[redacted]

June 23, 2009

Wendy Macias
[redacted]

Via: *Facsimile* [redacted]

RE: **Suggestions for Additional Issues that should be considered for action by the negotiation committees**

Dear Wendy Macias and Members of Negotiation Committees,

I suggest the following issues be considered for action by such parties as would make such decisions.

1) **Private Right of Action.** A specific "private right of action" needs to be created for borrowers who have received written correspondence from student loan organizations collecting on an alleged defaulted debt that includes misrepresentations as to the amount, status, credit reporting, records requests, or appeals process.
2) **Expanded Legal Representation.** Expanded avenues for low cost legal representation to student loan borrowers should be created by allowing students who have completed at least one year of law school at a school recognized by any state or territory in the U.S. to assist and represent borrowers in a dispute, administrative hearing, or appeal including representation in any Federal District Court if supervised by a licensed attorney. It should be made clear that student loan organizations will be responsible for any costs incurred if the dispute is resolved in favor of the borrower, but the borrower will not bear any charges from the borrower's law student representative if such efforts are unsuccessful.
3) **Appeals Process Clarified.** It is not clear exactly what the process for appealing decisions related to defaulted student loan debts is. This should be set out in the Code of Federal Regulations. I suggest a student loan borrower must 1) dispute the debt with the party attempting to collect on the debt. If the parties response is not acceptable to the borrower, he/she may 2) send a written dispute to the guarantor of the loan (i.e. guaranty agency) titled "request for administrative review." If this does not resolve the issue, the borrower may 3) appeal to a DOE department responsible for secondary appeals. If this is not successful, the borrower may 4) file a suit in either a Federal District Court or appropriate state court, but should concurrently send a petition for damages outlining the details of such to whatever department is appropriate. The addresses and departments should be clearly set forth in the Code of Federal Regulations (preferable around 34 CFR 682.410 b(6) or so.
4) **Records Requests Clarified.** According to 34 CFR 682.410b et seq., a borrower is entitled to records after the time for appeal has passed. However, it does not specify what records the

borrower is entitled to, the timeframe they can be expected to arrive, or if the records request must be made to the guarantor, 3rd party debt collector, or such other party as may be servicing the defaulted loan. If a number of years have gone by after alleged default, it might even be argued the borrower has no rights to records at all. The borrower should be allowed all records relating to all accounts. If the servicer is acting responsibly there should be nothing to hide. So, the borrower should receive copies of promissory notes, screen prints from all computer related records (including, but not limited to the payoff screen, and status screens), notes on account, copies of default claims, letters sent to the borrower, and anything else in the borrower's physical or electronic file.

Why is it necessary for these four issues to be addressed? Can't we just trust student loan servicers to do the right thing and behave responsibly? My personal experience is that guaranty agencies, 3rd party collectors, Sallie Mae, and DOE appeal officials cannot be trusted. We have become involved in a society that has allowed the regulated to regulate themselves. The student loan industry is a perfect example of everything that has gone wrong with our society today as it relates to the economy and government. I realize that it is one thing to blab incessantly about a supposed unfair system. However, I offer the following proof.

The reality is that student loan servicers have systematically overcharged borrowers on collection fees. See the collection cost matrix on page one of the first attachment to this letter. It is entitled, "Notice of Change in Collection Fee Assessment and Payment Application." This letter was provided to the Washington State Attorney General's office by Northwest Education Loan Association (NELA) in response to a dispute from a borrower complaining that his balance was going up instead of down despite the 15% garnishment of his government pay.

As a bit of background, I should point out that Secretary of Education made comments that were published in the Federal Register in 1996 stating that it would begin enforcing a requirement effective January 31, 1998 prohibitting the "front-loading" of collection costs. But the Secretary also noted that such practices had never been legal. The NELA letter is (not) coincidentally dated January 31, 1998.

The collection cost matrix reflects two columns. One is titled "Cost Rate" and the other "Make Whole Rate." Note that the Make Whole Rate is more than the cost rate in the matrix. However, according to the DOE letter attached to my letter as attachment number 2, the make whole rate is supposed to be less than the cost rate. What is the cost rate? The cost rate is an industry term that expresses the make whole rate on a per payment basis. It's the same amount as the cost rate just expressed differently. Because collection fees are assessable on a per payment basis (rather than front-loaded), the simplest (and only fair way) to assess the right amount of collection cost is to come up with a number that properly allocates collection costs to an individual payment when it comes in. Some of the payment obviously goes to collection costs, with the rest going to principle and/or interest. So, the make whole rate allocates the cost rate to figure how much of the payment goes to collection costs, while the rest goes to principle and interest. If the cost rate were applied directly to the whole payment, the collector would be effectively adding a collection cost onto a collection cost.

So, for the cost rate of 31.13, the effective make whole rate should be about 24%, not 45.1385% as listed on the NELA letter sent to the WA State Attorney General. NELA was charging almost 100% more than allowed, which is particularly noteworthy since the cost rate is supposed to reflect how much it

actually costs for this non-profit agency to collect on the loan. What did NELA do with the money it overcharged? Furthermore, NELA makes it clear that this was the way it charged all borrowers. This overcharging was not limited to a one-time thing. It was a systematic overcharging. Amazing really. I should also point out the CFR requires that student loan agencies explain to borrowers in a letter how they assess collection charges. Does this false letter qualify? Note the last paragraph of the letter states, "NELA appreciates you understanding...please understand NELA does not have the discretion to not comply with the Department of Education's directive."

It's actually a lot worse than this. In my case NELA tried to overcharge me collection fees initially. When I paid my loans off through a consolidation loan, I questioned the charges and they were reduced to the correct amount (or so I thought). What really happened was NELA treated my account as a "settled" debt, rather than a "Paid in Full" debt and left the account open in their system presumably to collect the more monies later. Eventually, outstanding and past due amounts began to appear on my credit reports. When I disputed them, they simply wrote me letters stating the loans were paid in full, but made no changes to their computer system or the related status codes. The status code "PD," meaning "paid not in full, principle settled" remained. Somewhere in 1997 or 1998 NELA programmed their computers to assess more charges on every open account with an outstanding debt, but failed to reverse the prior charges. So, in my case I had a whole new set of charges show up years after my debt was supposedly resolved, which updated to the credit bureaus. 13 letters to NELA, an appeal to the Dept of Education, and requests for records under the Freedom of Information Act were of no avail. Only after a year and a half in Federal District Court did I get some resolution of the matter (through mediation actually). See my third attachment, which includes a couple pages of a deposition with [redacted] who was the head of repayment operations at the time and is probably known to most people at the DOE.

So, getting student loan debts resolved is a very hard road. My four suggest additional issues (listed in the first page) address the biggest problems I faced. First, it was difficult to carve out a clear private right of action that a federal judge could recognize. I maintained that simply having a student loan debt was cause enough to get the case admitted into Federal Court. However, the judge did not necessary see it that way. He suggested that I needed a specific private right of action. If you look carefully at the Higher Education Act, you will see a cause of action related to "closed schools," and withheld "refund" situations and a couple other specific situations. Nevertheless, there is no specific cause of action created for debtors that are subject to misrepresentation, overcharging, or extortion (in my case). But, when I filed in state court, I was told it was a federal issue and to file there instead. Thus, I had a problem being certain where to file at all despite language in the HEA that suggests I could file in either place. This needs to be clarified. Also, despite language in the HEA that allows the DOE to enter into contracts with student loan agencies and "borrowers," there is actually case precedent that views student loan promissory notes as not being contracts. It was argued that student loans were a sort of grant/gift type of thing, and not a cause of action in a "contract" dispute.

I had more money than most defaulted debtors at the time because I was beginning to have success being self employed. Nonetheless, I burned through two attorneys that seemed bewildered by the student loan laws and wanted more than the combined $4000 I paid them up front. Thus, it seems to me that a law student would possibly welcome the idea of potentially getting paid to help a debtor in a dispute and get some valuable experience at the same time. Note, under my suggestion, the borrower does not pay anything out of pocket. The student loan agency pays the advocate, but only if it's resolved favorably to

the borrower. Otherwise, it's free. The simple truth is that it's hard for defaulted borrowers to get representation because they have almost no money typically, and their credit is destroyed (in some cases unjustly due to false information provided related to the alleged defaulted student loans and their supposed status).

As to the appeals issue, it was never clear to me what the process was although I did my best to figure it out. The response I got from [redacted] at the DOE was ridiculous and baseless. Obviously, he was not interested in anything related to truth or fairness. The appeals process needs to be completely reworked with honest people engaged in resolving these matters.

My requests for records were ignored at all levels including the Department of Education office responsible for requests under the Freedom of Information Act, requests to the guarantor (NELA), and the third party debt collector (Financial Assistance, Inc.). I only received the records I needed through my lawsuit in Federal District Court. NELA hasn't changed much. I currently know of another borrower, [redacted] who has made a records request to NELA sent certified mail, but has not received a response. It's been almost two months now.

So, these are my suggestions. Please contact me as it relates to the language of any specific changes or additions to laws. I would love to be involved in making laws that actually work to protect borrowers. As a business owner, I am not unaware of the issues business (such as student loan servicers) face, nor am I anti-corporation, or anti-debt collector. I just want a system that works.

Thanks.

Sincerely,

[redacted]

[redacted]

Attachment #1

LDoE Policy
Effective: 01 JAN 98

Notice of Change in Collection Fee Assessment and Payment Application

You may receive information from NELA which indicates a change in the assessment of collection fees on your defaulted student loan. The United States Department of Education has required that all guaranty agencies comply with regulation 34 CFR 682.404 (f) which became effective Jan. 1, 1998. The following is a brief explanation of the how the fees are calculated.

You will be presented with a loan balance which includes principal, accrued interest and collection fees. The collection fees are assessed in one of two ways:

1) If you made payments prior to January 1, 1998

a) Any payment you made prior to January 1, 1998 will now have incurred a fee as a percentage of each payment amount received. The percentage taken from each payment is determined by the date of default. Please refer to the matrix below. For example, if the sum total of your payments made prior to Jan 1, 1998 equaled $1000 and your loan defaulted October 10, 1993, you now have an incurred fee of $451.38. Your loan balance is not relevant to the incurred fee assessment formula.

b) Your current loan balance (principal and accrued interest) as today will be assessed a payoff fee of 22.804%. For example, if your current loan balance was $1000, your new assessed fees are $228.04.

The sum of the collection fees described in parts a and b of this section will be your outstanding collection fee balance. In this example, your collection fee would be $679.42 ($451.38 + $228.04). Your payoff balance would be $1679.42 ($1000 plus $679.42 in fees.)

From all payments made January 1, 1998 or later, a collection fee of 18.57% will be paid from each payment received. In order to be made whole (in order to return the entire balance of the loan back to the American taxpayer less costs), the rate of 22.804% will be assessed for the final payoff payment.

Collection Cost Rate Matrix

Date Loan Purchased	Cost Rate	Make Whole Rate
10-1-93	31.13	45.1385
10-1-94	20.68	25.2000
10-1-95	16.85	20.2200
10-1-96	18.60	22.8500
10-1-97	18.57	22.8040

The make whole rate determines the amount taken from each payment made.

EXHIBIT
#28
5-16-01

You will not have incurred costs charged 1) if your loan defaulted prior to August 12, 1993 and/or 2) you did not make payments prior to 1998. You will have a fee assessed at 22.8040% of your current principal and accrued interest for payoff purposes.

2) If you have not made any payments prior to January 1, 1998

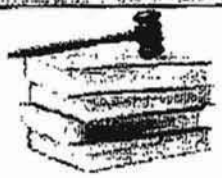
From all payments made January 1, 1998 or later, a collection fee of 18.57% will be paid from each payment received. In order to be made whole, the rate of 22.804 will be assessed for the final payoff payment. For example, if your current balance as of a certain date is $1000 (including accrued interest), the collection fee is $228.04. The payoff balance, then, is $1228.04.

Note: Loan Consolidation and Loan Rehabilitation Payoffs will continue to use a 18.5% collection fee as per regulation.

NELA appreciates your understanding and patience during this transition period. We do understand frustration which arises from the change in regulation but please understand that NELA does not have the discretion to not comply with the Department of Education's directive.

Attachment #2

COLLECTIONS - Financial Student Assistance (FSA) Home



▸ Notes to Contract Administrators

Subject: New Collection Fee Rate on Consolidations
Date: 07/12/02

NOTE TO CONTRACT ADMINISTRATORS - New Collection Fee Rate on Consolidations

For all consolidations posted on/after July 1, 2002 we have lowered the collection fee rate charged to borrowers. The new rate is 11.1% (down from the old rate of 13.4%).

The reason we have lowered the fee rate is that we have lowered the rate at which we pay commissions to our collection agencies for consolidations; we are only allowed to charge collection costs at a rate that recoups what we pay out to our vendors.

Note that 11.1% is the rate we charge to borrowers: when a consolidation payment posts, the system will create a CF at the make-whole rate of 10% of the gross payment amount. Example: if a borrower owes $1000 P&I, we would add collection fees equal to $111. The total payoff we quote to the consolidation lender would be $1111. When that $1111 payment posts to our system, a CF of $111 will be added--$111 is 10% of $1111.

The system change we requested to support this change in rate was not implemented until today, so some consolidations that posted between July 1 and July 11 will have posted CFs at the old higher rate. The good news is that our system will automatically write off this shortage, but please be aware when computing refunds that the new rate took effect July 1--AGs began preparing LVCs using the new rate prior to that date.

[redacted]

statement says is that I was charged 5,000 -- okay. Yeah. Okay. So I added right on Exhibit 5. I added wrong on the Eagle one. The Eagle one is 2,062.36 plus $3,488.45 -- yeah, you get a match. So according to Eagle I was charged, I was assessed $5,550.81 in collection fees, of which I've already paid 2,062, but of which $3,488.45 remains outstanding. That's what it says on Eagle. And on Dars it says the exact same thing. What it says on Dars is that I was assessed a collection fee up front of this 31.13 percent, and that's what it works out to be, and then upon consolidation I was charged another 18-and-a-half percent.

THE WITNESS: Not another.

[redacted]: That's what it says here.

[redacted]: No, you misread the records.

THE WITNESS: You paid $2,062.36, which is 18-and-a-half of the consolidation balance that you paid. That's what you were charged. That's what you paid.

[redacted]: Right.

Q In your system, your system I was assessed $5,550.81, of which I only paid --

A That's just accounting to balance everything out.

Q It doesn't look to me like it balanced out at all.

[redacted]

I've got an outstanding balance there.
A You paid $2,062.
Q Right. That's all I paid.
A That's all you paid. That's all you were charged. Done.
Q So let's say I sent in a payment. Could it post to my account?
A Yes.
Q It could?
A It could, uh-huh.
Q Why?
A Because there's still a balance that's showing on the account.
Q Why is there a balance showing on my account if you didn't assess more fees than was due?
A Because it's still showing outstanding on there, because you paid 18-and-a-half and there was a higher amount charged.
Q Okay. So there was a higher amount charged?
A Yes, that's never been an issue.
Q Well, you just told me that this -- that you didn't charge me, you didn't assess --
[redacted]: Hold on. Hold on. You're just going way down the trail and misinterpreting everything she said. You paid 18-and-a-half on what

was then owing principal and interest.

[redacted]: Okay, I have to object to this running commentary here.

[redacted]: Well, all you're doing is having a running commentary arguing with the witness at this point. I mean, ask her a factual question. You know, it's clear and the record will be clear that you've misconstrued what her prior testimony has been. What's the next question? I'd like to get this moving forward.

[redacted]: What I asked her before is if these amounts were -- these extra amounts on the consolidation were assessed to my account. I didn't ask her if I'd paid those amounts.

Q And then you said no, you weren't assessed those.

A They were not assessed. They were paid.

Q So what we're arguing over here is the term "assessed", not whether or not I was charged?

A Apparently.

Q Okay. So according to this statement, regardless of how much I was actually charged, there was an accounting entry on my account for -- at the time of consolidation.

A Yes.

Q Okay. So that's all I'm saying. I'm not trying to

say that you actually, at least not right now, that you're actually coming after me for money. But I am trying to conclude here that, you know --

A Yes, there was a transaction on the account.

Q There was a transaction on my account, okay. And that explains why we've got the fee balance of the $3,488.45 because I only paid 2,062.36. However, the total amount that was actually inputted into the system was $5,550.81.

A Yes.

Q Yes, okay. All right. So what I take that to mean is that those records showed an outstanding balance, although you characterize the account as having been closed after June of '99. So if I was to make a payment, there would be a place to post it to; right?

A Yes.

Q Do you know that I did make a payment?

A Do I know that you did?

Q Yes.

A No, I don't know what time frame you're talking about.

Q I sent in a payment over a week ago that posted and got cashed for $3,488.45. Are you guys going to refund that money?

A Sure, ask for it.

Q Are you sure you weren't trying to collect a debt from

100

me by reporting to consumer reporting agencies all this time?

A Absolutely positive. The account was closed.

Q Well, if it was closed, why would you post the payment to my account?

A Because it's still a balance on the account. The system doesn't write it off. It will let money apply to it. There were no letters sent to you. We weren't collecting the debt.

Q Well, why doesn't the system write it off?

A You'd have to ask them, the company that designed it. We can't do it.

Q I must have forgotten your answer to this question then. You're saying it's possible to post a payment to a closed account?

A Yes, that's what I said.

Q Why would anybody post a payment to a closed account?

A There's still a balance. We waived that balance. If somebody was good enough to pay that money, we'll post it on there. We're not collecting it, though.

Q Why would you waive a balance that I don't owe?

A You did owe it at the time. Before the consolidation it was owed. When you consolidated, we only take the 18-and-a-half fee and the rest is waived.

Q So how much was waived?

160

Q Do you know if CBI refers to Equifax?
A They used to be called that, and so I'm assuming it may be that.
Q Who has -- who has clearance to access the critical borrower data?
A Everybody.
Q Everybody has it?
A To add information to it, yes.
Q If I hadn't made the payment for $3,488.45, would your system have accepted a status code change from PD to PF?
A Yes.
Q But now that the payment posted of the $3,488.45, now it can be PF?
A Yes, as long as the balance is totally zero.
Q So if I want PF to be in your system I had to make the pavement?
A Uh-huh, yes.
[redacted] Exhibit 36. Let's mark this Exhibit 36.

(Deposition Exhibit 36 marked for identification.)

Q In the last paragraph of Exhibit 36, which is a letter from the United States Department of Education, Office of Student Financial Assistance, it's from [redacted]

[redacted]