



MEMORANDUM

March 30, 2022

TO: Interested Parties

FROM: Student Borrower Protection Center

RE: **PHEAA Borrower Voices on the Incomplete Promise of Relief through IDR**

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 forgiveness under IDR would be a powerful step toward finally restoring the purpose of the law. Abusive student loan servicers have greatly undermined the benefits of IDR, including debt cancellation, through illegal forbearance steering and misadvice to borrowers. While these actions have mostly been publicized as they relate to the conduct of one servicer, Navient, they are not limited to one bad actor but are instead prevalent across the industry. As the following memorandum describes in detail, borrowers whose loans are serviced by the Pennsylvania Higher Education Assistance Agency (“PHEAA”), also known as AES and FedLoan Servicing, have been robbed of the forgiveness they are entitled to under IDR due to the company’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.¹ 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.² 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.³

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

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

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

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



remain current on their loans.⁴ Moreover, the assumption that IDR generally delivers cancellation 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.⁵ Similarly, there is a growing body of policy research that frames substantial 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.⁶

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.⁷ 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.⁸ 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 2025.⁹ 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.”¹⁰

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.¹¹ 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.

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

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

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

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

⁸ <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%20204-8-21.pdf#page=2>.

⁹ https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.

¹⁰ *Id.*

¹¹ https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_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.¹² 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.¹³ 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."¹⁴

The Role of PHEAA in Breaking the Promise of IDR

PHEAA is a massive financial services company and quasi-governmental agency established by the Commonwealth of Pennsylvania. Initially chartered by the state legislature "to improve the higher educational opportunities of persons who are residents of [Pennsylvania] . . . by assisting them in meeting their expenses of higher education,"¹⁵ it has grown to service, guaranty, and lend hundreds of billions of dollars of student loans held by public and private actors alike.

Whereas PHEAA opened for business in 1964 with a quaint portfolio of about 5,000 loans,¹⁶ at its peak the company grew to handle one out of every ten dollars of non-mortgage consumer debt in the United States.¹⁷ The bulk of this servicing involved federal student loans, with PHEAA ultimately serving hundreds of billions of dollars of federal student loan debt owed by tens of millions of people in and beyond the Commonwealth.

As PHEAA rapidly grew, its record of poor job performance has combined with a glaring lack of accountability mechanisms to spell doom for countless Americans' financial lives. PHEAA proved to be a central player in every major student loan industry scandal of the last decade,

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

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

¹⁴ *Id.*

¹⁵ 24 Pa. Cons. Stat. § 5105 (1963), <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1963/0/0290..PDF>.

¹⁶ Michael Brown, *FedLoan Servicing Student Loans – Overview and Repayment Options*, Nitro (July 24, 2019), <https://www.nitrocollege.com/student-loan-servicers/fedloan>.

¹⁷ Seth Frotman & Ben Carter, *Demanding Justice in the Bluegrass State*, Domino: A Blog About Student Debt, (Jan. 2, 2019), <https://protectborrowers.org/demanding-justice-in-the-bluegrass-state/>.

targeting student loan borrowers coast to coast with illegal and abusive practices and becoming a regular subject of rebuke by government accountability watchdogs.¹⁸

In 2017, Massachusetts Attorney General Maura Healy filed a lawsuit against the company, alleging that PHEAA disqualified thousands of public servants—who had made years of faithful loan repayments—from loan forgiveness through malfeasance and active misinformation. The case was settled, requiring the company to make corrections to borrowers’ IDR qualifying payment counts, though unfortunately some borrowers have not been made whole.¹⁹

Massachusetts alleged that PHEAA “failed to process borrowers’ IDR applications timely and properly, thereby depriving borrowers of the opportunity to make qualifying monthly payments that count towards loan forgiveness. To accommodate its processing delays, PHEAA has put borrowers’ accounts into forbearance status, which is not a qualifying repayment plan for loan forgiveness under PSLF or IDR plans.”²⁰ When this causes public servants to lose out on qualifying payments, the lawsuit adds, “PHEAA does not remediate borrowers accounts to account for the lost months. Borrowers therefore bear the brunt of PHEAA’s servicing failures.”²¹ And while, “PHEAA is aware that its delays in processing IDR applications have caused borrowers to lose the opportunity to make qualifying monthly payments for loan forgiveness . . . and has received numerous complaints about processing delays and issues . . . PHEAA has not rectified the problem.”

Other government entities have similarly found widespread misconduct by PHEAA. In a February 2019 report, the ED Inspector General (“IG”) described PHEAA’s servicing work by saying:

*“[ED] listened to 99 borrower calls [from PHEAA]. It determined that, for 24 (24.2 percent) of the 99 calls, servicer representatives did not provide the borrowers with sufficient information regarding their available options. **PHEAA granted forbearances to 17 borrowers when they might have benefitted from a different option, such as possible deferment or income-driven repayment. PHEAA either***

¹⁸ U.S. Gov’t Accountability Off., GAO-15-314, Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes 26 (2015), <https://www.gao.gov/assets/670/668634.pdf>; U.S. Gov’t Accountability Off., GAO-15-663, Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options (2015), <https://www.gao.gov/assets/680/672136.pdf>; U.S. Gov’t Accountability Off., GAO-18-547, Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers (2018), <https://www.gao.gov/assets/700/694304.pdf>; U.S. Gov’t Accountability Off., GAO-19-595, Public Service Loan Forgiveness: Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion (2019), <https://www.gao.gov/assets/710/701157.pdf>. See also U.S. Dep’t. of Educ., Office of Inspector Gen., ED-OIG/A09Q0003, The Department’s Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs (2018), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf>.

¹⁹ <https://www.mass.gov/news/ag-healey-secures-first-of-its-kind-relief-in-settlement-with-major-student-loan-servicer>.

²⁰ Complaint at 9, Commonwealth v. Pa. Higher Educ. Assistance Agency, No. 1784CV02682 (Mass. Super. Aug. 23, 2017), <https://buckleyfirm.com/sites/default/files/Buckley%20Sandler%20InfoBytes%20-%20Commonwealth%20of%20Massachusetts%20v.%20Pennsylvania%20Higher%20Education%20Assistance%20Agency%20-%20Complaint%202017.08.23.pdf>.

²¹ *Id.* at 10.



*provided the other seven borrowers with **inaccurate information** regarding their options or **did not follow internal procedures** regarding the order of delinquency resolution options. The **24.2 percent rate of noncompliance** was additional evidence (to the 8.8 percent rate disclosed in the failed-call report for the same month) of a **pattern of noncompliance at PHEAA.**”²²*

PHEAA was not the only subject of the audit, but the “pattern of noncompliance” the IG described certainly contributed to the assessment that FSA needed to “use the contractual accountability provisions available, such as requiring the return of funds or reducing future loan volume, to hold servicers accountable for instances of noncompliance”²³

Most recently, Colorado Attorney General Phil Weiser filed a lawsuit against PHEAA after the company refused to fully comply with state law requiring consumer protection oversight.²⁴ While PHEAA refused to provide the attorney general with a request for records related to PHEAA's handling of student loans during the COVID-19 pandemic, the suit notes that PHEAA has been discovered to have a “pattern of noncompliance . . . with regard to PHEAA’s failure to provide sufficient information regarding available repayment options and, in calls monitored by FSA between PHEAA and borrowers, PHEAA’s failed-call rate was significantly higher (10.6%) than the average failed-call rate for all federal loan servicers (4.3%).”²⁵

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices by PHEAA related to IDR have had on borrowers, leaving the promise that Congress made through IDR unfulfilled:²⁶

1. Crystal G. from Texas: “When I first graduated with my Masters in Social Work degree, I made less than \$30,000 a year. I called in numerous times when I was unable to afford the full payment; and instead of offering solutions such as IDR or making a partial payment, I was encouraged to take a financial/economic deferment or forbearance. Now, despite paying on my loans for over 10 years now, I am still several years away from PSLF forgiveness; all because I did what I was encouraged to do by my loan servicer. If I had the opportunity at the time, I would have gladly paid what I could with either a partial payment or IDR.”
2. Linda L. from New York: “I took student loans out for my BA, masters and doctorate degrees. I have been in and out of deferment, forbearance and never in IDR until now. I called when I took three years off to care for my children and I was not working and told

²² U.S. Dep’t. of Educ., Office of Inspector Gen., *Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, for example, ED-OIG/A05Q0008, Fed. Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans 13 (2019), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

²³ *Id.* at 2.

²⁴ Complaint at 4, Fulford v. Pennsylvania Higher Education Assistance Agency, No. 2021cv31665 (Dist. Ct. City and Cnty of Denver, Colo. May 26, 2021), <https://coag.gov/app/uploads/2021/05/2021-05-26-PHEAA-Complaint.pdf>.

²⁵ *Id.* at 4.

²⁶ Submitted to and on file with the Student Borrower Protection Center.



forbearance was my only option and I stupidly agreed. I am on a medical leave now due to getting long term covid at school. I know now not working to ask for an IDR. I am older, wiser, and yes more jaded and I do not trust FedLoan.”

3. Jane from Ohio: “I have always struggled to make payments. . . . I always was put on forbearance or economic hardship. I made smaller payments throughout. \$50-150 when I could. I thought it was my only option. I now owe more than what I started with after grade school 14 years ago. I’m a speech-pathologist in the schools and we can only get paid so much. I lived in a state where my salary was the same for quite a few years.”
4. Shakeeda B. from Massachusetts: “My student servicer encouraged me apply for deferment and forbearance instead of applying for an IDR plan [and] because of that my loans went into default and my income tax was intercepted . . . that my family and I depend on because we live significantly below the poverty line. Not being in IDR where I would have had a payment of \$0 has not only pushed back my payoff date but has also been a huge financial burden on myself and my family.”
5. Melissa N. from New York: “When I was in my medical training, I was counseled by the loan specialists to go into forbearance rather than being told that my income-based payment would be nearly \$0 and actually affordable. My loans accrued a ton of interest and delayed my application for pslf. I could have been forgiven by now and have money to save for my children. Instead, because I was incorrectly advised and steered to forbearance, I have years of payments left on my loans.”
6. Rhonda D. from Kentucky: “I was put in forbearance being told as long as I paid something each month my interest would be controlled and my payments would count. This was false! Although I paid at least \$300.00 every single month I only have 38 qualifying payments. I have worked in healthcare since 1998. All of my employment has been approved and yet the waiver has not helped me. I graduated in 2008 with a masters in nursing (working my way up from a nursing assistant, a LPN, an associate degree RN, a BSN and finally a APRN. I had \$99k in debt which wasn’t too bad. But after all the fees and interest I now owe \$133k, I’m 61, and feel so hopeless. I have been misled and misinformed. I’m grateful for the opportunity I’ve had to serve God through helping so many patients over the years. But I’m really tired. I feel I will go to my grave owing for this education that was supposed to be a better life for my family.”

There is a real person behind each of these stories—one who reached out for help and would have been on track for forgiveness if they had been given correct information on IDR. Then, regardless of the life plans they had made, they found their financial life imperiled by PHEAA. For many, that peril is now a permanent financial reality.



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 PSLF program.²⁷ 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.²⁸ For tens of thousands of borrowers, that relief included immediate debt forgiveness.²⁹

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.³⁰ 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.³¹ A coalition of more than 100 unions, consumer protection organizations, and non-profit groups that represent a broad and diverse population of low to middle income student borrowers and workers across the country recently signed a letter in support of this proposed IDR waiver.³²

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 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.

²⁷ <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>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

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

³² https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.