

# EXHIBIT 1

EXHIBIT 1

**NCLC**<sup>®</sup>

NATIONAL  
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Advancing Fairness  
in the Marketplace for All

March 29, 2013

SENT VIA EMAIL

U.S. Department of Education  
Office of Management  
Regulatory Information Management Services  
400 Maryland Avenue, SW, LBJ 2W220  
Washington, DC 20202-4536  
EDFOIAManager@ed.gov

**Re: Freedom of Information Act Request**

Dear Chief Information Officer:

On behalf of the National Consumer Law Center, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I hereby request the following records:

**Information about Private Collection Agency Contractor Performance Evaluation**

- (1) All documents (including memorandum, letters, communications, forms, reports, and other data) used to calculate the Competitive Performance and Continuous Surveillance (CPCS) scores for each Private Collection Agency Contractor for Fiscal Year 2012, including documents and data submitted by each Private Collection Agency to the Department of Education.
- (2) All documents, results, and calculations relating to the ranking of Private Collection Agency Contractors based upon CPCS standing and scores for Fiscal Year 2012, including but not limited to:
  - a. The overall score awarded to each Private Collection Agency Contractor for every Performance Evaluation done in FY 2012;
  - b. The number of points awarded to each Private Collection Agency Contractor in all categories for every Performance Evaluation done in FY 2012; and
  - c. Each Private Collection Agency Contractor's ranking for every Performance Evaluation done in FY 2012.

[www.NCLC.org](http://www.NCLC.org)

**Boston Headquarters:**

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

**Washington Office:**

1001 Connecticut Ave. NW  
Ste. 510  
Washington, DC 20036-5528  
Phone: 202/452-6252  
Fax: 202/463-9462

Page 2 of 2

- (3) All memorandum, reports, and other documents indicating the amount of any bonuses and/or incentive fees paid to each Private Collection Agency Contractors based upon CPCS standing and scores, or for any other reason in Fiscal Year 2012.

In your response to this request, please specify whether: (1) you are providing all documents responsive to the request; (2) no documents exist that are responsive to the request; or (3) documents exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. The National Consumer Law Center, a nonprofit corporation founded in 1969, assists consumers, advocates, and public policy makers 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. These publications, which are listed on our website, [www.nclc.org](http://www.nclc.org) and [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org), often include information obtained through FOIA. We expect to publish information we receive pursuant to this FOIA request because to do so would contribute significantly to the public's understanding of student loan programs. Please note that your office has previously granted fee waivers for our organization and should have basic information about us on file.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We will expect a response within 20 working days as provided by law. If you have any questions regarding this request, please contact me at (617) 542-8010.

Thank you very much for your attention to this matter.

Sincerely,  
/s/  
Persis S. Yu

# EXHIBIT 2

EXHIBIT 2



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF MANAGEMENT

Privacy, Information, and Records Management Services

August 2, 2013

Ms. Persis Yu  
Staff Attorney  
National Consumer Law Center  
7 Winthrop Square, 4<sup>th</sup> Floor  
Boston, MA 02110

RE: FOIA Request No. 13-01138-F

Dear Ms. Yu:

This is the Department's final response to your e-mail dated March 29, 2013, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested that a copy of the following documents or documents containing the following information be provided to you:

- Information about Private Collection Agency Contractor Performance Evaluation:
  1. All documents (including memorandum, letters, communications, forms, reports, and other data) used to calculate the Competitive Performance and Continuous Surveillance (CPCS) scores for each Private Collection Agency Contractor for Fiscal Year 2012, including documents and data submitted by each Private Collection Agency to the Department of Education.
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  3. All memoranda, reports, and other documents indicating the amount of any bonuses and/or incentive fees paid to each Private Collection Agency Contractors based upon CPCS standing and scores, or for any other reason in Fiscal Year 2012.

Page 2 – Ms. Persis Yu  
FOIA Request No. 13-01138-F

Your request was forwarded to Federal Student Aid (FSA) within the Department to search for documents that may be responsive to your request.

Enclosed is a CD containing 25 pages of documents responsive to Items 1 and 2 of your request. FSA advises that it has no documents responsive to Item 3. However, certain information has been withheld (including 17 pages in their entirety) according to the FOIA exemption specified below:

- Records or portions of records relating to trade secrets and commercial or financial information is exempt pursuant to 5 U.S.C. § 552 (b)(4) of the FOIA. This provision exempts from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”

You have the right to appeal this decision by writing to the address below, within 35 days from the date of this letter. Your appeal should be accompanied by a copy of your initial letter of request, this denial letter, and any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

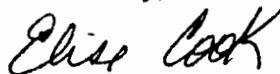
**Appeal Address:**

U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
400 Maryland Avenue, SW, LBJ, 2W311  
ATTN: FOIA Appeals Office  
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:  
[http://www.ed.gov/policy/gen/leg/foia/foia\\_appeal\\_form\\_1.html](http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html).

If you have any questions, please contact the FOIA Service Center (FSC) at (202) 401-8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,



Elise Cook  
FOIA Public Liaison  
FOIA Service Center  
U.S. Department of Education

Enclosure

# EXHIBIT 3

EXHIBIT 3









































# EXHIBIT 4-1

EXHIBIT 4-1

# CPCS 8 Ranking - Small Business Pool

October 1, 2011 - December 31, 2011

- 1 COAST PROFESSIONAL
- 2 COLLECTION TECHNOLOGY
- 3 IMMEDIATE CREDIT RECOVERY
- 4 NATIONAL RECOVERIES
- 5 DELTA MANAGEMENT ASSOCIATES

(b)(4)

(b)(4)

# EXHIBIT 4-2

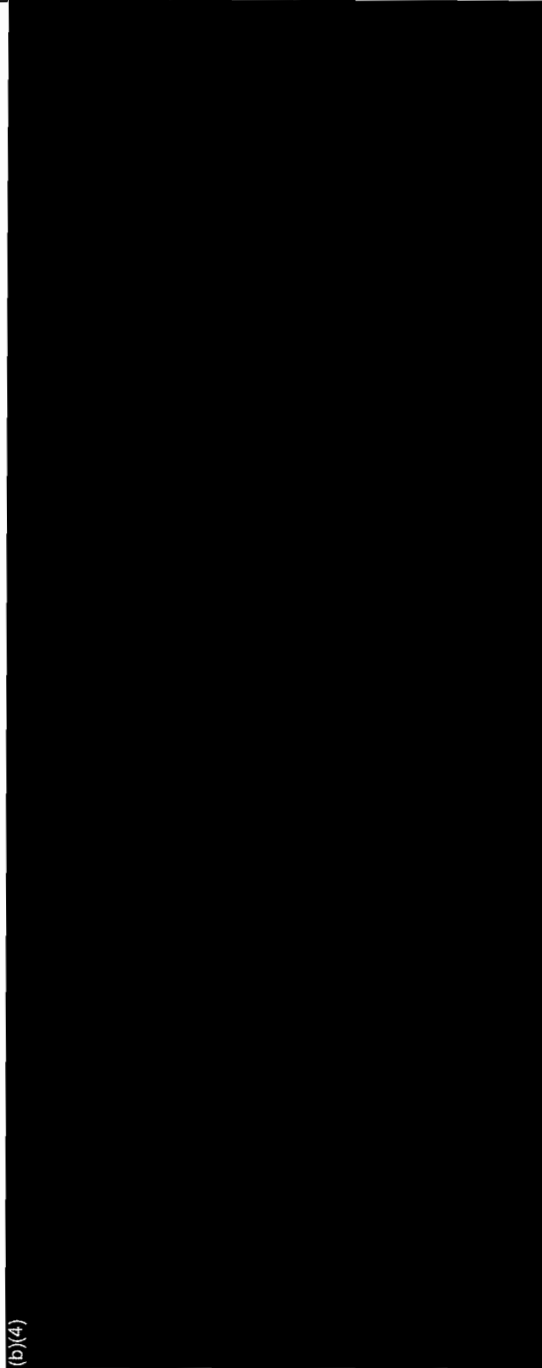
EXHIBIT 4-2

# CPCS 8 Ranking - Unrestricted Pool

October 1, 2011 - December 31, 2011

- 1 FMS INVESTMENT CORP
- 2 PIONEER CREDIT RECOVERY
- 3 CONSERVE
- 4 GC SERVICES LP
- 5 PREMIERE CREDIT OF NORTH AMERICA
- 6 NCO FINANCIAL SYSTEMS
- 7 VAN RU CREDIT CORP
- 8 PROGRESSIVE FINANCIAL SERVICES
- 9 ERS
- 10 PRI (FORMERLY DCS)
- 11 EOS-CCA (COLLECTO INC)
- 12 ACCOUNT CONTROL TECHNOLOGY
- 13 WINDHAM PROFESSIONALS
- 14 ALLIED INTERSTATE
- 15 THE CBE GROUP
- 16 WEST ASSET MANAGEMENT
- 17 FINANCIAL ASSET MANAGEMENT

(b)(4)



# EXHIBIT 4-3

EXHIBIT 4-3

# CPCS 9 Ranking - Small Business Pool

January 1, 2012 - March 31, 2012

- 1 COAST PROFESSIONAL
- 2 COLLECTION TECHNOLOGY
- 3 IMMEDIATE CREDIT RECOVERY
- 4 NATIONAL RECOVERIES
- 5 DELTA MANAGEMENT ASSOCIATES

(b)(4)



# EXHIBIT 4-4

EXHIBIT 4-4

# CPCS 9 Ranking - Unrestricted Pool

January 1, 2012 - March 31, 2012

1	PIONEER CREDIT RECOVERY
2	GC SERVICES LP
3	FMS INVESTMENT CORP
4	CONSERVE
5	NCO FINANCIAL SYSTEMS
6	VAN RU CREDIT CORP
7	PREMIERE CREDIT OF NORTH AMERICA
8	PROGRESSIVE FINANCIAL SERVICES
9	PRI (FORMERLY DCS)
10	ERS
11	EOS-CCA (COLLECTO INC)
12	ACCOUNT CONTROL TECHNOLOGY
13	WINDHAM PROFESSIONALS
14	ALLIED INTERSTATE
15	THE CBE GROUP
16	FINANCIAL ASSET MANAGEMENT
17	WEST ASSET MANAGEMENT

(b)(4)



# EXHIBIT 4-5

EXHIBIT 4-5

# CPCS 10 Ranking - Small Business Pool

April 1, 2012 - June 30, 2012

- 1 COAST PROFESSIONAL
- 2 COLLECTION TECHNOLOGY
- 3 NATIONAL RECOVERIES
- 4 IMMEDIATE CREDIT RECOVERY
- 5 DELTA MANAGEMENT ASSOCIATES

(b)(4)



# EXHIBIT 4-6

EXHIBIT 4-6

# CPCS 10 Ranking - Unrestricted Pool

April 1, 2012 - June 30, 2012

- 1 PIONEER CREDIT RECOVERY
- 2 GC SERVICES LP
- 3 NCO FINANCIAL SYSTEMS
- 4 CONSERVE
- 5 FMS INVESTMENT CORP
- 6 VAN RU CREDIT CORP
- 7 PRI (FORMERLY DCS)
- 8 PREMIERE CREDIT OF NORTH AMERICA
- 9 PROGRESSIVE FINANCIAL SERVICES
- 10 ERS
- 11 ACCOUNT CONTROL TECHNOLOGY
- 12 EOS-CCA (COLLECTO INC)
- 13 WINDHAM PROFESSIONALS
- 14 ALLIED INTERSTATE
- 15 THE CBE GROUP
- 16 FINANCIAL ASSET MANAGEMENT
- 17 WEST ASSET MANAGEMENT

(b)(4)



# EXHIBIT 4-7



EXHIBIT 4-7

**CPCS 11 Ranking - Small Business Pool**  
July 1, 2012 - September 30, 2012

- 1 COAST PROFESSIONAL
- 2 COLLECTION TECHNOLOGY
- 3 NATIONAL RECOVERIES
- 4 IMMEDIATE CREDIT RECOVERY
- 5 DELTA MANAGEMENT ASSOCIATES

(b)(4)



# EXHIBIT 4-8



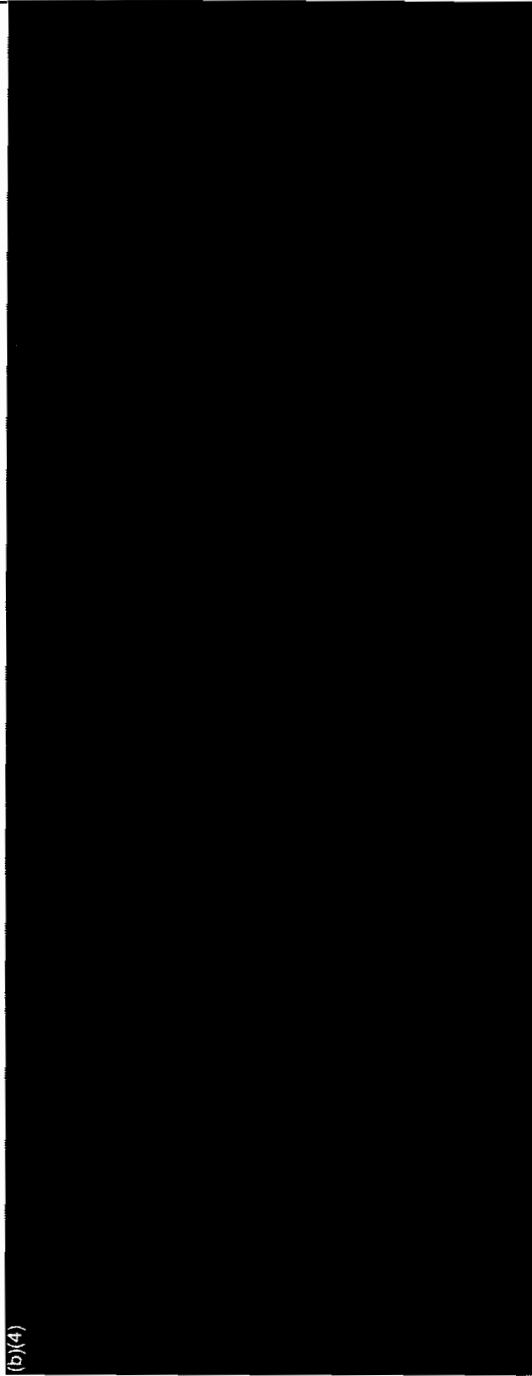
EXHIBIT 4-8

# CPCS 11 Ranking - Unrestricted Pool

July 1, 2012 - September 30, 2012

- 1 PIONEER CREDIT RECOVERY
- 2 FMS INVESTMENT CORP
- 3 GC SERVICES LP
- 4 CONSERVE
- 5 NCO FINANCIAL SYSTEMS
- 6 VAN RU CREDIT CORP
- 7 PRI (FORMERLY DCS)
- 8 PREMIERE CREDIT OF NORTH AMERICA
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(b)(4)





# EXHIBIT 5

EXHIBIT 5

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in the Marketplace for All

September 4, 2013

SENT VIA EMAIL

U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
400 Maryland Ave, SW, LBJ, 2W311  
ATTN: FOIA Appeals Office  
Washington, DC 20202-4500  
EDFOIAappeals@ed.gov

Dear Sir or Madam:

Re: Freedom of Information Act Appeal Request No. 13-01138-F

By letter dated March 29, 2013, I requested access to: Information about Private Collection Agency Contractor Performance Evaluation, specifically:

- (1) All documents (including memorandum, letters, communications, forms, reports, and other data) used to calculate the Competitive Performance and Continuous Surveillance (CPCS) scores for each Private Collection Agency Contractor for Fiscal Year 2012, including documents and data submitted by each Private Collection Agency to the Department of Education.
- (2) All documents, results, and calculations relating to the ranking of Private Collection Agency Contractors based upon CPCS standing and scores for Fiscal Year 2012, including but not limited to:
  - a. The overall score awarded to each Private Collection Agency Contractor for every Performance Evaluation done in FY 2012;
  - b. The number of points awarded to each Private Collection Agency Contractor in all categories for every Performance Evaluation done in FY 2012; and
  - c. Each Private Collection Agency Contractor's ranking for every Performance Evaluation done in FY 2012.

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Washington, DC 20036-5528  
Phone: 202/452-6252  
Fax: 202/463-9462

Page 2 of 4

- (3) All memorandum, reports, and other documents indicating the amount of any bonuses and/or incentive fees paid to each Private Collection Agency Contractors based upon CPCS standing and scores, or for any other reason in Fiscal Year 2012.

By letter dated August 2, 2013, Ms. Elise Cook of the FOIA Service Center of your agency denied my request pursuant to the exception for records or portion of records related to trade secrets and commercial or financial information, 5 U.S.C. § 552(b)(4). Also, Item 3 of my request was denied because Federal Student Aid (FSA) claimed that it did not have records responsive to this request. Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby appeal that denial. I have enclosed a copy of my request letter and the denial that I have received.

#### **Exception 4 Does Not Apply to Requested Records**

The denial of my request was improper because the exception for records or portion of records related to trade secrets and commercial or financial information, 5 U.S.C. § 552(b)(4) (“Exception 4”), does not apply to the information requested. For this exemption to apply, all three of the following conditions must apply: the information must be (1) commercial or financial information; (2) obtained from a person; and (3) that is privileged or confidential. 5 U.S.C. § 552(b)(4). Although this information may be commercial or financial, this exception does not apply because the most of the requested records were not “obtained from a person,” and any that were are not privileged or confidential.

Courts have read the requirement that information be “obtained from a person” to mean that it comes from a third party and restricts the exemption's application to data which have not been generated within the Government, even when that information is derived from or based upon information submitted by third party. *COMPTEL v. F.C.C.*, --- F.Supp.2d ----, 2013 WL 2171793 (D.D.C. May 20, 2013); *see also Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 148 (D.C. Cir. 2006). This request sought records relating to the Department’s evaluation of its private collection agencies and the bonuses the Department paid as a result of its own evaluation. Because these records are based upon the Department’s evaluation, they were generated within the Government and could not have been “obtained from a person.” Therefore, all documents generated by the Department of Education that are responsive to this request, including but not limited to, the performance evaluation points, scores, rankings, and resulting bonuses are not excluded and must be disclosed.

This request also sought the records that the Department used in making its evaluation of the private collection agencies. While some of these records may have been “obtained from a person,” they must still be disclosed. Under the exception, even if information is “obtained from a person,” it must also be “privileged or confidential.” To be privileged and confidential, the information must “(1) ... impair the Government's ability to obtain necessary information in the future; or (2) ... cause substantial harm to the competitive position of the person from whom the information was obtained.” *Public Citizen Health Research Group v. Food and Drug Admin.*, 704 F.2d 1280, 1290-1291 (D.C. Cir. 1983) citing *National Parks &*

Page 3 of 4

*Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The Department has not stated how either of these conditions apply.

Disclosing the requested records would not impair the government's ability to obtain this information. The records that the Department used in making its evaluation of the private collection agencies are based upon information given by the collection agencies themselves. This disclosure is not voluntary; the private collection agencies must provide these documents to the Department as a condition of their contract. Furthermore, failing to disclose this information would prevent the private collection agencies from receiving a bonus. Therefore, disclosing this information will not impact the Department's ability to get this information in the future.

Furthermore, there is no reason to believe that disclosing these records would result in competitive harm. "[C]onclusory and generalized allegations of substantial competitive harm are unacceptable and cannot support an agency's decision to withhold requested documents." *Public Citizen Health Research Group*, 704 F.2d at 1291 (D.C. Cir. 1983). The contracts they are based upon, the policies they must use, and the resulting rankings are all public information.<sup>1</sup> Even if some of the information could result in competitive harm, it is unlikely that all of the information would result in competitive harm. The Department has a duty to reasonably segregate those records from those that would not result in competitive harm.

### **Request Item 3: Bonuses Paid To Private Collection Agencies**

Item 3 requested information documenting any bonuses paid to private collection agencies in FY 2012. In its response, the Department indicates that it has no records related to Item 3 of my request. However, InsideARM.com reports, and Department documents confirm, that contractors are awarded bonuses based upon the rankings and scores each company receives for a quarter and for the fiscal year.<sup>2</sup> Therefore, records must exist documenting the amount of each bonus, to whom it was paid, and when. These records do not fall under any of the FOIA exceptions and must be disclosed.

### **Department Has Discretion To Disclose All Requested Documents**

Finally, even if any exceptions do apply to the requested records, withholding under FOIA is discretionary. As the Supreme Court held, "Congress did not design the FOIA exemptions to be mandatory bars to disclosure." *Chrysler Corp. v. Brown*, 441 U.S. 281, 293, 99 S. Ct. 1705, 1713 (1979). The Department should exercise its discretion and release this information. Information about the performance of and commission paid to collectors should be publicly available. These private collection agencies are being paid by taxpayers to act on

<sup>1</sup> See e.g., Patrick Lunsford, Full Results for ED Debt Collection Contract – Q4 2012, InsideARM.com (Jan. 23, 2013) available at [www.insidearm.com/daily/debt-collection-news/debt-collection/full-results-for-ed-debt-collection-contract-q4-2012](http://www.insidearm.com/daily/debt-collection-news/debt-collection/full-results-for-ed-debt-collection-contract-q4-2012).

<sup>2</sup> Id. See also, U.S. Dep't of Educ., Request for Quotes, RFP No. ED-08-R-0052, (2008) p 20 ("Bonus payments and transfers of new accounts shall be based upon each contractor's total CPCS score.").

Page 4 of 4

behalf of the federal government to uphold the Higher Education Act. Taxpayers have a right to know how much they are paying for these services and whether they are being performed satisfactorily.

For the above reasons, the Department of Education has improperly denied the disclosure of the above requested information. I request that you overturn this denial and disclose requested records.

I expect a response within 20 working days, as the law provides. If you have any questions regarding this request, please contact me at (617) 542-8010.

Thank you for your consideration of this appeal.

Sincerely,

/s/

Persis S. Yu  
Staff Attorney

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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. These publications, which are listed on our website, [www.nclc.org](http://www.nclc.org) and [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org), often include information obtained through FOIA. We expect to publish information we receive pursuant to this FOIA request because to do so would contribute significantly to the public's understanding of student loan programs. Please note that your office has previously granted fee waivers for our organization and should have basic information about us on file.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

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Thank you very much for your attention to this matter.

Sincerely,  
/s/  
Persis S. Yu



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF MANAGEMENT

Privacy, Information, and Records Management Services

August 2, 2013

Ms. Persis Yu  
Staff Attorney  
National Consumer Law Center  
7 Winthrop Square, 4<sup>th</sup> Floor  
Boston, MA 02110

RE: FOIA Request No. 13-01138-F

Dear Ms. Yu:

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Page 2 -- Ms. Persis Yu  
FOIA Request No. 13-01138-F

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**Appeal Address:**

U.S. Department of Education  
Assistant Secretary for Management  
Office of Management  
400 Maryland Avenue, SW, LBJ, 2W311  
ATTN: FOIA Appeals Office  
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:  
[http://www.ed.gov/policy/gen/leg/foia/foia\\_appeal\\_form\\_1.html](http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html).

If you have any questions, please contact the FOIA Service Center (FSC) at (202) 401-8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,



Elise Cook  
FOIA Public Liaison  
FOIA Service Center  
U.S. Department of Education

Enclosure

# EXHIBIT 6

EXHIBIT 6

4/25/2014

National Consumer Law Center Mail - Follow-up on Freedom of Information Act Appeal Request No. 13-01138-F



**Follow-up on Freedom of Information Act Appeal Request No. 13-01138-F**

Persis Yu <pyu@nclc.org>  
To: EDFOIAppeals@ed.gov  
Bcc: Persis Yu <pyu@nclc.org>

Wed, Nov 20, 2013 at 3:58 PM

To whom it may concern:

I am writing to follow-up on the status of the National Consumer Law Center's appeal of the denial of FOIA Request No. 13-01138-F. Please let me know when I can expect to have a response to this appeal.

Thank you for your prompt attention to this matter.

Sincerely,

Persis Yu

**NCLC**<sup>®</sup> Persis Yu  
Staff Attorney  
NATIONAL National Consumer Law Center®  
CONSUMER 7 Winthrop Square, 4th Floor  
LAW Boston, MA 02110  
CENTER 617/542-8010  
www.nclc.org



----- Forwarded message -----

From: **Persis Yu** <pyu@nclc.org>  
Date: Wed, Sep 4, 2013 at 3:22 PM  
Subject: Freedom of Information Act Appeal Request No. 13-01138-F  
To: EDFOIAppeals@ed.gov

To whom it may concern:

Please find attached, the National Consumer Law Center's appeal of the denial of FOIA Request No. 13-01138-F pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 along with our original request and the Department of Education's response.

Thank you for your prompt attention to this matter.

Sincerely,

Persis Yu

Persis Yu  
Staff Attorney  
National Consumer Law Center®

4/25/2014


National Consumer Law Center Mail - Follow-up on Freedom of Information Act Appeal Request No. 13-01138-F


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CENTER<sup>®</sup>



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**2 attachments**

 **FIOA Appeal Letter to ED re No. 13-01138-F with attachments.pdf**  
551K

 **FOIA Response Docs 13-01138-F.zip**  
692K