

**United States Senate**  
WASHINGTON, DC 20510

July 1, 2021

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Docket ID: ED-2021-OPE-0077

Dear Secretary Cardona:

We write in support of the U.S. Department of Education's ("Department") regulatory agenda to provide relief to federal student loan borrowers. As part of the upcoming negotiated rulemaking process, we encourage the Department to pursue policies that reduce disparities in the burden of student debt, simplify loan repayment, close donut holes in forgiveness programs, and improve the overall confidence of borrowers in the federal student loan system.

As you assemble the negotiated rulemaking committee, we hope you will ensure the panel reflects a broad range of borrower voices and interests and the diversity of our higher education system. Additionally, we hope the Department will consider opportunities to implement these rules early and take advantage of existing statutory and regulatory authorities to provide student debt relief administratively while it finalizes the new rules. We offer the following suggestions for overarching approaches to major topic areas:

**1. The Department should simplify and consolidate the income-driven repayment (IDR) plans and expand the relief they provide to struggling borrowers.**

IDR provides millions of student loan borrowers the ability to cap their monthly payments at no more than 10 percent of their income and reduce the crushing burden of student debt. Previous expansions of these IDR plans have provided much-needed relief to borrowers, particularly borrowers who are paid low incomes. Unfortunately, these expansions also added to the complexity of student loan repayment. Sections 455 and 493C of the *Higher Education Act* provide the Department with clear authority to establish terms of IDR and to consolidate the current plans. The Department should use this authority to streamline IDR plans by sunseting the current IDR plans and creating a new streamlined IDR plan that is easy to navigate and available to all current and future federal student loan borrowers.

We encourage the Department to pursue IDR regulations that continue to ensure borrowers' monthly payments are capped at no more than 10 percent of their income and for no more than 20 years. Additionally, the new plan should protect an amount equal to 250 percent of the

poverty guideline applicable to the borrower's family size to ensure that struggling borrowers can prioritize their basic living expenses like food, housing, child care, and health care. The plan should further ensure that borrowers in IDR do not accumulate interest on their loans faster than they can repay it (negatively amortize) on all loan types; this will support borrowers who are paid low incomes and have a significant amount of debt. After the new streamlined IDR plan is made more generous than existing plans, borrowers can and should be transferred to this plan automatically to ensure they receive the benefits.

Finally, borrowers should have a seamless process to enroll in the new streamlined IDR plan based on the *FUTURE Act*, which permits the direct and secure exchange of a borrower's tax return information with the Department. The rules should also provide easy ways for borrowers to provide alternative income documentation if their tax return information does not reflect their current circumstances. The rules should avoid adding burdensome barriers to enrollment in the plan, such as income verification procedures that are unnecessary in the context of the secure exchange of tax return information.

## **2. The Department should reverse the Trump Administration rules that harmed student loan borrowers who had been cheated or defrauded by their schools and establish a single “borrower defense” standard for all federal student loans.**

The “borrower defense” rule established by the previous Administration was a devastating blow for students cheated out of their education and savings by predatory for-profit colleges. This policy makes students go to extraordinary lengths to prove their colleges caused them harm and eliminated nearly 75 percent of the student debt relief that would have been granted under a 2016 version of the rule. The rule was also consistent with the previous Administration's policy of relentlessly stalling, limiting, or denying borrowers any relief on their debt and undermining protections for students. An overwhelming number of student and consumer groups, and bipartisan Members of Congress, strongly opposed the previous Administration's rule. This Administration must reverse course and establish a consistent, fair, and equitable borrower defense rule that applies to all current, future, and former federal student loan borrowers. The new rule should replace all previous borrower defense standards.

The borrower defense rule should provide for eliminating the outstanding federal student loan debt, and refunding amounts paid, of any student who was the victim of unlawful, unfair, deceptive, or abusive practices in higher education. Full—not partial—relief should be presumed for all borrowers subject to substantial misrepresentation. The process for students to receive this relief should also be as streamlined as possible. The rule should state that the Department will prioritize automatic relief for groups of students who are subject to the same findings of misconduct. The rule should clearly specify that a borrower does not need to submit an application to receive relief in the case of group discharges. Borrowers should not be subject to onerous burdens of proof or provide documentation when the Department and government agencies can already provide evidence of misrepresentation. And, borrowers should not face any statutes of limitations from this relief since there is no limitation on repayment and collections.

The rule should also bring back the 2016 measure banning the use of any forced arbitration agreements, or limitations on class action lawsuits, in school enrollment agreements. Forced

arbitration subjects students to one-sided negotiations and prevents students from getting debt relief directly from their school or from uncovering the evidence they need to support a possible borrower defense claim. The rule should also reflect a collaborative approach with states to provide borrowers with additional pathways for relief. The rules should promote strong collaboration with State authorizing agencies and attorneys general, who have the power and experience to investigate misrepresentation on the ground in their states. The rule should establish a transparent process for States to submit evidence or findings of misrepresentation, receive a timely response, and contest or appeal decisions by the Department.

### **3. The Department should reinstate automatic discharges of loans from closed schools.**

Far too many students pursuing their dreams of higher education are thrown off track when their institutions of higher education abruptly close—often when corporate executives and private equity owners put profits before students. First and foremost, the Department should reinstate a policy for borrowers to receive a discharge automatically after their schools close and without the need for an application. Additionally, Section 437(c)(3) of the *Higher Education Act* provides the authority for the Secretary to discharge the loans from “an institution at which the student was unable to complete a course of study” and makes no mention of transfers to other institutions. Accordingly, the Department’s current regulations are inconsistent with the statute, and the rules should remove the limitation that a student cannot get a closed school discharge if they later transfer to another institution.

Removing the limitation against students transferring credits while also getting their loans discharged will eliminate the only obstacle to fully automating the discharges. Therefore, the Department should automatically discharge the loans of students from the closed institution not more than 90 days after the institution closes, similar to how the restoration of Pell Grant eligibility already occurs for students that attended closed schools. Students who quickly transfer to another institution to continue their education after their school closes should have their loans discharged more quickly to ensure they can afford to attend their new institution.

For students who leave their schools when warning signs start to appear, but before a sudden closure, the Secretary is authorized to extend the “look-back” window in regulation that allows a student to obtain a discharge if they left between 120 to 180 days prior to the school’s closure. The Department should make this window consistent for all borrowers at 180 days and, for the Secretary’s authority to extend the look-back period, require the Department to make an affirmative determination of whether to extend such window in the case of any (1) suspension, emergency action, or termination of the institution’s participation in State or Federal financial aid programs; (2) adverse action by the institution’s accrediting agency or association; or (3) action by the State to revoke the institution’s license or other authority to operate.

### **4. The Department should swiftly move forward with automatic discharges of loans for borrowers with significant disabilities and expand the population of eligible borrowers.**

More than half a million borrowers who have been determined to have a total and permanent disability (TPD) are already eligible to have their federal student loans discharged. However, requiring borrowers to submit an application, and be subject to a “monitoring period” of

potential earnings, has created unnecessary and harmful barriers to these borrowers getting the relief they deserve. Section 437(a) of the *Higher Education Act*, which authorizes TPD discharges, does not require a monitoring period, and the Department should remove it. Instead, the Department should streamline procedures with the U.S. Department of Veterans Affairs (VA) or the Social Security Administration (SSA) to address improper discharges, as such agencies are much better equipped to manage the relationship between beneficiaries and their physicians. The Department's rules should automatically discharge the loans for borrowers not more than 90 days after they receive a determination of TPD on file with either VA or SSA.

Borrowers are also eligible for relief if they are "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." To date, the Department has not regulated the definition of substantial gainful activity and has never interpreted this provision to include additional relief other than to borrowers who are totally and permanently disabled. However, many borrowers have severe disabilities that are not totally and permanently disabling but still prevent them from engaging in substantial gainful activity, particularly with the added burden of their student debt. Veterans with student debt who have a disability can often have significant difficulty engaging in substantial gainful activity. VA has extensive data on veterans' disabilities, including disability ratings and participation in various VA programs for those who struggle to engage in substantial gainful activity. Therefore, the Department should expand its data match process with VA to include veterans with federal student loans who have such disabilities and automatically discharge these loans.

The Department should also pursue new data matches with SSA that would incorporate any information that may be on file related to medical determinations that may impede the borrower's ability to engage in substantial gainful activity. The Department should consider borrowers who meet the Social Security disability standard for five years, people who have an onset of disability date at least five years ago, beneficiaries on the compassionate allowance list, all beneficiaries currently receiving retirement benefits who were receiving disability benefits when they transitioned to retirement benefits, older disability beneficiaries who will not have their disability status reviewed again, and certain working beneficiaries such as those on a plan to achieve self-sufficiency to be unable to engage in any substantial gainful activity and also be eligible to receive a discharge of their loans.

Finally, the rules should also formalize the requirement to maintain the appropriate data-sharing agreements with VA and SSA, and include a process for the Department to resolve data mismatches that may arise from minor errors or discrepancies in the data with either agency.

## **5. The Department should close donut holes and improve eligibility for Public Service Loan Forgiveness and Temporary Expanded Public Service Loan Forgiveness.**

The Department's rules for Public Service Loan Forgiveness (PSLF) and Temporary Expanded Public Service Loan Forgiveness (TEPSLF) should codify recent improvements in consideration of payments and the application and employer certification process. The rules should ensure that lump sum and advance payments by borrowers continue to be counted as qualifying payments if the borrower is employed in public service and should remove current limitation that blocks such payments for qualifying for more than one year. The regulations should also require the

Secretary to continue to maintain the PSLF Help Tool and single, streamlined employment certification and forgiveness form. This will prevent a future Administration from degrading these process enhancements.

The PSLF rules must close donut holes that exist in the current program. Borrowers who consolidate their loans should not be penalized by having their payment count reset upon consolidation. This unfair policy is a significant source of confusion and barrier to relief for many borrowers. Periods in which the borrower was in economic hardship deferment or military service deferment should also count toward forgiveness.

PSLF rules should ensure that borrowers working for multiple employers can still get relief if their total hours meet 30 hours or more per week. The rule should remove the provision allowing employers to set a higher full-time definition. The rules should further specify what happens for borrowers who run into problems with their employment certification, such as an employer who refuses to sign paperwork for the borrower or has since closed. Borrowers who have been approved for qualifying payments should never have those payment counts rescinded by the Department if the approval was due to an error on the part of the Department or a student loan servicer. And, borrowers who the Department has denied payments or forgiveness should have access to an appeal process that is clearly defined in the regulations to contest such decisions.

Finally, the Department should establish a data match process for all federal employees and service members that connects to respective databases with the Office of Personnel Management and the U.S. Department of Defense to automatically identify and credit periods that qualify toward PSLF and codify this process in the rules.

The above goals for the rules governing student loan borrower repayment and forgiveness programs will help to provide additional relief to struggling borrowers and close gaps in how these programs currently operate. These regulatory enhancements will also help build borrowers' confidence in the federal student loan program's efforts to put higher education within reach for more students, rather than creating complex or burdensome requirements that stop students from accessing or pursuing educational opportunities. Thank you for your attention to our requests.

Sincerely,



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PATTY MURRAY  
Senator



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CHARLES E. SCHUMER  
Senator

/s/

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SHERROD BROWN  
Senator

/s/

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