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## MEMORANDUM

March 2, 2022

**TO:** Interested Parties  
**FROM:** Student Borrower Protection Center  
**RE:** **Nelnet Borrower Voices on the Incomplete Promise of Relief through IDR**

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### Overview

The promise of affordability and loan relief through income-driven repayment (“IDR”) options has largely been broken, plagued by failed policy, unwieldy regulatory requirements, and industry misconduct. A waiver that would credit all of a borrower’s time since the start of repayment—irrespective of loan status or payment history—towards IDR would be a powerful step towards finally restoring the purpose of the law. Abusive student loan servicers have greatly undermined the promise of IDR and debt cancellation through illegal forbearance steering and misadvice to borrowers. While these actions have mostly been publicized as to one servicer, Navient, they are not limited to one bad actor but are prevalent across the industry. As the following memorandum describes in detail, borrowers whose loans are serviced by Nelnet have suffered from the industry’s harmful practices.

### Background

Almost three decades ago, in recognition of the massive burden that student loan debt imposes on American households, Congress introduced one of the most vital protections available in any consumer financial market: income-driven repayment.<sup>1</sup> From its inception and throughout its expansion across successive presidential administrations, IDR has been shaped by three core principles: that federal borrowers should be able to afford their monthly student loan bills, that the most financially strapped borrowers should enjoy safeguards from delinquency and default, and, perhaps most importantly, that student loan debt should never become a lifelong affliction.<sup>2</sup> In implementing the latter precept, the U.S. Department of Education (“ED”) has entitled federal student loan borrowers in IDR to debt cancellation after 20 to 25 years of consistent, on-time repayment based on the borrower’s loan type and particular IDR plan.<sup>3</sup>

The promise of eventual debt cancellation through IDR is a key source of hope for millions of borrowers, many of whom make substantial personal sacrifices even while enrolled in IDR to remain current on their loans.<sup>4</sup> Moreover, the assumption that IDR generally delivers cancellation

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<sup>1</sup> <https://journals.sagepub.com/doi/abs/10.1177/0002716217701673>.

<sup>2</sup> <https://protectborrowers.org/idr-history-report/>.

<sup>3</sup> <https://studentaid.gov/manage-loans/repayment/plans/income-driven>.

<sup>4</sup> <https://protectborrowers.org/idr-unaffordability-report/>.

as promised is the cornerstone of significant federal policy and case law. For instance, the legal regime that makes it extremely difficult for borrowers to discharge student loan debt in bankruptcy partly stems from the assumption that IDR makes student loan payments manageable.<sup>5</sup> Similarly, there is a growing body of policy research that frames substantial policy intervention to alleviate student debt burdens, such as through broad-based cancellation, as unnecessary based on the assumption that IDR can be a source of meaningful relief for most borrowers struggling with student loan debt.<sup>6</sup>

Unfortunately, the promise of eventual debt relief through IDR has proven to be completely broken. Though debt cancellation under IDR has been available for qualifying borrowers since at least 2016, ED data accessed through the Freedom of Information Act (“FOIA”) revealed last year that only 32 borrowers have *ever* successfully achieved cancellation via IDR.<sup>7</sup> For relative scale, information uncovered by U.S. Senator Elizabeth Warren indicates that more than 4.4 million borrowers have been in repayment for 20 years or more.<sup>8</sup> Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to improve. An internal analysis conducted by one large student loan servicer recently found that of the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.<sup>9</sup> This overall estimate involved the projection of an 83 percent *reduction* between 2022 and 2025 in the number of borrowers that will receive cancellation through IDR each year, prompting one company employee to remark in uncovered emails that the number of borrowers securing cancellation seemed “very low.”<sup>10</sup>

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from federal policymakers, regulators, and the student loan industry. For example, over the past several years, state attorneys general across the country and the Consumer Financial Protection Bureau have brought public enforcement actions against ED’s largest student loan servicing contractors for a wide range of abuses related to borrowers’ access to IDR, including deploying abusive forbearance steering tactics, deceiving borrowers regarding their obligation to annually recertify income, and failing to timely process IDR applications.<sup>11</sup> These abuses—conducted by the very same companies tasked with guiding borrowers through repayment and empowering them to access their protections under the law—will add years or decades to borrowers’ repayment sequences even if they are eventually able to access IDR at all. By that time, borrowers will likely have undergone extensive but entirely unnecessary financial hardship including periods of disastrous delinquency or default.

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<sup>5</sup><https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf>.

<sup>6</sup> <https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/>.

<sup>7</sup><https://protectborrowers.org/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program/>.

<sup>8</sup><https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf#page=2>.

<sup>9</sup>[https://protectborrowers.org/wp-content/uploads/2021/10/SBPC\\_Driving\\_Into\\_A\\_Death\\_End.pdf#page=18](https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Death_End.pdf#page=18).

<sup>10</sup> *Id.*

<sup>11</sup> [https://protectborrowers.org/wp-content/uploads/2021/10/SBPC\\_Driving\\_Into\\_A\\_Death\\_End.pdf#page=15](https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Death_End.pdf#page=15).

A recent settlement between 39 states attorneys general and the federal student loan servicing giant Navient demonstrates that servicers have consistently and recklessly engaged in a startling variety of abusive practices with long-term consequences for borrowers.<sup>12</sup> While beneficial for some private loan borrowers, the terms of the settlement will not provide relief for the millions of borrowers who lost years of credit towards federal loan forgiveness and over-paid on their monthly student loan bills because of student loan servicers' illegal activities. This episode is yet another instance of the policy apparatus and specifically the promise of affordability through IDR failing borrowers entirely.

Worse, as with so many aspects of the student debt crisis, the weight of IDR's widespread breakdown has landed most heavily on Black borrowers. In particular, a nationwide survey from The Education Trust recently found that Black federal student loan borrowers struggle to access IDR, and that they continue to face both difficulty affording basic life necessities and an ongoing risk of default on their student loans even when enrolled in IDR.<sup>13</sup> Reflecting on IDR's failure to deliver eventual debt cancellation for Black borrowers, the survey noted that Black borrowers feel that repayment under IDR is "a lifetime debt sentence."<sup>14</sup>

### **The Role of Nelnet**

Nelnet, a publicly traded conglomerate, is one of the largest student loan servicers in the world, servicing \$529.0 billion of loans for 16.4 million borrowers across its various subsidiaries and business lines.<sup>15</sup> This business includes handling more than \$215 billion of federally-held student loans owed by 6.4 million student loan borrowers under its servicing contract with the Department.<sup>16</sup> In addition, Nelnet holds 120 third-party contracts with national and regional banks, credit unions, and various state and nonprofits to service older Federal Family Education Loans ("FFEL"); rents its servicing platform to other student loans servicers, such as Edfinancial Services, LLC; and services its own \$88 million portfolio of privately owned FFEL.<sup>17</sup>

Nelnet has developed a troubling track record in recent years, with borrowers regularly and increasingly facing financial harm due to the company's widespread operational and policy failures. In June 2018, student loan borrowers filed a class action lawsuit against the company, alleging that Nelnet failed to recertify their IDR applications in a timely way, resulting in their IDR applications being denied and unpaid interest capitalized into their principal, and improperly placed borrowers into forbearance.<sup>18</sup> This episode is representative of broader failures. Even by the Department's own metrics, which it uses to compare servicers against one another by measuring their ability to keep borrowers in on-time repayment status and out of default, Nelnet finished second to last during the most recent review period (which ranged from January 1, 2021

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<sup>12</sup><https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/>.

<sup>13</sup> <https://edtrust.org/resource/jim-crow-debt/>.

<sup>14</sup> *Id.*

<sup>15</sup> <https://www.sec.gov/Archives/edgar/data/1258602/000125860222000024/0001258602-22-000024-index.htm>

<sup>16</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001258602/000125860222000024/nni-20211231.htm>

<sup>17</sup> *Id.*

<sup>18</sup> *Olsen v. Nelnet, Inc. et al.*, 4:18-cv-03081 (D. Neb. June 8 2018), <https://www.dominalaw.com/documents/NELNET-Lawsuit.pdf>.

through June 30, 2021).<sup>19</sup> Rather than invest in its workforce or servicing platform to better serve student loan borrowers during this time period, Nelnet spent more than \$50 million on stock buybacks to enrich their investors and shareholders.<sup>20</sup>

Despite this, Nelnet saw its contract with the Department rapidly grow in recent months due to the Pennsylvania Higher Education Assistance Agency (“PHEAA”) leaving the market and approximately 850,000 PHEAA borrowers being transitioned to Nelnet Servicing’s platform.<sup>21</sup> The company anticipates additional borrowers to be transitioned to the company in 2022.<sup>22</sup>

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by Nelnet related to IDR have had on borrowers. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled. Here are a few illustrative stories that capture the pain felt by millions of borrowers:

1. Farah B., from Little Rock, Arkansas: “Nelnet says my loans do not qualify for loan forgiveness even though I have been in public service now going on 7 years working for DHS in Arkansas. I inquired about it as I overheard other people in the office discussing it. So I got all my paperwork filled out so that they could count my time etc. My loans are from 93-08 and then I returned to college again in 2001-2002 so all of my loans are 18 years plus. My loan servicers kept my loans in forbearance up until the last 5 years when a friend of mine at work told me I should apply for IBR. Luckily I took her advice but my student loan debt, originally \$34,000 is now \$86,000 and I'm worried now that I have to restart my time for public service loan forgiveness but my payments are gonna be outrageous with my kids reaching 18 soon.”
2. A borrower from Loudoun County, Virginia:<sup>23</sup> “Nelnet is my loan servicer. When I was younger I was frequently placing my student loans into forbearance because I was never properly counseled on how the interest would continue to compound year over year. ... My current loan information only goes back [redacted] years. However, I've been paying on this account every month with auto-deduct since I got married in [redacted]. Presently if I go back just [redacted] years it shows a principal balance of \$14,000.00. I've been out of college since [redacted].... I've paid [redacted], [redacted] in INTEREST alone, \$11,000.00 toward principal, equalling \$19,000.00. How is there STILL a balance of \$9,700.00 when I've been paying \$220.00 every month since JUST [redacted]?! AND, there were several years when I was paying \$440.00! I have not worked [for 19 months]. I refuse to allow [redact] additional cent of "Interest" on whatever amount I originally owed if I use a forbearance program. At what point can ANYONE determine that I've paid enough in compounding interest and principal? How can it possibly be fair that I still owe over \$9,000.00 when I've been paying on this loan for at least 18 years?”

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<sup>19</sup> *Supra* 16.

<sup>20</sup> [https://s21.q4cdn.com/368920761/files/doc\\_financials/2021/q4/117826\\_Shareholder\\_Letter\\_2021\\_FIN.pdf](https://s21.q4cdn.com/368920761/files/doc_financials/2021/q4/117826_Shareholder_Letter_2021_FIN.pdf)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4800434>



3. A borrower:<sup>24</sup> “Don't know if this helps anyone, but my federal student loans transferred from Fedloan to Nelnet. I was on REPAYE payment plan with Fedloan with a lower monthly payment, but when the account showed up in Nelnet, it showed standard repayment with the REPAYE amount. Then, the COVID pause was extended from 1/31/2022 to 5/1/2022. After that, my account not only showed standard repayment but also the much higher standard repayment amount. I emailed Nelnet through their contact form because this is hard to explain to a phone agent, but they basically just said I can apply for REPAYE ...again. ... The Department of Education had the correct repayment plan at studentaid.gov, so the screw up had to be with Nelnet. So I found a chat feature after logging in to Nelnet's site. Apparently, it's a known issue, and the chat agent had to send a complaint to the processing department to investigate, and they'll email back within 10 business days....

It still had not been corrected after a month and a half. [The customer service agent] was trying to get me to do a recertification instead. I politely declined because my current, correct payment would have been lower if I didn't recertify immediately. Instead, she proceeded to submit an IDR application for ICR with an income significantly higher than what I had. I found that out a week later checking on my account and chatting with a different agent.

This current agent said they can't go back and fix it, and I'll simply have to submit another IDR application, which I didn't want to because Nelnet made a mistake during my loan transfer and submitted an application that I did not ask for. I wasn't getting anywhere with her, and she suggested calling and speaking with a supervisor, which I did. Now this supervisor insisted that I submitted the application and that agents couldn't do it and that they got it from Federal Student Aid, which only I had access to. After I insisted several times that 2 agents offered to submit an application on my behalf and that one was submitted without my permission, he finally said that he could submit a complaint to investigate the first chat and see if they can/can't roll back the app. Who knows where that'll go.”

4. A borrower from Washington, DC:<sup>25</sup> “... I received notice from my credit monitoring service that late payments had been reported on my credit report. Upon investigation the late payment reporting came from NelNet, a company I had never heard of. Upon contacting NelNet I was told that my federal student loans had been purchased ... from my prior loan servicer and then almost immediately put into deferment. When speaking to customer service, I was told multiple times that my loan would be put in further forbearance to make me current. I had told her multiple times during the conversation I would not have trouble paying and could pay the amount in full. [The customer service representative] was insistent that my loans be placed in forbearance, despite my ability to pay, until I asked to speak to her supervisor. The language she was using and insistence on forbearance appeared to come from a script. Upon being transferred to [the]

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<sup>24</sup> [https://www.reddit.com/r/StudentLoans/comments/rx3q0s/federal\\_student\\_loan\\_transfer\\_fiasco/](https://www.reddit.com/r/StudentLoans/comments/rx3q0s/federal_student_loan_transfer_fiasco/) and [https://www.reddit.com/r/StudentLoans/comments/szkkla/i\\_hope\\_nelnet\\_burns\\_to\\_the\\_ground\\_update\\_2/](https://www.reddit.com/r/StudentLoans/comments/szkkla/i_hope_nelnet_burns_to_the_ground_update_2/)

<sup>25</sup> <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4079562>

supervisor, I explained my ability to pay and the circumstances that led to NelNets reporting on my credit. After explaining that I would pay the amount in full, I asked that the late payment be removed as I had never received contact from NelNet (including notice of their becoming my loan servicer, that any amounts were late, that payments were due during CARES Act forbearance), and that studentaid.gov the only method that would have been available for me to see the loan showed no amount due. [The supervisor] stated that by federal law it was illegal to remove NelNets credit reporting. [The supervisor] then advised me not to attempt any dispute as it could further harm my credit.”

5. Josh J.:<sup>26</sup> “I was told for years just to go into forbearance even though I asked for an income based repayment plan. Nelnet wouldn’t even discuss it with me and forced me into forbearance for 8 years! If I had made payments then I would be forgiven thanks to PSLF in 2 more years.”

As these stories illustrate, Nelnet’s actions have undermined Congress’ intent to create affordable repayment plans that were not a lifelong debt sentence and instead have misled borrowers into forbearance to maximize profits for their shareholders.

### **ED Can and Must Act to Restore the Promise of Relief through IDR**

In October, the Biden administration initiated a sweeping waiver to address longstanding, wide-ranging failures plaguing the Public Service Loan Forgiveness (“PSLF”) program.<sup>27</sup> This waiver allowed hundreds of thousands of borrowers to bypass byzantine administrative burdens, sweep aside the lingering effects of past servicing abuses, and rise from the wreckage of decades-long policy blunders to access earned relief.<sup>28</sup> For tens of thousands of borrowers, that relief included immediate debt forgiveness.<sup>29</sup>

Now, borrowers and a broad coalition of advocates are calling on the Biden administration to use authorities already at its disposal to initiate a similarly bold program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.<sup>30</sup> As outlined in a white paper co-authored by the Student Borrower Protection Center, the Center for Responsible Lending, and the National Consumer Law Center, this waiver would involve the use of administrative data to retroactively count all months since borrowers entered repayment as qualifying months towards forgiveness under IDR, regardless of the borrower’s loan type or prior repayment plan.<sup>31</sup> A coalition of more than 100 unions, consumer protection organizations, and non-profit organizations that represent a broad and diverse population of low to middle

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<sup>26</sup> <https://twitter.com/JAdamJohnson/status/1491558515609112579>

<sup>27</sup> <https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> [https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2\\_9\\_2022.pdf](https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf).

<sup>31</sup> <https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/>.

income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.<sup>32</sup>

Until the Biden administration takes substantial action such as implementing the proposed IDR waiver, however, borrowers will continue languishing under the weight of system-wide failure and broken promises. The weight that these borrowers face goes far beyond what may be captured in any statistic outlining how few borrowers have secured cancellation through IDR, how many borrowers continue to face delinquency and default, and how many decades borrowers have been trapped in repayment. The failure of IDR means years of lost payments, rippling financial ruin, and broken promises between citizens and their government at every level.

Servicers like Nelnet have too long put their financial profits ahead of borrowers' financial security. The Biden administration must choose to right that wrong by implementing a IDR waiver that will provide credit towards loan forgiveness for borrowers' time in default, forbearance, and deferment.

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<sup>32</sup> [https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2\\_9\\_2022.pdf](https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf)