

SUFFOLK SUPERIOR COURT

CIVIL ACTION NO. 2484CV00079

IN THE MATTER OF )  
Nelnet Inc. )  
\_\_\_\_\_ )

ASSURANCE OF DISCONTINUANCE  
PURSUANT TO M.G.L. CHAPTER 93A, § 5

**I. Introduction**

1. The Commonwealth of Massachusetts, through its Attorney General ("AGO"), and Nelnet, Inc. ("Nelnet") voluntarily enter into this Assurance of Discontinuance ("AOD").
2. Nelnet, Inc. is a for-profit corporation engaged in the business of holding, securitizing, and servicing student loans. Headquartered in Lincoln, Nebraska, Nelnet has been a publicly traded company since 2003. Nelnet services the loans of over 16 million student loan borrowers.
3. Most of the student loans owned or serviced by Nelnet are federal loans that were either made by the federal government under the Direct Loan Program or insured by the federal government under the Federal Family Education Loan Program ("FFELP").

**II. Background**

1. Collectively, Americans owe over \$1.6 trillion in federal student loan debt. Millions of Americans struggle to repay these loans, including parent and student borrowers.
2. Although federal student loans provide borrowers with certain benefits and protections, including interest rates that are set by the government, a variety of flexible repayment

plans, and options to postpone payments,<sup>1</sup> the consequences of falling behind on federal student loans are severe. For example, if FFELP borrowers default on their loans, they are typically charged fees by guarantors equaling or exceeding 16% of their loan balance to get out of default and transition back to repayment. Moreover, defaulted federal loans are collected through involuntary measures, including administrative wage garnishment, seizure of tax refunds, and partial seizures of government benefits, such as Social Security retirement and disability benefits. Unlike most other categories of consumer debt, federal student loans are often not dischargeable in bankruptcy. Further, there is no statute of limitations on the collection of federal loans—they remain with the borrower for life.

3. The first income-driven repayment (“IDR”) plan was made available to federal student loan borrowers in the 1990’s. Titled Income-Contingent Repayment (“ICR”), the plan was authorized by Congress under the Higher Education Act and was later joined by several other similar but often more affordable repayment plans, including Income-Based Repayment (“IBR”), Pay As You Earn (“PAYE”), and Revised Pay As You Earn (“REPAYE”) plans. Recently announced regulations are changing the REPAYE plan, which has been rebranded as the Saving on a Valuable Education (“SAVE”) plan.

4. All of these IDR plans work in a similar way: they set the borrower’s monthly payment based on a portion of the borrower’s income and cancel any remaining loan balance after a certain number of years of payments, depending on the plan. Some of the IDR plans also offer valuable interest subsidies. IDR plans are a helpful tool for managing unaffordable federal student loan debt and avoiding the consequences of default.

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<sup>1</sup> Federal loans are either subsidized or unsubsidized. Interest accrues on subsidized and unsubsidized loans during a period of forbearance. Interest on subsidized loans is paid by the U.S. Department of Education during periods of deferment.

5. For example, the IBR plan enables federal loan borrowers who demonstrate a partial financial hardship (“PFH”) to limit their student loan payments to 10% or 15%<sup>2</sup> of discretionary income,<sup>3</sup> with forgiveness of any remaining balance after 25 years of qualifying payments. Borrowers are determined to have a PFH if their annual payment under a standard ten-year repayment plan exceeds 10% or 15% of discretionary income.<sup>4</sup> Borrowers with income levels at or below 150% of the federal poverty line qualify to pay \$0 per month under the IBR plan.

6. Payments under the IBR plan are typically lower than the monthly payments required under a standard ten-year repayment plan and may be insufficient to cover accruing interest. To prevent this unpaid accrued interest from being capitalized (i.e., added to loan principal), and to continue making lower income-based payments, borrowers in IBR must annually provide their loan servicers with income and family size information demonstrating a continuing PFH. The annual process of submitting income and family size information is known as “recertification.”

7. The IBR plan also offers a valuable interest subsidy to struggling borrowers. Specifically, for borrowers of subsidized federal loans whose monthly income-based payments do not fully cover accruing interest, the federal government will pay the remaining interest during the first three consecutive years of IBR enrollment. This interest subsidy is a significant financial benefit to borrowers.

8. Nelnet has numerous responsibilities in helping borrowers avail themselves of the benefits available under IDR plans. Under 34 C.F.R. 682.215, 34 C.F.R. 682.221, and 34 CFR

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<sup>2</sup> For borrowers who are defined as “new borrowers,” the percentage is 10%.

<sup>3</sup> “Discretionary income” is the difference between a borrower’s adjusted gross income and 150% of the poverty guideline for the borrower’s state and family size.

<sup>4</sup> For purposes of determining PFH status, the higher of the borrower’s original or current loan balance is used.



685.209, Nelnet is required to follow specific procedures intended to ensure that borrowers are able to successfully navigate the enrollment and annual recertification processes required for IDR.

9. For example, when a borrower first applies for the IBR plan, Nelnet must evaluate income and family size information to determine whether the borrower has a PFH. If the borrower has a PFH, the borrower's income is used to calculate an income-based payment amount, which remains in effect for twelve months ("**PFH Annual Payment Period**"). Before this PFH Annual Payment Period ends, the borrower must again provide income and family size information demonstrating a PFH to obtain a new income-based payment amount for the upcoming 12-month period and avoid capitalization of any unpaid accrued interest. For each subsequent year in which the borrower wishes to continue making income-based payments and avoid capitalization, the borrower must demonstrate a continuing PFH by recertifying income and family size as directed by Nelnet.

10. In initially welcoming the borrower to the IBR plan and in each subsequent year in which the borrower is determined to have a PFH, 34 C.F.R. 682.215(e)(2) and 34 C.F.R. 682.221(e)(2) require Nelnet to send the borrower a notice acknowledging the borrower's PFH and providing an overview of the annual recertification process ("**Approval Notice**"). This Approval Notice must set forth certain information, including the borrower's new income-based monthly payment amount, a reminder that the borrower must recertify income and family size each year, and certain consequences if the borrower fails to do so.

11. After the borrower enters the IBR plan, Nelnet must begin preparations for the next annual payment cycle by designating a deadline for the borrower to recertify income and family size information ("**Annual Deadline**"). By regulation, this deadline must fall within the last 35 days of the borrower's current PFH Annual Payment Period and leave Nelnet sufficient time to process the borrower's recertification information before the current PFH Annual Payment Period

ends. Then, at least 60 days before the Annual Deadline, Nelnet must notify the borrower of the need to recertify income and family size by the Annual Deadline ("**IBR Renewal Notice**"). Per 34 C.F.R. 682.215(e)(3) and 34 C.F.R. 682.221(e)(3), this IBR Renewal Notice must explain the consequences if the borrower's recertification is not received within 10 days of the Annual Deadline, including the resulting higher monthly payment amount and the fact that any unpaid accrued interest will be capitalized.

12. By warning borrowers about the adverse consequences of failing to timely recertify, both the Approval Notice and the IBR Renewal Notice help borrowers preserve their right to make more affordable income-based payments and avoid capitalization.

13. Once the borrower's recertification information is received for the IBR plan, Nelnet must determine whether the borrower still has a PFH. If the borrower no longer has a PFH, Nelnet is required by 34 C.F.R. 682.215(e)(4) and 34 C.F.R. 682.221(e)(4) to send the borrower a notice ("**Notice of Lost PFH Status**") specifying the borrower's increased monthly payment amount and the fact that unpaid accrued interest will be capitalized. The Notice of Lost PFH Status must also describe the borrower's option to seek a redetermination, at any time, of whether the borrower has a PFH, and explain that the borrower will be notified annually of this option ("**Annual Reminder Notices**"). Together, the Notice of Lost PFH Status and the subsequent Annual Reminder Notices, required by 34 C.F.R. 682.215(e)(5) and 34 C.F.R. 682.221(e)(5), serve to regularly remind borrowers who have lost PFH status that they can still seek reduced monthly payments under the IBR plan.

14. Other IDR plans require similar written notification regimes. Nelnet is responsible for providing these notices of borrower rights and responsibilities in order to help borrowers manage unaffordable debt and pursue loan forgiveness through IDR plans. Struggling student loan borrowers rely on Nelnet for this information and assistance.

### **III. Allegations**

1. Pursuant to M.G.L. c. 93A, § 6, the AGO initiated an investigation into Nelnet's written notification practices for IDR plans. Based on its review, the AGO alleges that between 2013 and 2017, Nelnet violated M.G.L. c. 93A by sending written notices that did not meet regulatory requirements in 34 C.F.R. 682.215, 34 C.F.R. 682.221, and 34 C.F.R. 685.209, including in certain periods, failing to send notices required by 34 C.F.R. 682.215(e)(5), 34 C.F.R. 682.221(e)(5), and 34 C.F.R. 685.209 (a)(5)(v).

2. In lieu of litigation and in recognition of Nelnet's assistance, cooperation and desire to resolve this matter, the AGO agrees to accept this AOD on the terms and conditions contained herein.

3. The AGO and Nelnet both voluntarily enter into this AOD, which is made without trial or adjudication of any issue of fact or law. Nelnet enters into this AOD for settlement purposes only and neither admits nor denies the AGO's allegations.

4. The acceptance of this AOD is not acceptance or approval by the AGO of any of Nelnet's business practices and Nelnet will make no representation to that effect.

### **IV. Terms**

5. Within 10 (ten) business days of the filing date of this AOD, Nelnet will pay \$1,000,000 (One Million Dollars) to the AGO, which shall be applied to the Commonwealth's General Fund. This payment will be made by check payable to the Commonwealth of Massachusetts, which will be sent to the attention of Arwen Thoman, Deputy Director and Student Loan Ombudsman, Insurance & Financial Services Division, Office of the Attorney General, One Ashburton Place, 18<sup>th</sup> Floor, Boston, MA 02108.



6. In addition to the payment referenced in the paragraph above, within 10 (ten) business days of the filing date of this AOD, Nelnet will pay \$800,000 (Eight Hundred Thousand Dollars) to the AGO, which shall be applied to the Student Loan Trust Fund, established pursuant to M.G.L. Chapter 29, Section 2NNNNN. This payment will be made by check payable to the AGO, which will be sent to Arwen Thoman, Deputy Director and Student Loan Ombudsman, Insurance & Financial Services Division, Office of the Attorney General, One Ashburton Place, 18<sup>th</sup> Floor, Boston, MA 02108. These funds may be used by the Massachusetts Student Loan Ombudsman to, inter alia, conduct outreach to Massachusetts borrowers that Nelnet previously identified to the AGO as having privately owned FFELP loans, and encourage these borrowers to consolidate into the Direct Loan Program to take advantage of (a) the U.S. Department of Education's upcoming payment count adjustment, announced in 2023, which credits past repayment and certain forbearance and deferment periods toward Public Service Loan Forgiveness and IDR forgiveness; and (b) the new more affordable SAVE plan.

## **V. Conduct Reforms**

7. The following conduct reforms apply to loans for which the borrower has a last known mailing address in Massachusetts.

8. For privately owned FFELP loans in IBR, Nelnet shall comply with all notice requirements in 34 C.F.R. 682.215.

9. In the body of any email that Nelnet sends to notify the borrower of a privately owned FFELP loan in IBR that an IBR Renewal Notice is available in the borrower's online Nelnet account inbox, Nelnet will ensure that the email identifies (a) that the document in the borrower's online Nelnet account inbox is a Renewal Notice; (b) that the Renewal Notice contains deadlines by which the borrower must provide income and family size information in order to continue making

reduced income-based payments; and (c) that failure to timely respond to the Renewal Notice will result in increased monthly payments and may result in capitalization of interest. Nelnet will also include in the subject field of any email communication relating to upcoming IBR recertification the following statement, or a substantially similar statement: "Take Action Now or Your Monthly Payment May Increase."

10. For FFELP loans owned by the U.S. Department of Education and Direct Loans in IBR, ICR, PAYE, or REPAYE/SAVE, Nelnet shall comply with the requirements and guidance of the U.S. Department of Education. To the extent that any conduct reform set forth in this AOD conflicts with any applicable federal law, rule, regulation, guidance from the U.S. Department of Education, or requirement of a federal contract, including but not limited to any work, task or change order issued under the terms of that contract, that conduct reform shall not apply to the extent of the conflict during the period of such conflict. Nelnet will document any such conflict and promptly notify the AGO of the conflict.

11. In the body of any email that Nelnet sends to a borrower of a FFELP loan owned by the U.S. Department of Education enrolled in IBR or a Direct Loan enrolled in IBR, ICR, PAYE, or REPAYE/SAVE concerning the need to provide income or family size information to continue making payments based on income and family size, Nelnet will, subject to approval by the U.S. Department of Education, ensure that the email identifies that failure to timely respond will result in increased monthly payments. Nelnet will also include in the subject field of any such email "Take Action Now or Your Monthly Payment May Increase."

12. For three years following the filing date of this AOD, Nelnet will retain copies of each written communication that it sends to borrowers in IDR regarding their IDR plans (*i.e.*, each written communication must be retained, rather than just its template).



## **VI. Miscellaneous Provisions**

13. The AGO will not proceed with or institute a civil action or proceeding under M.G.L. c. 93A or any other statute, regulation or other legal basis against Nelnet, its parent corporation, subsidiaries and subdivisions, successors, assigns, or any purchasers of all or substantially all of its assets, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees or costs, based on the written mail or electronic notices that Nelnet sent (or did not send) relating to IDR between July 1, 2013 and March 1, 2017.

14. This AOD constitutes the entire agreement between the AGO and Nelnet and supersedes any prior communication, understanding or agreements, whether written or oral, concerning the subject matter of the AOD. This AOD can be modified or supplemented only by a written document signed by both parties, except that timeframes and deadlines in this AOD may be extended by the AGO in its sole discretion.

15. The AOD will be binding upon Nelnet, its parent corporation, agents, subsidiaries and subdivisions, as well as its successors, assigns, and/or purchasers of all or substantially all of its assets.

16. The AOD and its provisions will be effective on the date that it is filed in Suffolk Superior Court.

17. All notices as required by the AOD will be provided as follows:

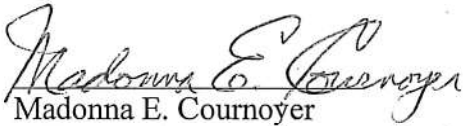
To the AGO:

Arwen Thoman, Deputy Director & Student Loan Ombudsman  
Insurance & Financial Services Division  
Office of the Massachusetts Attorney General  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
[Arwen.Thoman@mass.gov](mailto:Arwen.Thoman@mass.gov)

To Nelnet:

William J. Munn  
Nelnet, Inc  
121 S 13<sup>th</sup> Street  
Lincoln, NE 68508

18. By signing below, Nelnet agrees to comply with all of the terms of this AOD. Any violation of this AOD or non-compliance with this AOD may be pursued in a civil action or proceeding under M.G.L. c. 93A hereafter commenced by the AGO.



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