NCLC®
NATIONAL CONSUMER LAW CENTER®
Advancing Fairness in the Marketplace for All

BOSTON HEADQUARTERS
7 Winthrop Square, Boston, MA 02110-1245
Phone: 617-542-8010 • Fax: 617-542-8028

WASHINGTON OFFICE
1001 Connecticut Avenue NW, Suite 510, Washington, DC 20036
Phone: 202-452-6252 • Fax: 202-296-4062

www.nclc.org

August 17, 2016

The Honorable John B. King Jr.
Secretary of Education
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202
john.king@ed.gov

Dear Secretary King,

We are writing on behalf of the National Consumer Law Center's low-income clients, along with a coalition of national, state and local civil legal aid, civil rights, and public interest groups and advocates, regarding the need for data to ensure that the federal student loan program is a tool that helps students of color access a meaningful education and achieve greater economic mobility, rather than holding them back. This administration has taken many important steps to acknowledge and address both the higher education student loan crisis and the problems of inequality in our education system. Under your leadership, we have seen the issue of racial justice brought to the forefront of Department of Education policy. We appreciate the tremendous value of the Civil Rights Data Collection concerning the nation's K-12 education system. And we applaud your recent policy directive stating that student loan servicing practices should be adjusted to better reflect the Department's broader policy objectives.[1] Unfortunately, the Department has yet to bring the same level of attention to the impact of the student loan crisis on student loan borrowers of color.

For nearly a decade, the Department of Education has known that student debt impacts borrowers of color differently from white borrowers. Yet in that decade, the Department has failed to take sufficient steps to ameliorate the disproportionately negative impact on borrowers of color, or even to conduct further research to discover the causes or the extent of disparities. We call on the Department to collect and release the data necessary to learn the true extent of the impact of student debt on communities of color and to work with borrower and consumer

[1] Ted Mitchell, Under Secretary, U.S. Department of Education, "Policy Direction on Federal Loan Servicing," July 20, 2016, *available at* http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

advocates to ensure that student loans are a tool for economic advancement and not economic devastation for borrowers of color.

Research on Race and Student Debt

Since 2007, the Department of Education has known that borrowers of color are more likely to default on their student loans than white borrowers. On average, students of color take out more student debt than white students. African American and Latino students also make up a disproportionately large portion of students at for-profit colleges, meaning that the issues facing this sector have a higher impact on students of color—including higher average loan balances and default rates.[2] This higher debt load—combined with disparities in education and broader societal inequalities, including the racial wealth gap and discrimination in the labor and credit markets—has contributed to higher default rates for students of color.[3] An *Education Sector* report from 2007 analyzed the default rates of borrowers who graduated in 1992-93 and found that, ten years after graduation, the default rate for African American students was more than five times higher than the default rate for white students, and the default rate for Hispanic students was more than twice the rate for white students.[4]

Recent research confirms that, for borrowers of color, things do not seem to have improved in the last ten years. Borrowers of color borrow more than white borrowers.[5] Research published in the Children and Youth Services Review found significant variation in education-debt levels by race and household income, with African American and lower-income students accumulating higher levels of education debt compared to their white and upper-income peers.[6] Even after controlling for socioeconomic status and college completion rates, African Americans incurred more student loan debt than similarly situated white borrowers.[7]

Likewise, the available research suggests that borrowers of color continue to be more likely to be in distress on their student loans. Research by the Washington Center for Equitable Growth found that, at the national level, zip codes with higher shares of African Americans or Latinos have much higher delinquency rates on their student loans.[8] Women of color are especially burdened by student loan debt.[9] This relationship suggests that communities of color disproportionately suffer from student loan delinquency and likely default.[10]

---

[2] Peter Smith & Leslie Parrish, Center for Responsible Lending, Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures, (Oct. 2014) http://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf.

[3] See Marshall Steinbaum & Kavya Vaghul, Washington Center for Equitable Growth, How the student debt crisis affects African Americans and Latinos, (Feb. 17, 2016) http://equitablegrowth.org/how-the-student-debt-crisis-affects-african-americans-and-latinos/.

[4] Erin Dillon, "Hidden Details: A Closer Look at Student Loan Default Rates," Education Sector (2007).

[5] Mark Huelsman, "The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing," Demos (May 19, 2015).

[6] Michal Grinstein-Weiss, Dana C. Perantie, Samuel H. Taylor, Shenyang Guo, and Ramesh Raghavan, *Racial disparities in education debt burden among low- and moderate-income households*, Children and Youth Services Review Volume 65, June 2016, Pages 166–174

[7] Id.

[8] Steinbaum & Vaghul.

[9] Suparna Bhaskaran, Pinklining: How Wall Street's Predatory Products Pillage Women's Wealth, Opportunities, & Futures at 20 (June 2016). Available at

The full array of reasons for racial disparities in default rates is not yet known, but may include several factors within the Department's control. In particular, reducing default rates for African American and Hispanic borrowers may require improving student loan servicing, better recognizing and addressing the financial needs of students of color, addressing racial targeting by predatory proprietary schools, and breaking down barriers that students of color experience in accessing the highest-quality institutions. The Department has taken positive steps in several of these areas, by strengthening program integrity rules, improving consumer information and tools, and enabling students to apply for aid earlier. While these critical steps may help reduce disproportionate impacts by race, the Department has both the means and an obligation to examine and address disproportionate impacts explicitly.

Consequences of Student Debt

Disparities in federal student loan default rates disproportionately expose borrowers of color to government offsets and other damaging debt collection practices. There are extraordinary penalties for borrowers who go into default. When a borrower has a defaulted federal student loan (a loan that is more than 270 days past due), the government can seize certain income and assets from the borrower without a court order. Low-income borrowers are especially harmed because the government often seizes benefits, such as the Earned Income Tax Credit ("EITC"), that are aimed at promoting economic security and mobility.

Defaulting on a federal loan is also very costly. Borrowers who default on their loans will have any unpaid interest capitalized and are also assessed high collection fees, up to 25 percent of the loan balance for Stafford loans and as high as 40 percent for Perkins loans. In addition, borrowers in default are often required to pay more per month than similarly situated borrowers in good standing. For example, a single borrower making $25,000 per year with two children would have a $0 payment each month if in good standing on an income-driven repayment plan. That same borrower in default would likely have approximately $250 garnished from her wages.[11] Additionally, that borrower would likely have her tax refund intercepted, losing approximately $4000 in Earned Income Tax credits.[12] By one calculation, default increases lifetime payments on an average loan by 250% over standard repayment.[13] As a result of these collection costs and practices, borrowers of color will disproportionately pay more for their student loans than their white peers, both in the short term and over the life of the loan.

Moreover, a borrower in default is prevented from receiving further aid (including Pell grants) to return to school. This prevents borrowers from getting a second chance if college does not work out the first time around. Defaults disproportionately impact non-traditional students—including first-generation, low-income, and independent students—and block their educational

---

https://d3n8a8pro7vhmx.cloudfront.net/acceinstitute/pages/100/attachments/original/1466121052/acce_pinklining_VIEW.pdf?1466121052.

[10] Steinbaum & Vaghul.

[11] NCLC calculations based upon a single taxpayer with a gross income of $25,000 claiming three allowances living in Massachusetts with a loan balance of $50,000 and an interest rate 6.8%.

[12] NCLC calculations based upon a single taxpayer with a gross income of $25,000 and two children..

[13] Consumer Reports, Costing it Out: The Way You Repay Student Loans Really Matters, (June 2016) available at http://www.consumerreports.org/student-loan-debt-crisis/student-loan-repayment/.

advancement.[14] For-profit schools, which disproportionately enroll minority students and women,[15] also produce high default rates which prevent their targeted populations from getting a fresh start after a potentially fraudulent experience. Giving borrowers another chance is critical not only in their individual lives, but also for society. The denial of student aid after student loan default impedes economic productivity by preventing many borrowers of color from returning to school and getting the training and credentials needed to realize their full economic potential in the labor force. Denial of further education may also, perversely, hinder these borrowers' ability to repay their loans.

Moreover, a defaulted student loan can put a borrower in a "Catch-22" where the default prevents the borrower from obtaining a job that could help pay the student loan, as defaulting on a federal loan will also be reported to the three major credit bureaus. Nearly half of all employers perform credit checks on some or all of their employees when hiring.[16] A study by Demos found that credit checks impact not only management positions, but also "jobs as diverse as doing maintenance work, offering telephone tech support, assisting in an office, working as a delivery driver, selling insurance, laboring as a home care aide, supervising a stockroom and serving frozen yogurt."[17]

A defaulted student loan on a credit report can also affect a borrower's ability to secure affordable housing and will likely make other necessities, such as insurance premiums, especially car insurance, more expensive. As the Department acknowledged in its credit reporting fact sheet, "Credit reports play an important role in the financial lives of Americans, affecting our ability to get a home, buy a car, get a job, or even open a bank account."[18]

The extra costs and collateral consequences of defaulting on a federal student loan are detrimental to the well-being of low-income borrowers and their families. For example, the EITC is one of the most important anti-poverty programs available to low-income workers and is specifically intended to help raise working families with children out of poverty. Government seizures of EITC payments have the inequitable and counterproductive effect of punishing these borrowers' children. Such seizures deny children critical resources specifically intended for their benefit, making it harder for these children to get out of poverty and consequently depriving them of future opportunities for advancement.[19]

---

[14] Adam Looney & Constantine Yannelis, "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults," BROOKINGS INSTITUTE (Fall 2015), available at https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPEA.pdf; see also data 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/.

[15] Bhaskaran at 21.

[16] Society for Human Resources Management, SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions (July 19, 2012).

[17] Amy Traub, Demos, Discredited: How Employment Checks Keep Qualified Workers Out of a Job (Feb. 2013).

[18] U.S. Dep'ts of Educ. and Treasury, and Consumer Financial Protection Bureau, Fact Sheet: Modernizing Credit Reporting For Student Loans, http://www2.ed.gov/documents/press-releases/04282016-credit-reporting.doc.

[19] NCLC, Stop Taking the Earned Income Tax Credit from Struggling Student Loan Borrowers (May 2015), available at http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/ib-stop-taking-earned-income-tax.pdf.

The impact of the Department's default collection tools extends beyond those borrowers' immediate families and into their surrounding communities. The collection practices used by the government, which disproportionately affect borrowers of color, have the disastrous effect of systematically removing wealth from communities of color through seizures of wages, tax refunds, and benefits to service student debts and huge collection fees. These practices strip wealth from already significantly disadvantaged neighborhoods and communities.

<u>Defaulted Student Loan Borrowers Experience Aggressive and Illegal Collection Tactics</u>

In addition to these powerful collection tools, both the government and guaranty agencies rely heavily on private collection agencies and other more "traditional" collection efforts in dealing with borrowers who have defaulted. According to a Department of Treasury report in 2009, the Department of Education refers every eligible defaulted debt to one of its private collection agencies.[20] Unfortunately, oversight of collection agencies has been insufficient to protect student loan borrowers. For example, in its testimony to Congress, the GAO stated that the Department's oversight provides "little assurance that borrowers are provided accurate information."[21] The GAO documented a range of errors for each of the six collection agencies visited, including providing borrowers with inaccurate or misleading information about rehabilitation program requirements and other repayment options for emerging out of default.

In early 2015, the Department cancelled the contracts of five of its private collection agencies after finding that "agents of the companies made materially inaccurate representations to borrowers about the loan rehabilitation program."[22] However, some of these companies had been top performers under the existing review process, indicating that the process failed to adequately detect or protect against conduct that harms defaulted borrowers.[23] And, despite the contracts being cancelled, the Department has now reinstated the contracts of at least two of these companies.

Current policies create two paths for student loan borrowers. For borrowers who stay in good standing, there are generous repayment plans that create affordable monthly payments and forgive outstanding balances after a number of years. Borrowers who fall off that path are relentlessly pursued by debt collectors, charged interest on interest and exorbitant collection fees, and have vital safety net resources taken until the debts and collection fees are fully paid off. Given the dramatic difference in treatment between borrowers in default and borrowers in good standing, and the knowledge that borrowers of color face default more often than white

---

[20] U.S. Dep't of the Treasury, U.S. Government Receivables and Debt Collection Activities of Federal Agencies: Fiscal Year 2009 Report to the Congress 15 (Mar. 2010), available at/www.fiscal.treasury.gov.

[21] Federal Student Loans: Oversight of Defaulted Loan Rehabilitation Needs Strengthening: Testimony Before the H. Subcomm. on Higher Educ. and Workforce Training, Comm. on Educ. and the Workforce, 113th Cong. 8 (2014), available at www.gao.gov (statement of Melissa Emrey-Arras, Dir., Educ., Workforce, and Income Sec., U.S. Gov't Accountability Office).

[22] Press Release, U.S. Dep't of Educ., U.S. Department of Education to End Contracts with Several Private Collection Agencies (Feb. 27, 2015), available at www.ed.gov. The five agencies with canceled contracts were: Coast Professional, Enterprise Recovery Systems, National Recoveries, Pioneer Credit Recovery, and West Asset Management.

[23] See National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies Appx. A (Sept. 2014), available at www.nclc.org.

borrowers, we would expect that the Department would do everything in its power to try to address this problem.

Inadequacy of the Department of Education's Response

In May 2015, NCLC, together with the ACLU, filed a Freedom of Information Act ("FOIA") request seeking data on federal student loan delinquencies, default, and collection methods, disaggregated by race.[24] NCLC and the ACLU also requested documents reflecting how the Department assesses whether its collection policies result in adverse impact on borrowers of color.[25]

We were disappointed to learn that Federal Student Aid ("FSA") has not been tracking borrower race for the federal student loan program, and thus lacks data that would help guard against or reform practices that contribute to racial disparities in the program. The Department responded to the FOIA requests by explaining that FSA "does not track race or data related to race" such that no "data, policies, procedures, or guidelines exist" that would be responsive.[26] NCLC and the ACLU have subsequently sued the Department regarding the sufficiency of its FOIA response,[27] but the fact that FSA does not track race with student loan information does not appear to be contested in the litigation.[28]

If, indeed, the Department is not tracking racial outcomes in federal student loans, it is failing in its responsibility to ensure that its debt collection practices do not disproportionately harm borrowers of color. The existing research described above on racial disparities in student loan default rates, taken together with the Department's private servicing and debt collection contractors' record of poor service, provide significant reason for concern that borrowers of color may be disproportionately harmed by student loan collection practices.

The Department Should Track and Remedy Racial Disparities in Student Loan Servicing and Collection

The Department can and should make a priority of ensuring that its student loan servicing and collection policies do not disproportionately harm borrowers of color. To do so, it must track and assess federal student loan borrower outcomes by race. Just as the collection of race-coded mortgage data through the Home Mortgage Disclosure Act (HMDA) enabled regulators and citizens to better assess whether mortgage providers were affirmatively furthering fair housing,[29]

---

[24] See Complaint, ACLU et al v. U.S. Dep't of Education, Case No.16-10613-JCB (D. Mass., filed March 30, 2016), Ex. 1 (Freedom of Information Act Request by the ACLU and National Consumer Law Center to the U.S. Department of Information (May 7, 2015) at 3-4.
[25] See *supra* Complaint, Ex. 1, at 3.
[26] See *supra* Complaint, Ex. 4 (ED Second Interim Response to FOIA Request) at 6.
[27] See ACLU et al v. U.S. Dep't of Education, Case No. 16-10613-JCB (D. Mass.).
[28] See Answer, ACLU et al v. U.S. Dep't of Education, Case No. 16-10613-JCB, (D. Mass., filed June 17, 2016) paras. 51-53 (answering that the content of the Department's cited response to the FOIA request speaks for itself).
[29] See *Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement: Hearings Before the Subcomm. On Oversight and Investigations of the H. Comm. On Financial Services.,* 110th Cong. 37, 42 (2007) (statements of Sandra L. Thompson, Director of the Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation & Calvin R. Hagins, Director of Compliance Policy, Office of the Comptroller of Currency) (suggesting that HMDA data helped regulators target supervisory activities and identify

data collection is needed in the higher education context to clarify how student loan servicers and collectors can affirmatively further the Department's racial justice goals.

The Department has stated a clear policy "to promote student achievement … and ensur[e] equal access."[30] The Department's Office of Civil Rights expressly includes financial aid, including federal student loans and grants, within its regulatory mandate to investigate and prohibit "criteria or methods of administration which have the effect of subjecting individuals to discrimination."[31] The Department is authorized to collect and assess race data for federal student loan borrowers to test for disparities in the program and to identify and ameliorate servicing and collection practices giving rise to such disparities.[32] To ensure that it serves all students appropriately, the Department should exercise its authority to engage in such assessment, and should engage its Office of Civil Rights along with FSA to do so.

As described above, there are several major inflection points in the federal student loan system where social science research has indicated borrowers of color have disproportionately experienced adverse outcomes. The Department has a unique capacity to test not only the most visible inflection points—such as delinquencies and defaults—but also application of the various forced collection mechanisms that borrowers experience most acutely.

Further, because the Department uses different servicers and collection contractors, it should take advantage of the opportunity to test and compare the outcomes of borrowers of color by contractor. Studying borrower outcomes by race and by contractor may illuminate which servicer and collector practices exacerbate and which ameliorate racial disparities, and thus light a path for improvements. For example, how and what collectors communicate to borrowers in default, how decisions regarding which collection mechanisms to invoke are made, and how collection practices interact with factors that correlate with race, can result in different borrower outcomes and should be assessed. Tracking, reporting, and analyzing borrower outcome data by race is necessary to detect and properly remedy any practices that unnecessarily harm borrowers in general and that disproportionately harm borrowers of color.

---

discriminatory practices); Allen Fishbein & Ren Essene, *The Home Mortgage Disclosure Act at Thirty-Five: Past History, Current Issues* 1 (Joint Ctr. for Hous. Studies, Harvard Univ., Paper No. MF10-7, 2010), *available at*http://www.jchs.harvard.edu/publications/MF10-7.pdf (noting that "HMDA has now become an accepted part of the mortgage industry and regulatory landscape . . . [and] there is general agreement that HMDA has helped to bring greater fairness and efficiency to the residential home loan market.").

[30] http://www.ed.gov/ ("*Our mission* is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.")

[31] 34 C.F.R. § 100.3.
While Title VI of the Civil Rights Act of 1964 does not apply to the Department of Education itself, the anti-discrimination principles that regulate all recipients of federal financial assistance should also shape the distribution and servicing of federal financial assistance. See Ted Mitchell, Under Secretary, U.S. Department of Education," Policy Direction on Federal Loan Servicing," July 20, 2016, *available at* http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

[32] For example, although the Equal Credit Opportunity Act generally prohibits creditor inquiries about applicants' race, an exception exists to encourage creditors to request and analyze race data for the purpose of testing the extent or effectiveness of compliance with ECOA's antidiscrimination purpose. *See* 12 C.F.R. §§ 1002.5, 1002.15. ECOA incentivizes creditors to self-test for racial disparities by privileging the results in some circumstances, though given the public interest in fair administration of government programs, this privilege should not be invoked by ED.

For each of the following points where borrower outcomes diverge, we encourage the Department to collect and report data on the total number and percentage of borrowers (separately for each contractor, and in aggregate), by race, and to analyze other factors such as completion rates and type of school attended:

a) Borrowers in repayment that are in an Income Driven Repayment ("IDR") plan

b) Borrowers who failed to recertify for an IDR plan

c) Borrowers who have missed payments and are delinquent

d) Borrowers who default

e) Borrowers who are charged collection fees

f) Borrowers subject to each of the following collection methods (and, for collection methods that provide a hearing right, the number of borrowers who requested a hearing and data on the outcomes):

    i) Tax refund offsets

    ii) Administrative wage garnishments

    iii) Other administrative offsets, including social security offsets

    iv) Removal from default via consolidation

    v) Removal from default via rehabilitation

    vi) Discharge of loan that was in default status

    vii) Collection lawsuits, including (by race) how many such suits result in default judgments, how many are settled, how many are dismissed, how many result in contested judgments for borrowers, how many result in contested judgments against borrowers, how many result in actual collection following the judgment, and how many defendants are insolvent and have nothing from which to collect.

Conclusion

For at least a decade, the Department of Education has known that racial disparities exist in the outcomes of student loan borrowers. Unfortunately, as the response to the ACLU and NCLC's FOIA demonstrates, the Department has not studied the source of these disparities or the extent to which they occur despite the harmful consequences of default. Moreover, it has allowed abusive practices by collection agencies to occur which are more likely to disproportionately harm student loan borrowers of color.

It is time for the Department to leverage its tremendous resources and ensure that student loan policies work for all borrowers. For all these reasons, we call on the Department to collect and release the data necessary to learn the true extent of the impact of student loan debt on communities of color and to work with borrower and consumer advocates to ensure that student loans are a tool for economic advancement and not economic devastation for borrowers of color.

If you need additional information regarding this letter, please contact Abby Shafroth at ashafroth@nclc.org or Persis Yu at pyu@nclc.org.

Thank you for your consideration.

Sincerely,

American Civil Liberties Union
Americans for Financial Reform
Bay Area Legal Aid
Center for Responsible Lending
Civil Justice, Inc.
Consumer Action
Consumers Union
CT Citizen Action Group (CCAG)
Demos
EMPath
Empire Justice Center
Equal Justice Works
Faculty Forward Network
Generation Progress
Heather Jarvis, Attorney and Advocate
Housing and Economic Rights Advocates
Higher Ed, Not Debt
The Institute for College Access and Success (TICAS)
Legal Services of New Jersey
Legal Services NYC
Maryland Consumer Rights Coalition (MCRC)
MFY Legal Services, Inc.
Mississippi Center for Justice
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza (NCLR)
National Education Association
New York Legal Assistance Group
North Carolina Justice Center
Public Higher Education Network of Massachusetts (PHENOM)
Public Justice Center
Public Law Center
Project on Predatory Student Lending of the Legal Services Center of Harvard Law School
Service Employees International Union (SEIU)
Student Debt Crisis
U.S. Public Interest Research Group
Veterans Education Success

Watsonville Law Center
William Kennedy, Faculty, Racial Justice Training Institute, The Law Office of William Kennedy
Woodstock Institute
Young Invincibles