools in the State of Mississippi* (2009), available at http://www.aclu.org/pdfs/racialjustice/missingthemark_report.pdf; Erika Wood & Rachel Bloom, Am. Civil Liberties Union and Brennan Center for Justice at New York University School of Law, *De Facto Disenfranchisement* (2008), available at http://www.aclu.org/pdfs/racialjustice/defactodisenfranchisement_report.pdf; Am. Civil Liberties Union & Human Rights Watch, *A Violent Education: Corporal Punishment of Children in U.S. Public Schools* (2008), available at http://www.aclu.org/pdfs/humanrights/aviolenteducation_report.pdf; Mike German & Jay Stanley, Am. Civil Liberties Union, *Fusion Center Update* (2008), available at http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf; James Thomas Tucker & Stephen Wermiel, *Enacting A Reasonable Federal Shield Law: A Reply to Professors Clymer and Eliason*, 57 AM. U. L. REV. 1291, 1292 (2008), available at http://www.aclu.org/images/asset_upload_file113_35870.pdf; Robin L. Dahlberg, Am. Civil Liberties Union, *Locking Up Our Children: The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication* (2008), available at http://www.aclu.org/pdfs/racialjustice/locking_up_our_children_web_ma.pdf; Am. Civil Liberties Union, *Race &*

The ACLU publishes a magazine for its members at least twice a year that reports on and analyzes civil liberties-related current events. The magazine is distributed to approximately 500,000 people.⁴ Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA requests, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. The ACLU also regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public.

The ACLU operates a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://aclu.org/blog>. The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multimedia projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also disseminates information through its website, <https://www.aclu.org>.⁵

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

NCLC regularly issues reports, books, and newsletters on consumer issues, including student loan law, which are distributed to consumers, lawyers, academics, and other interested parties. These publications, which are listed on its websites, www.nclc.org and www.studentloanborrowerassistance.org, often include information obtained through FOIA

Ethnicity in America: Turning a Blind Eye to Injustice (2007), available at http://www.aclu.org/pdfs/humanrights/cerd_full_report.pdf.

³ See, e.g., Press Release, Am. Civil Liberties Union, *Justice Department Releases Bush Administration Torture Memos*, Apr. 16, 2009, available at <http://www.aclu.org/safefree/torture/39393prs20090416.html>; Press Release, Am. Civil Liberties Union, *Documents Obtained by ACLU Provide Further Evidence That Abuse Of Iraqi Prisoners Was Systemic*, Nov. 19, 2008, available at <http://www.aclu.org/safefree/torture/37818prs20081119.html>.

⁴ In addition to the national ACLU offices, there are 52 ACLU affiliate and national-chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the Am. Civil Liberties Union Archives at Princeton University Library.

⁵ Notably, other agencies routinely grant the ACLU’s requests for expedited processing of FOIA requests. For example, the ACLU has been granted expedited processing by the National Security Division of the Department of Justice (May 2009), the Department of Justice (December 2008), the National Security Agency (October 2008), the Department of the Army (July 2006), the Defense Intelligence Agency (March 2006), the Civil Division of the Department of Justice (March 2006), and the Department of Justice’s Office of Information and Privacy (January 2006).

requests. NCLC expects to publish information received pursuant to this FOIA request because to do so would contribute significantly to public understanding of student loan programs.

III. Application for Waiver or Limitation of Fees

A. A waiver of search, review, and reproduction fees is warranted under 5 U.S.C. § 552(a)(4)(A)(iii)

We request a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is “in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the [United States] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Given the ongoing and widespread public attention to issues of student debt, the records sought by the Requesters will significantly contribute to public understanding of the operations and activities of the government. As noted above, the economic impact of student debt and default, as well as the effects of the Department’s collection practices, have generated significant media coverage, and the Department’s Inspector General has issued a report relating to the Department’s oversight of PCAs. The records sought in this Request would inform that public debate by illustrating the federal government’s role in relation to some of the most consequential aspects of the student debt system.

Moreover, disclosure is not in the Requesters’ commercial interest. Any information disclosed by the Requesters as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.”) (citation omitted) (internal quotations omitted); *Openness Promotes Effectiveness in our National Government Act of 2007*, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (2007) (amending the FOIA and noting in its findings that “disclosure, not secrecy, is the dominant objective of the Act”).

B. A waiver of search and review fees is warranted under 5 U.S.C. § 552(a)(4)(A)(ii)

A waiver of search and review fees is warranted because the Requesters qualify as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii). The Requesters are representatives of the news media in that they are organizations actively gathering news and they are organized and operated to publish or broadcast news to the public, where “news” is defined as “information that is about current events or that would be of current interest to the public.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

The Requesters meet the statutory definition of a “representative of the news media” because each organization is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.*; *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (holding that the National Security Archive was primarily engaged in

disseminating information and “thus well within” the concept of a “representative of the news media”); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003); (holding that a non-profit organization was a representative of the news media for purposes of FOIA when the organization published analysis of information derived from various sources through printed books, online content, and a newsletter); *Am. Civil Liberties Union of Washington v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) *on reconsideration*, No. C09-0642RSL, 2011 WL 1900140 (W.D. Wash. May 19, 2011).⁶

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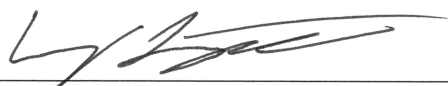
Pursuant to applicable statutes and regulations, we expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

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

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

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I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).


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⁶ In light of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.” Examples in recent years include the following: In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the Central Intelligence Agency granted a fee waiver with respect to the same request. In March 2009, the Department of State granted a fee waiver to the ACLU with respect to its request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request.