

ORIGINAL

In the United States Court of Federal Claims

No. 18-454

Filed: September 21, 2018

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U.S. COURT OF FEDERAL CLAIMS

DARLENE BENNETT,
Plaintiff, pro se,
V.
THE UNITED STATES,
Defendant.

Darlene Bennett, Suitland, Maryland, Plaintiff, pro se.

Joshua A. Mandelbaum, United States Department of Justice, Civil Division, Washington, D.C., Counsel for the Government.

MEMORANDUM OPINION AND FINAL ORDER

BRADEN, Senior Judge.

I. RELEVANT FACTUAL BACKGROUND.<sup>1</sup>

On November 9, 2017, Ms. Darlene Bennett submitted an Income-Driven Repayment Plan Request ("IDR Request") to the United States Department of Education (the "DOE"). Compl. at 2. "Income-driven repayment . . . plans are designed to make [a borrower's] student loan debt more manageable by reducing [the] monthly payment amount." See FEDERAL STUDENT AID, AN OFFICE OF THE U.S. DEPARTMENT OF EDUCATION, INCOME-DRIVEN REPAYMENT (IDR) PLAN REQUEST, https://studentloans.gov/myDirectLoan/ibrInstructions.action (last visited Sept. 19, 2018). Question 17 of the IDR Request asks: "Has your income significantly changed since you filed your last federal income tax return." Compl. Ex. 2 at 6. If the borrower's response is "no," the IDR Request requires the borrower to "[p]rovide [her] most recent federal income tax return or transcript." Compl. Ex. 2 at 6. Ms. Bennett responded "no" to Question 17 of the IDR Request, but did not submit her most recent federal income tax return or transcript. Compl. Ex. 2 at 6.

<sup>1</sup> The facts herein were derived from the March 27, 2018 Complaint ("Compl.") and attached exhibits thereto ("Compl. Exs. 1-2").

On November 14, 2017, Fedloan Servicing<sup>2</sup> sent Ms. Bennett an e-mail stating that her federal student loans were in default. Compl. Ex. 2 at 14 (e-mail from Fedloan Servicing to Darlene Bennett). The November 14, 2017 e-mail informed Ms. Bennett that she had “30 days to contact Fedloan Servicing to review [her] options or [her] loans may be transferred to the [DOE]’s Default Resolution Group.” Compl. Ex. 2 at 14.

On November 21, 2017, Fedloan Servicing sent Ms. Bennett an e-mail acknowledging receipt of her IDR Request. Compl. Ex. 2 at 15 (e-mail from Fedloan Servicing to Darlene Bennett).

On February 6, 2018, the DOE sent Ms. Bennett a letter to inform her that, “Action Financial Services, LLC<sup>3</sup> . . . has commenced collection efforts” concerning her federal student loan debt. Compl. Ex. 2 at 9 (letter from the DOE to Darlene Bennett). The February 6, 2018 letter also stated that “the entire unpaid balance of [Ms. Bennett’s] loan is due and payable.” Compl. Ex. 2 at 9.

On February 24, 2018, Fedloan Servicing sent Ms. Bennett an e-mail providing her with “information that [Fedloan Servicing’s] customers have found most helpful to answer . . . Billing & Payment questions.” Compl. Ex. 2 at 13 (e-mail from Fedloan Servicing to Darlene Bennett).

On March 12, 2018, Ms. Bennett contacted the DOE Inspector General’s Office twice concerning her IDR Request. Compl. at 4. On that same day, Fedloan Servicing sent Ms. Bennett an e-mail acknowledging receipt of “[Ms. Bennett’s] complaint about [the IDR Request], which was submitted before [Ms. Bennett’s] loans defaulted” and stating that Fedloan Servicing was “working with the appropriate experts to research this issue;” consequently, Ms. Bennett’s “loans [were] requested for a reinstatement back to good standing.” Compl. Ex. 2 at 3.

On March 19, 2018, Fedloan Servicing sent Ms. Bennett a letter stating that it could not restore her defaulted loans to good standing, because her IDR Request was incomplete, although it was received prior to the loan transfer date.<sup>4</sup> Compl. Ex. 2 at 2 (letter from Fedloan Servicing to Darlene Bennett) (“Although your IDR [Request] was received . . . , [it] was incomplete. You did not provide the required supporting documentation[.]”). Therefore, even if Ms. Bennett submitted a complete IDR Request, nevertheless, she must continue making scheduled monthly student loan payments, because “there was no General Forbearance time available on [her] account[.]” Compl. Ex. 2 at 2. After receiving this information, Ms. Bennett again contacted Fedloan Servicing. Compl. at 4.

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<sup>2</sup> Fedloan Servicing is a commercial enterprise operated by the Pennsylvania Higher Education Assistance Agency, that services federal student loans. FEDLOAN SERVICING, WHO WE ARE, <http://myfedloan.org/general/about/who-we-are> (last visited Sept. 19, 2018).

<sup>3</sup> Action Financial Services, LLC is a private company that collects federal student loan debt on behalf of the DOE. See ACTION FINANCIAL SERVICES, LLC, ABOUT US, <http://actionfinancialservices.net/aboutus.html> (last visited Sept. 19, 2018).

<sup>4</sup> The court construes this letter to reflect that Ms. Bennett’s federal student loan account with Fedloan Servicing was transferred to Action Financial Services, LLC.

On March 23, 2018, Fedloan Servicing informed Ms. Bennett in an e-mail that it is “unable to take action on [Ms. Bennett’s] concern due to procedural policy and governing regulation.” Compl. Ex. 2 at 1 (e-mail from Fedloan Servicing to Darlene Bennett).

## **II. PROCEDURAL HISTORY.**

On March 27, 2018, Ms. Darlene Bennett (“Plaintiff”) filed a *pro se* Complaint (“Compl.”) in the United States Court of Federal Claims alleging that her federal student loan account “was wrongly defaulted, closed[,] and given to a collection agency for collection.” Compl. at 1. The March 27, 2018 Complaint requests “[r]elief of [Plaintiff’s] student loan through the student loan forgiveness program” and “monetary relief at the judge[’]s discretion for unnecessary harassment[,] because [Plaintiff] is not able to pay, being ignored, stress for having to continue to revisit this hard issue as well as any court cost and legal fees for attorney[,] if one is hired.” Compl. at 3.

On May 1, 2018, the Government filed an Unopposed Motion For Extension Of Time for an additional twenty-one days to file a response to Plaintiff’s March 27, 2018 Complaint. On May 4, 2018, the court issued an Order granting the Government’s May 1, 2018 Unopposed Motion. On May 8, 2018, Plaintiff filed a Notice of a conversation with the Government’s Counsel concerning jurisdiction and the possibility of settlement.

On June 19, 2018, the Government filed a Motion To Dismiss (“Gov. Mot.”), pursuant to Rules of the United States Court of Federal Claims 12(b)(1) and 12(b)(6). On June 26, 2018, Plaintiff filed a “Motion Opposing Defendant’s Motion To Dismiss” (“Pl. Resp.”).<sup>5</sup> On July 13, 2018, the Government filed a Reply (“Gov’t Reply.”).

On August 22, 2018, Plaintiff filed a Notice, together with an attached copy of Plaintiff’s Fedloan Servicing account summary, stating that a payment in that account was due on August 24, 2018. The August 22, 2018 Notice also states that the Government’s Counsel informed Plaintiff in May 2018 that Plaintiff’s account was “placed on indefinite hold and that all interest and late fees had been removed.”

## **III. DISCUSSION.**

### **A. Jurisdiction.**

The United States Court of Federal Claims has jurisdiction under the Tucker Act, 28 U.S.C. § 1491, to adjudicate “any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The Tucker Act, however, is “a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages . . . . [T]he Act merely confers jurisdiction upon [the United States Court of Federal Claims] whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976).

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<sup>5</sup> The court construes Plaintiff’s June 26, 2018 Motion as a Response to the Government’s June 19, 2018 Motion To Dismiss.