STUDENT BORROWER PROTECTION CENTER

National Consumer Law Center
Fighting Together for Economic Justice

April 27, 2020

The Honorable Betsy DeVos
400 Maryland Avenue, SW
Washington, DC
20202

Dear Secretary DeVos:

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) which includes several protections designed to mitigate financial distress for some federal student loan borrowers during the global coronavirus pandemic.[1] However, in the last two weeks, we have heard from borrowers raising many important questions about certain provisions in the law. Where borrowers have heard from the Department of Education (ED) or its contracted servicers, the answers have been inadequate, out of date, and often contradictory. How the Department effectuates its mandate under the CARES Act is not only critical to borrowers' short-term financial stability, but also to their long-term repayment success.

Therefore, we urge the Department of Education to clearly do the following:

- **Ensure borrowers who are enrolled in any type of deferment or forbearance automatically receive the full range of protections offered under the CARES Act.** As of December 31, 2019, more than five million borrowers who owe ED-owned student loan debt were in some form of deferment or forbearance.[2] Many of these options—such as economic hardship deferments, military deferments, or general hardship forbearances—are time-limited. Importantly, none of these previously existing ways to defer or forbear payments come with the protections offered under the CARES Act payment suspension, such as credit towards Public Service Loan Forgiveness or Income-Driven Repayment (IDR) forgiveness. And now, as borrowers reach out to their servicers to determine whether their previous deferment or forbearance was lifted in favor of the CARES Act payment suspension, they face hours-long hold times and unanswered emails. The Department should ensure that all borrowers who are receiving discretionary deferment or forbearance receive the full range of protections provided under Section 3513(c) of the CARES Act.

- **Prohibit capitalization of any previously accrued interest following the suspension of payments**. At the end of 2019, the Department of Education reported that borrowers

[1] Section 3513.
[2] *See* U.S. Dep't of Educ., Office of Fed. Student Aid, *Federal Student Loan Portfolio: Portfolio by Loan Status* (reflecting data as of Q1 2020), https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls.

collectively owed $83.3 billion in accrued interest on their federal student loans.[3] In many cases, accrued interest is capitalized (added to the principal on which interest will be charged) whenever a triggering events occurs, such as the end of a period of forbearance.[4] Accrued interest is also capitalized if the borrower leaves the repayment plan or switches between certain income-driven repayment plans.[5] The Department has not, as of yet, issued formal guidance on whether the payment suspension or a borrower's enrollment in an alternative repayment plan during or immediately following the payment suspension will be treated as a capitalization-triggering event. As a result, borrowers are getting mixed messages on social media about interest capitalization.[6] The Department should take steps to ensure that any previously accrued interest is not capitalized as borrowers pursue long-term relief by enrolling in alternative repayment plans following the payment suspension.

- **Improve the IDR enrollment process for borrowers who are eligible for $0 payments.** Experts anticipate that the current recession will be the most significant in our lifetimes and will extend far beyond the next several months.[7] Today's unprecedented unemployment may very well extend through the end of the year or longer, creating long-term financial distress for millions.[8] However, income-driven repayment options can play a valuable role in improving the financial circumstances of student loan borrowers in the face of economic upheaval.[9] The flexibility offered by IDR is critical for the most vulnerable borrowers who, despite being eligible for $0 payments, struggle to enroll in these plans and instead often face unnecessary delinquency and default.[10] Law enforcement officials,[11] consumers advocates,[12] and Members of

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3 *See* U.S. Dep't of Educ., *Federal Student Aid Annual Report FY 2019* 38 (Nov. 15, 2019), https://www2.ed.gov/about/reports/annual/2019report/fsa-report.pdf.

4 *See, e.g.*, 34 C.F.R. § 685.202(b).

5 *See, e.g.*, 34 C.F.R. § 685.209(c)(2)(iv).

6 *See, e.g.*, Great Lakes (@MyGreatLakes), Twitter (Apr. 7, 2020, 1:44pm), https://twitter.com/MyGreatLakes/status/1247580997123813378; Ron Lieber (@ronlieber), Twitter (Apr. 7, 2020, 7:37pm), https://twitter.com/ronlieber/status/1247669855790272514.

7 *See* Alan Rappeport & Jeanna Smialek, *I.M.F. Predicts Worst Downturn Since the Great Depression*, N.Y. Times (Apr. 14, 2020) https://www.nytimes.com/2020/04/14/us/politics/coronavirus-economy-recession-depression.html.

8 *See* Nelson D. Schwartz, *'Nowhere to Hide' as Unemployment Permeates the Economy*, N.Y. Times (Apr. 16, 2020), https://www.nytimes.com/2020/04/16/business/economy/unemployment-numbers-coronavirus.html.

9 *See* Holger M. Mueller & Constantine Yannelis, Reducing Barriers to Enrollment in Federal Student Loan Repayment Plans: Evidence from the Navient Field Experiment, U. of Chicago Booth Sch. of Bus. (Nov. 2019), https://faculty.chicagobooth.edu/constantine.yannelis/IBR.pdf; *see also* Daniel Herbst, Liquidity and Insurance in Student Loan Contracts: Estimating the Effects of Income-Driven Repayment on Default and Consumption (Jan. 31, 2018) (unpublished manuscript), https://perma.cc/2ALA-BK9H.

10 *See* Consumer Fin. Prot. Bureau, *Annual Report of the CFPB Student Loan Ombudsman* 20 (Oct. 2015), https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf ("Borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default, according to one recent analysis. Yet the median debt burden and median wages of these borrowers suggest that the average borrower likely would qualify for a $0.00 or a substantially lower loan payment under an income-driven repayment plan.").

11 *See* Office of N.Y. Att'y Gen. Letitia James, *Attorney General James Leads Multistate Coalition Fighting for Emergency Relief for Federal Student Loan Borrowers in Response to Coronavirus Pandemic* (Mar. 26, 2020), https://ag.ny.gov/press-release/2020/attorney-general-james-leads-multistate-coalition-fighting-emergency-relief.

12 *See, e.g.*, Suzanne Martindale, Letter from Consumer Reports to the CFPB Re: Request for Information Regarding Student Loan Servicing [Docket No. CFPB2015-0021], Consumer Reports (July 13, 2015), https://advocacy.consumerreports.org/wp-content/uploads/2015/07/CFPB_RFI_servicing_0715.pdf.

Congress[13] have all called for reducing the burden to enroll in IDR so more borrowers can access this vital protection. In fact, one large servicer found that allowing borrowers to verbally attest to having no income over the phone improved IDR uptake, thereby improving borrowers' long-term outcomes.[14] The Department should immediate action to reduce the burden of IDR enrollment, including by permitting verbal enrollment and attestation of income. Furthermore, the Department should instruct servicers to implement interactive voice response and website systems that include information about IDR for borrowers who experience job loss.

- **Provide additional guidance and relief for borrowers in default on federal debt that is not owned by ED.** Under the plain language of the bill, the CARES Act protections apply to debt that is owned by the Department of Education—interpreted by the Department of Education to mean Direct Loans and ED-owned FFELP loans. However, over $170 billion worth of federal student loans are not owned by the federal government and it is unclear what, if any, protections will be extended to these borrowers. This includes uncertainty as to what action the Department taking to halt collections on commercial FFELP loans.[15] Specifically, upon default, commercial FFELP debt becomes a liability of the Department.[16] As such borrowers who have defaulted on commercial FFELP loans should be afforded the same protections under the CARES Act as other borrowers in default on federally held student debt. The Department should take steps to ensure that commercial FFELP borrowers in default are provided with relief similar to that offered under the CARES Act, and furthermore, should assist loan holders, servicers, and collectors in implementing this relief.

- **Execute a plan for borrowers who are already in default.** More than nine million federal student loan borrowers are currently in default.[17] Many borrowers are now seeking options to cure their defaulted loans, such as rehabilitation or consolidation, particularly as they seek to take advantage of the other federal student loan protections

[13] *See, e.g.*, College Affordability Act, H.R. 4674, 116th Cong. § 4628 (2019).
[14] *See* Jack Remondi, *The student loan crisis we should work together to solve*, Medium (Oct. 20, 2019), https://medium.com/@JackRemondi/the-student-loan-crisis-we-should-work-together-to-solve-8629b800de89 ("A pilot we launched to increase document completion rates enabled customers to e-sign their forms and more than doubled completion rates. Other simple solutions such as allowing servicers to enroll borrowers in income-driven payment plans over the phone, and enabling borrowers pursuing loan rehabilitation to seamlessly enroll in plans tied to income, would also make a big difference.").
[15] On April 3, 2020, the Department of Education issued guidance giving holders of commercial FFELP loans the option, at the holder's expense, of waiving interest charges and suspending payments. As of the date of this letter, no lender has publicly announced an intention to follow this guidance. Further, there remains confusion around the effect of guidance halting involuntary collections for loans held by Guaranty Agencies. See U.S. Dep't of Educ., *UDPATED Guidance for interruptions of study related to Coronavirus (COVID-19)* (Apr. 3, 2020), https://ifap.ed.gov/electronic-announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19.
[16] *See, e.g.*, Ascendium, https://www.ascendiumeducation.org/ (accessed April 22, 2020, 2:35 PM) (noting that defaulted FFEL loans held by Ascendium were eligible for collections protections under the CARES Act); ECMC, *COVID-19 Pandemic*, https://www.ecmc.org/covid-19-pandemic.html (accessed April 22, 2020, 2:38 PM).
[17] *See* Mike Pierce, *Plans to "Pause" Student Loan Payments Solve a Political Problem, But Leave Student Loan Borrowers Worse for Wear*, Student Borrower Protection Ctr (Mar. 20, 2020), https://protectborrowers.org/plans-to-pause-student-loan-payments-solve-a-political-problem-but-leave-student-loan-borrowers-worse-for-the-wear/

provided under the CARES Act. However, as call centers are reducing staff, limiting hours, or closing altogether, borrowers report that they are struggling to either consolidate their loans or enroll and make progress in a rehabilitation plan. In the best of circumstances, student loan rehabilitation is a fraught process that relies heavily on regular communication with one's debt collector.[18] But now, call center disruptions leave borrowers who are seeking to cure a defaulted loan at risk of falling prey to communication failures that will keep them in default, when instead these borrowers could be using the six-month payment suspension to set their loans up for long-term success. The Department should ensure that any borrower who has made at least three payments under a rehabilitation plan be automatically considered to have successfully completed the rehabilitation plan. The Department should further ensure that those borrowers' loans are returned to good standing and continue with standard servicing in an IDR plan. By doing so, the Department would allow borrowers to use the six-month payment suspension to enroll in an income-driven repayment plan, thereby helping to ensure long-term repayment success.

The passage of the CARES Act laid out necessary first steps for mitigating the economic fallout of the coronavirus pandemic. However, more work is needed to ensure the financial health and wellness and millions of borrowers. We ask that these questions be addressed promptly and directly by the Department of Education.

Sincerely,

Seth Frotman Executive Director Student Borrower Protection Center	Persis Yu Director Student Loan Borrower Assistance Project National Consumer Law Center

[18] *See* Consumer Fin. Prot. Bureau, *Annual Report of the CFPB Student Loan Ombudsman 2016* (Oct. 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman/.