

**Settlement Agreement**  
**National Federation of the Blind, et al. & U.S. Department of Education**

Whereas, the Department of Education (“Department”), through its student loan servicers, administers a student loan program called the Direct Loan Program, and

Whereas, on March 23, 2011, Mr. Scott Berry filed a Section 504 administrative complaint with the Department pursuant to 34 C.F.R. §105.41(d), alleging that a student loan servicer discriminated against him in violation of Section 504 when it denied his request for: (1) his monthly student loan statement in an accessible format (Braille), and (2) assistance over the phone with filling out a student loan change of payment form, and

Whereas, Mr. Berry requested that he receive correspondence about his student loan in an accessible format and assistance from a student loan servicer in filling out forms, and

Whereas, Mr. Berry also requested relief on behalf of all other similarly situated student loan borrowers who need information on their student loans in an alternate format, including, but not limited to: Braille, audio CD, large print or MS Word on CD, and

Whereas, on September 23, 2011, the Department’s Equal Opportunity Services in its Office of Management issued a decision on Mr. Berry’s complaint that provided him the individual relief he requested, and

Whereas, on December 13, 2011, Mr. Berry timely appealed the decision to the Secretary pursuant to 34 C.F.R §105.41(h) asserting that the Department should provide the systemic relief requested in his complaint, and

Whereas, Mr. Berry, along with the National Federation of the Blind (“NFB”), Rebecca Landry and Teri Saltzman (collectively the “Complainants”), have approached the Department and raised issues concerning the accessibility of the Direct Loan Program for individuals who are blind or visually impaired, and

Whereas, the Complainants informed the Department that they planned to file a federal court complaint, asserting violations of Section 504 for failure to provide blind and visually impaired individuals with meaningful and equally effective access to student loan information, and

Whereas, the Department denies all of the allegations made by the Complainants to date, and

Nonetheless, the Parties mutually desire to resolve all of the claims asserted by the Complainants without the need for further proceedings or litigation, without any admission of liability by any party, and in pursuit of the shared goal of enhancing the accessibility of the Direct Loan Program. Accordingly, the Parties hereby agree to resolve and compromise all issues related to accessibility in the Direct Loan Program through positive and proactive steps by the Department as provided for in the following terms and conditions.

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Now, therefore, the Department, NFB, Scott Berry, Rebecca Landry, and Teri Saltzman agree as set forth below:

1. Parties: The parties to this agreement (“Agreement”) are the Department, NFB, Scott Berry, Rebecca Landry, and Teri Saltzman.
2. Definitions: For purposes of this Agreement, the following definitions shall apply:
  - (a) “Student loans” are loans made by the Department under the William D. Ford Federal Direct Loan (Direct Loan) Program, as authorized under Title IV-D of the Higher Education Act (20 U.S.C. §1087a et seq.).
  - (b) “Student loan servicers” or “servicers” are entities that are under contract with the Department to perform the following services with respect to active non-defaulted student loans:
    1. Communicate with student loan borrowers by mail, phone, or electronically, regarding their student loan accounts;
    2. Collect payments from student loan borrowers;
    3. Process and apply forbearances, deferments, discharges, and repayment plan selections to student loan borrowers’ accounts;
    4. Respond to account inquiries and credit inquiries from student loan borrowers; and
    5. Maintain student loan websites, P.O. boxes, and call centers for use by student loan borrowers.
  - (c) “Borrowers” are current and prospective student loan applicants and borrowers.
  - (d) “Student aid forms” and “Student aid electronic forms” refer to all forms approved, now or in the future, by the Office of Management and Budget and used by the Department or a student loan servicer pursuant to its contract with the Department to perform services listed in Section 2(b) of this Agreement. A list of all student aid forms currently in use is provided in Attachment A.
  - (e) “Student loan statements” and “student loan electronic statements” are statements reflecting a student loan borrower’s individual account information and loan balance as of the date the statements are generated.

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- (f) “Notices and Written Communications” and “Electronic Notices and Electronic Written Communications” are student loan-related materials other than those listed in Section 2(d), (e), and (g), sent to borrowers by student loan servicers in the course of performing services listed in Section 2(b) of this Agreement.
- (g) “Publications” and “Electronic Publications” are student loan-related materials other than those listed in Section 2(d), (e), and (f), developed by the Department for student loan borrowers.
- (h) “Websites” are websites maintained by student loan servicers for use by student loan borrowers pursuant to a student loan servicer’s contract with the Department to perform services listed in Section 2(b) of this Agreement.
- (i) “Electronic Signature” is a type of signature or means of verifying consent or agreement, other than an ink signature, that is made with the help of an electronic device.
- (j) “Facsimile Signature” is a signature, whereby the individual creates a digital copy of what would otherwise be a signature made by a pen on paper and merges it into the relevant signature field or location on a digital document as an image.
- (k) “Electronic submission” is a submission performed through the use of an electronic device, other than facsimile transmission, including a personal computer, laptop, or smart phone, that can be signed with a facsimile signature.
- (l) “Section 508 standards” are standards set out in the regulations established by the Architectural and Transportation Barriers Compliance Board (“the Access Board”) at 36 C.F.R. Part 1194 and incorporated in the Federal Acquisition Regulations, 48 C.F.R. Parts 2, 7, 11, 12 and 39, by a final rule issued jointly by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, 66 Fed. Reg. 20894 (April 25, 2001) or, if those standards are revised by the Access Board, those revised standards.
- (m) “PDF standards” are standards established by the Department based on Section 508 standards. (“Attachment B”).

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- (n) “Large Print” is an enlarged font consistent with standards established by the American Printing House for the Blind as set forth in Attachment C.
- (o) “Substantial” issues/updates/changes are website issues that affect user interface interactive elements or documents.
- (p) “WCAG 2.0 level A and AA standards” (“WCAG 2.0 standards”) are non-technology-specific “Web Content Accessibility Guidelines” for making Web content accessible to a wide range of people with disabilities. The WCAG 2.0 standards are set forth in Attachment D.
- (q) “Monitoring” is manual/user random testing, by the Department, for each servicer, of a representative sample of web pages.

3. Policy Statement and Outreach:

- (a) The Department shall issue a policy statement within 90 days of the effective date of this Agreement discussing the Department’s policies with regard to Section 504 and 508 compliance in connection with the Settlement Agreement. A copy of this policy statement will be provided to Counsel for the Complainants no later than 60 days after the effective date of this Agreement. Counsel for Complainants shall provide any feedback within 45 days.
- (b) The Department shall, beginning as soon as practicable, but no later than 90 days after the effective date of this Agreement, start to conduct outreach to blind and visually impaired borrowers. Through these efforts, the Department shall provide information about, and solicit input concerning, the accessibility of its websites and those of its servicers, the procedure for requesting alternative formats for student loan-related materials, and how to report problems with accessibility. The outreach shall be conducted via the Department’s websites, as well as by posting notices in such publications as the Braille Monitor, as well as through other publications for blind, visually impaired, and large-print readers and newsletters published by the National Library Service for the Blind and Physically Handicapped. Copies of all draft outreach materials shall be provided to Counsel for Complainants for prior review and comment no later than 60 days after the effective date of this Agreement. Counsel for Complainants shall provide any feedback within 45 days.

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4. Websites:

- (a) The Department shall instruct all student loan servicers that their websites must comply with Section 508 standards and WCAG 2.0 standards for their websites as soon as practicable, but no later than 18 months after the effective date of this Agreement. The Department shall instruct all student loan servicers that if any applicable Section 508 standards are modified by the Access Board, the student loan servicers' websites shall come into compliance with any applicable standards consistent with the timeframe specified in the revised standards.
- (b) The Department shall instruct all student loan servicers to: (1) conduct pre-release testing of new websites and of substantial updates to existing websites pursuant to the Department's Section 508 Compliance Test Process for Applications, set forth in Attachment E, to ensure that all new websites and substantial updates are in compliance with applicable Section 508 and WCAG 2.0 standards; (2) certify to the Department that all new websites and substantial updates to existing websites are in compliance with Section 508 and WCAG 2.0 standards prior to release; and (3) not release any new website or substantial update to an existing website that, through testing, has identified substantial issues until the identified issues are resolved, unless correction of the issues would result in a release being delayed beyond a statutorily mandated deadline. The Department shall independently verify the results of such pre-release testing as soon as practicable, but no later than 3 months after the release of those new websites and substantial updates.
- (c) Beginning on the effective date of this Agreement the Department shall monitor changes to student loan servicers' websites for compliance with Section 508 and WCAG 2.0 standards every 6 months. If the results of the monitoring reveal that all or part of a student loan servicer's website is out of compliance with Section 508 or WCAG 2.0 standards, the Department shall instruct the student loan servicer to promptly correct the non-compliance. The Department shall monitor the website or website update until it is in compliance with the Section 508 and WCAG 2.0 standards. The preceding sentences of this subsection shall be interpreted consistently with the last sentence of Section 4(a) of this agreement. Correction of instances of non-compliance shall be prioritized by the student loan servicers as follows:

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- i. 85% of issues blocking development and/or testing work (“blocker issues”), issues causing the website to crash (“critical issues”), and issues causing a major loss of website function (“major issues”) shall be corrected on the same time line used for correcting blocker, critical, and major issues for all borrowers.
- ii. All other issues shall be corrected on the same time line used for correcting similar types of issues for all borrowers.

5. Electronic Forms:

- (a) The Department shall make or instruct the student loan servicers to make the student aid forms included in Attachment F fillable, electronically signable, electronically submissible, and savable upon completion in HTML-based, or other universally accessible, non-proprietary formats by blind and visually impaired borrowers through a “Form Wizard,” which shall be available as soon as practicable, but no later than 18 months after the effective date of this Agreement. The Form Wizard will provide users an opportunity to view a read-only HTML version of a form prior to completing the questions in Form Wizard.
- (b) For all student aid forms, except for the TEACH Grant Agreement to Serve and Direct PLUS Request for Supplemental Information, the Department shall make available, as soon as practicable, but no later than 9 months after the effective date of this Agreement, one set of student aid forms in PDF format that are in compliance with PDF and WCAG 2.0 standards and are viewable, fillable, signable with a facsimile signature, savable, and, no later than 12 months after the effective date of this Agreement, electronically submissible. The Department shall instruct student loan servicers to use this set of student aid forms as soon as the Department makes them available.
- (c) The Department shall ensure that all new student aid forms not in existence on the effective date of this Agreement are, prior to their release:
  - (i) available in PDF format, in compliance with PDF and WCAG 2.0 standards, viewable, fillable, signable with a facsimile signature, savable, and electronically submissible; and,
  - (ii) available in HTML-based format in compliance with WCAG 2.0 standards, fillable, electronically signable, electronically submissible, and savable upon completion by blind and

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visually impaired borrowers through a Form Wizard. The Form Wizard for new student aid forms will provide users an opportunity to view a read-only HTML version of a form prior to completing the questions in Form Wizard.

6. Electronic Student Loan Statements: The Department shall instruct student loan servicers to ensure that, as soon as practicable, but no later than 12 months after the effective date of this Agreement, all student loan electronic statements are in compliance with Section 508 and WCAG 2.0 standards. The preceding sentences of this section shall be interpreted consistently with the last sentence of Section 4(a) of this agreement. The student loan servicers shall accomplish this by developing website functionality that creates a read-only HTML, or other universally accessible, non-proprietary formats version of student loan statements for reference purposes as an alternative to the official system-generated PDF version. In the event of a discrepancy between the HTML and the PDF versions of the statements, the Department and its loan servicers shall correct any mistakes without using such a discrepancy to the detriment of the borrower.
7. Electronic Notices and Written Communications: The Department shall instruct servicers that all notices and written communications must be available in accessible and savable formats that blind and visually impaired borrowers can navigate and review across a spectrum of appropriate electronic devices, and must be in compliance with Section 508 and WCAG 2.0 standards, as soon as practicable but no later than 18 months after the effective date of this Agreement. The preceding sentence of this section shall be interpreted consistently with the last sentence of Section 4(a) of this agreement.
8. Electronic Publications: The Department shall ensure that all of its publications are available in accessible and savable formats that blind and visually impaired borrowers can navigate and review across a spectrum of appropriate electronic devices, and must be in compliance with Section 508 and WCAG 2.0 standards, as soon as practicable but no later than 24 months after the effective date of this Agreement. The preceding sentence of this section shall be interpreted consistently with the last sentence of Section 4(a) of this agreement.
9. Requesting Materials in Alternative Format:
  - (a) The Department shall instruct student loan servicers that, as soon as practicable, but no later than 12 months after the effective date of this Agreement, they shall begin to send copies of student aid forms, student loan statements, notices, and written communications, in alternative

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formats, including Braille, HTML, large print, audio CD, and digital navigable formats supported by computers and digital talking-book players transmitted through data CD, e-mail, or other requested media, within 7-14 business days of the borrower's request. If the document requested requires a response within a specified time period, such period shall be extended by the number of days it took the servicer to process the request. Requests for other alternative formats shall be processed pursuant to requirements set forth in Section 504 regulation, 34 C.F.R. § 105.40. The format selected by a borrower during the first such request shall be that borrower's "default format" for all student aid forms, student loan statements, notices, and written communications, until the borrower requests a change to what constitutes his/her default format. Within 60 days after the effective date of this Agreement, the Department shall provide to Counsel for Complainants a draft policy and high level procedure outlining the process for requesting student aid forms, student loan statements, notices, and written communications in alternative formats. Counsel for Complainants shall provide any feedback within 45 days.

- (b) The Department shall provide hard copies of its publications in alternative formats, including Braille, large print, audio CD, and digital navigable formats supported by computers and digital talking-book players transmitted through data CD, e-mail, or other requested media as soon as practicable, but no later than 24 months after the effective date of this Agreement. The format for publications shall be specified separately by the borrower for each individual request. Within 60 days after the effective date of this Agreement, the Department shall provide to Counsel for Complainants a draft policy and high level procedure outlining the process for requesting publications in alternative formats. Counsel for Complainants shall provide any feedback within 45 days.
- (c) The Department shall take the following steps to inform blind and visually impaired borrowers of how to request alternative formats, as soon as practicable, but no later than 12 months after the effective date of this Agreement:
  - 1. The Department shall post on its website a notice explaining the availability of alternative formats and the process for requesting other alternative formats not automatically provided.



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2. The Department shall instruct student loan servicers to post a notice on their websites explaining the availability of alternative formats and the process for requesting other alternative formats not automatically provided.
3. The Department shall instruct student loan servicers to add a standard notice on student loan statements explaining the availability of alternative formats and the process for requesting other alternative formats not automatically provided.
4. The Department shall provide copies of the draft notices described in Sections 9(c) (1)-(3) of this Agreement to Counsel for Complainants for prior review and comment no later than 60 days after the effective date of this Agreement. Counsel for Complainants shall provide any feedback within 45 days.

10. Input and Informal Complaints:

- (a) The Department shall instruct the student loan servicers to designate, as soon as practicable, but no later than 2 months after the effective date of this Agreement, customer service representative(s) to timely handle accessibility issues and alternative format requests. The Department shall instruct the student loan servicers to train all customer service staff to refer accessibility issues to the designated representative(s). Blind and visually impaired borrowers shall be able to contact the designated representative(s) via email, internet, or telephone.
- (b) The Department shall create, as soon as practicable, but no later than 6 months after the effective date of this Agreement, a website where individuals can, via email, online form, or written correspondence: 1) provide a complaint about website accessibility related to student loans and servicing; and 2) provide a complaint about accessibility of student loan servicing documents, forms, statements and websites. The Department shall track the type and number of complaints submitted to this site. The Department shall instruct the student loan servicers to provide a link from the servicer websites to this website. Within 60 days after the effective date of this Agreement, the Department shall provide to Counsel for Complainants a draft policy and high level procedure for creating and managing this website. Counsel for Complainants shall provide any feedback within 45 days.

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- (c) The informal complaint system established by this paragraph of the Agreement does not replace or limit the formal complaint procedures established by 34 C.F.R. § 105.41.

11. Reporting Requirements:

- (a) Within 120 days after the effective date of this Agreement, the Department shall submit a report to counsel for the Complainants on the status of the implementation of changes in policies and procedures described above in Sections 3, 9, and 10(b). The Department shall provide counsel for the Complainants with information about the training provided to Department staff and loan servicers, including the topics addressed and target audiences.
- (b) Within 12 months of the effective date of this Agreement, and annually thereafter until the expiration date of this Agreement, the Department shall submit a report to counsel for the Complainants that:
  1. Provides a description of the types and numbers of requests for alternative formats in Section 9 of this Agreement and the Department's determinations in response to each request;
  2. Provides a brief description of the types and numbers of formal and informal complaints submitted to the Department pursuant to Section 10 of this Agreement;
  3. Provides copies of complaints and appeals submitted by borrowers pursuant to 34 C.F.R. § 105.41 that allege discrimination by the Department or loan servicers on the basis of the borrower's blindness or visual impairment and the Department's responses to such complaints and appeals;
  4. Provides a summary of the results of the monitoring performed by the Department pursuant to Section 4(c) of this Agreement; and
  5. Provides an up-to-date status report that identifies all new student aid forms and confirms compliance with this Agreement with respect to each form.

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- (c) The Department shall not, as part of the reports it provides under Section 11, provide any personally identifiable information or any other non-public information.
  - (d) The Department shall, as soon as practicable, but no later than 6 months from the date of the Agreement, share with NFB an outline of its approach to monitoring of student loan servicers, including but not limited to the types of materials to be tested and the frequency of testing. Counsel for Complainants shall provide any feedback within 45 days.
- 12. Individual Relief: The Department shall, consistent with its authority under Sections 432 and 451 of the Higher Education Act, reduce the amount due from Mr. Scott Berry by \$1,000.
- 13. No Admission of Liability: This Agreement does not constitute an admission of the merits of any position taken by any Party in these proceedings, nor of any liability by the Department for the violation of any law, statute, regulation, or policy. The Department expressly denies any wrongdoing or liability. Furthermore, this Agreement may not be introduced or relied upon in any judicial or other proceeding of any kind for any purpose.
- 14. Release:
  - (a) Complainants, unless they allege facts that, if proven, would establish that the Department has breached the terms and conditions of the Agreement, do hereby completely release and discharge all claims (administrative and judicial, monetary and injunctive) that they now have or that arise prior to the expiration date of this Agreement, and all rights to bring claims, against the Released Parties under the U.S. Constitution, federal law (including, but not limited to, Sections 504 and 508 of the Rehabilitation Act and their implementing regulations), and state law, that involve, arise from, or relate to allegations that persons who are blind or visually impaired have been denied access to, excluded from participation in, denied the benefits of, subjected to discrimination in connection with, or denied an accommodation or modification in connection with the Direct Loan Program, and all programs, activities, websites, forms, operations, policies, practices, or procedures of the Direct Loan Program, including those of the student loan servicers.
  - (b) The “Released Parties” are the United States, the U.S. Department of the Education, and the student loan servicers, and all administrators, successors,

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officers, employees, and agents of these entities in their official and personal capacities.

15. Dispute Resolution:

- (a) **Notice of Non-Compliance.** If a Party to this Agreement believes that any other Party has not complied with any provision of this Agreement, that Party shall provide the other Party with Notice of Non-Compliance containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of this Agreement that is or are not being complied with; (iii) a statement of the remedial action sought by the initiating Party; and (iv) a brief statement of the specific facts, circumstances, and legal argument supporting the position of the initiating Party.
- (b) **Response.** Within 30 days of receipt of a Notice of Non-Compliance, the non-initiating Party shall respond to the initiating party in writing.
- (c) **Meet and Confer.** Within 14 days after the response described above, representatives of the Parties shall informally meet, either in person or via tele-conference, and confer and attempt to resolve the issues raised in the Notice of Non-Compliance.
- (d) **Submission to Mediation.** If the matters raised in the Notice of Non-Compliance are not resolved within 45 days of the initial meet and confer, either Party may submit the unresolved matters to nonbinding mediation before a mediator provided by the Federal Mediation and Conciliation Service. The Parties shall each cover 50% of the total cost of such mediation proceedings.

16. Fees: The Department shall pay attorneys' fees and costs to Counsel for the Complainants in the amount of \$252,051 within 30 days of the effective date of this Agreement. Upon receipt of this payment for attorneys' fees and costs, Counsel for Complainants shall release and forever discharge all claims against the Released Parties for attorneys' fees and costs accrued through and including the effective date of this Agreement. Counsel for Complainants expressly reserve their rights to pursue claims for additional attorneys' fees and costs for work performed after the time the Settlement Agreement is signed by all parties, including for work spent on substantive issues related to this Agreement and/or work spent securing their fees and collecting any and all fees and costs that are due to them, but no provision in this Settlement Agreement should be interpreted

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to imply that additional attorneys' fees should be claimed or paid. The Department expressly reserves its right to reject or oppose any such claim. Any dispute over future claims for attorneys' fees will be resolved according to the dispute resolution process outlined in Section 15 of this Agreement.

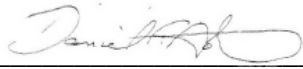
17. Availability of Funds: With the exception of Section 16, the performance of this Agreement by the Department is subject to the availability of funds annually appropriated into the Student Aid Administration account for the Direct Loan Program, as appropriated by Congress and as allotted by the Secretary, and performance of this Agreement will not take priority over the required functions of the Direct Loan Program.
18. Execution: This agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
19. Effective Date: The effective date of this Agreement is the date of the last signature below and is in effect for 36 months from that date.
20. Expiration Date: This Agreement shall expire on the date that is 36 months from the date of the last signature below.

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Date: October 7, 2014

COUNSEL FOR THE NATIONAL FEDERATION  
OF THE BLIND, SCOTT BERRY, REBECCA  
LANDRY, AND TERI SALTZMAN

By  \_\_\_\_\_

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Date: 10/7/2014

FOR THE U.S. DEPARTMENT OF EDUCATION

By   
James Runcie  
Chief Operating Officer  
Federal Student Aid  
U.S. Department of Education

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Thomas Skelly  
Director of Budget Services, Delegated to  
Perform  
The Functions of the Chief Financial Officer,  
U.S. Department of Education

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Deputy General Counsel, Designated to Perform  
the Functions and Duties of the General Counsel  
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Ronald B. Petracca  
Senior Counsel  
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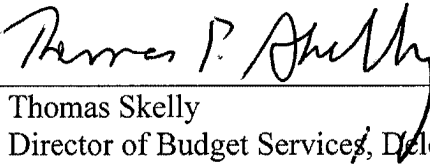
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Date: 10 - 3 - 2014

FOR THE U.S. DEPARTMENT OF EDUCATION

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Chief Operating Officer  
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Date: 10-8-2014


FOR THE U.S. DEPARTMENT OF EDUCATION

By \_\_\_\_\_

James Runcie  
Chief Operating Officer  
Federal Student Aid  
U.S. Department of Education

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U.S. Department of Education