



MEMORANDUM

April 6, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center
RE: **Older 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 towards finally restoring the purpose of the law. While the student loan crisis is often mischaracterized as a young person’s issue, older Americans are struggling under the weight of unbearable student loan debt. This group includes borrowers who have carried student loans for decades, as well as those who attended school later in life to try to better their lives.

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 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

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>.

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

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.

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

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.

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

Older Borrowers are Buckling under the Weight of Federal Student Loans

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices 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.¹⁵

1. Joe from Burbank, CA, 61 years old. "I finished my master's degree in 1994. My lender, Sallie Mae, never told me about the IDR option. I had to just keep filing for forbearance and deferred payments. I would have gladly chosen IDR. When my number of allowable forbearance and deferred options ran out, I ended up going back to school, because (as far as I was informed), being a full-time student was the only way to continue deferring. I didn't find out about IDR options until 2010 (after my loans got transferred several times), and that discovery was only by my own research. Now I won't be eligible for the 25-year forgiveness until 2035, which will be 10 years after I retire. My original loan of \$45,000, plus another \$10,000 when I went back to school, has now ballooned to \$260,000 because of interest. Furthermore, because my payments are based on my income, every time I get a raise, my school loan payment goes up, so I can never get ahead."
2. Kate. "I am 68 years of age and am blessed with being approved for the income based repayment plan. My loans originate as far back as 1984 and I believe they should be forgiven. I have worked as a mental health counselor for over 30 years now. When will I receive a break on these if ever! I feel I am being penalized because I am stuck with debt probably until my death."

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 Names changed for borrowers' privacy. Stories on file with the Student Borrower Protection Center, the National Consumer Law Center, and the Student Debt Crisis Center.



3. Marjorie, Tulsa, OK. “I have \$7,000 in student loan debt. What can I do? I am a wife, mother and grandmother. Please help me get this sword out of my side. I work at a learning disabled private school as an assistant. I am going to turn seventy this June. I got my degree in 1998. I have worked hard all my life.”
4. LJ is retired and in his 70s. He has FFEL loans that he has been struggling to pay off for more than 16 years. After 16 years of payments, he still had a remaining balance of \$3,000 and recently paid it off with a credit card that he is still paying off. LJ has never heard of IDR—his servicer has never told him about it. Whenever he called his servicers over the years and told them he was having trouble affording payments, his servicers advised him to apply for forbearance.
5. Marilyn, Colorado. “I went through the recession in 2008 and graduated at that point with my masters degree and was 63 years old and nobody would hire me because we were not hiring anybody at that point in time! And now on Social Security I can't afford payments.”

Additionally, below are stories that have featured in previous memoranda on issues regarding Parent PLUS loans, FFEL loans, and deferment/forbearance steering. Older borrowers are impacted by all the related issues covered in those memos.

6. Ms. Smith is an elderly, disabled, Black woman borrower living on fixed Social Security retirement benefits of \$1,800 per month. She suffers from severe back pain, fibromyalgia, and chronic depression. In 2019, when she sought the Legal Aid Foundation of Los Angeles’s help, Ms. Smith owed around \$240,000 on a Federal Family Education Loan (“FFEL”) Consolidated loan. Her loans were on a repayment plan with a \$2,100 monthly payment, which she had never been able to afford. Between July 2010 and March 2015, she called her loan servicer five times and told it that she could not afford her monthly payments. Each time her loan servicer put her on forbearance. She finally defaulted in July 2015, and experienced tax refund offsets of money she needed to survive. She rehabilitated her loan out of default in February 2019. At this time, she sought LAFLA’s help. They immediately submitted an IDR request which was granted, with a \$0 monthly payment.
7. Ned is a retired, partially disabled, Black veteran. Circa 1990, Ned’s employer told him he had to attend a 6-week course at a truck driving school if he wanted to keep his job as a truck driver. He ended up having to take out around \$3,000 in federal student loans and did not learn anything from the course. Ned is now 68 and his loans have ballooned to almost \$7,000. He does not have internet access or email. He was unable to keep up with the payments and defaulted in 2008. Ted has had over \$7,600 garnished from his tax refund since then—it has all gone towards fees and interest with none applied to the principal balance. A retiree living primarily on SSI, Ted has qualified for a \$0 REPAYE IDR plan for years, which his servicer never told him about. He did not enter such a plan until late 2019 when a legal services organization contacted his servicer to get him out of default and onto a REPAYE plan, after over a decade of being in default.



8. George is 75 years old and still has approximately \$5,200 student loans. He is a retired teacher, Black, and attended a state school. His wages were garnished each month from his part-time job at the YMCA because he defaulted on his student loans. George qualified for a \$0 IDR plan, but because he did not have access to a computer and his loan servicer never shared this information with him, he was trapped in default for years. The wage garnishments took away some of the little income that he subsided on in his retirement. After years of being in default, a legal service organization helped him submit documentation and go through the many steps to get out of default and onto a \$0 monthly repayment plan, all information which his servicer never provided.
9. Natasha is in her mid 60s, Black and physically disabled. She does not own a home and is having medical issues, and is considering moving to a senior living facility. She attended community college and state-school in the mid 80s and graduated in 1994. She had to borrow a total of \$20,872 in FFEL loans and has been in and out of repayment since 1994 with Navient as her servicer. Despite nearly 3 decades of being in repayment—including periods of deferment, forbearance, and default—her loan balance has ballooned to \$63,825. Navient placed her loans in forbearance a total of 27 times, and she was placed in deferment at other times she could not afford payments. In 2021, a debt relief organization consolidated her loans and got her onto an IDR plan. Once, she remembers getting on an IDR plan, but forgot to recertify her income and was disenrolled. When she contacted the servicer to try to get back on it, she found out her monthly payment had gone up and she was put in forbearance again.
10. Deborah, a USPS worker, took out a FFEL loan of approximately \$9,500 to attend college in 1983. Nearly 40 years later, because of servicer misconduct and the prohibitive 9% interest rate on her FFEL loans, she owes \$43,000. Deborah's servicer consolidated her FFEL loans in 2003 against her request, upon which her loan balance increased to \$28,000. She made payments when she could but did not have steady employment. When she started working at USPS, she started making regular payments but entered forbearance while she was buying a house. Her loan balance ballooned. Over the past several years, she has paid \$280 a month on her student loans on an income-driven plan, though her payments recently rose to \$350 a month. When she called her servicer to tell her she was having difficulty affording the payments, they offered to put her loans into forbearance once again. She declined. She recently checked her statement and realized her servicer put her in a 3 month forbearance against her request, meaning interest will continue to capitalize on her loans. Forty years after attending college, Deborah's loan balance has quadrupled despite making payments, and she feels trapped in a cycle of ever-growing student loan debt.
11. Jessica is 65 years old and borrowed \$39,000 in FFEL loans for a master's degree in 1987-91. She has paid off about \$26,000 since 1992 but currently owes \$250,000—more than six times what she originally borrowed. Jessica was only able to access an IDR plan around 4 years ago because her servicer did not previously tell her it was an option. On this plan, she still pays \$225 per month, and she will be 86 years old by the time she can finish paying off her loans. Jessica retired from teaching full-time and now works part-time teaching workshops at a local community college. Jessica had two children while in



school and then a few years later got divorced. She had to scrape by for years and wasn't able to make loan payments. She has no other debt, paid off her undergraduate student loans, and has no assets. Her two kids graduated from college with loans and paid them off. She has considered filing for bankruptcy, but a lawyer told her her loans will not be dischargeable. Jessica was hoping she would get relief through the Public Service Loans Forgiveness ("PSLF") program, but though she worked for more than 25 years in public service, she does not yet have 10 years of qualifying payments even with the waiver. And, since she retired from full-time work, her part-time teaching does not provide credit for public service going forward. Jessica has had to continue making payments through the COVID-19 pandemic, as FFEL loans were not eligible for the payment pause. While she struggled to make these payments, she did not consolidate into the Direct loan program because she didn't want to further increase her overall balance. After nearly 30 years of being in debt for graduate school, and another two decades of payments facing her, Jessica will have been trapped in her FFEL loan debt for her entire adult life.

12. Marie attended a for-profit college, California Institute, for fewer than two weeks in 1989. She was living in project-based housing where the school targeted residents to attend its school. Even after Marie withdrew, her school reported that she had remained in the course for several more weeks to keep her financial aid. Two FFEL loans were disbursed in her name, for \$2,625 with 8 percent interest and for \$2,800 with 12 percent interest, which she consolidated in 1995 to a loan balance of \$8,774, which were incorrectly set at a 12 percent interest rate. Twenty-four years after consolidation, her loan balance is now over \$105,000, for 2 weeks of college. Marie's servicer, American Education Services ("AES") never informed her of income-driven repayment options and steered into unhelpful forbearances and deferments, which exacerbated the exponential growth of her loan balance. During this time, Marie was earning an average of \$20,000 gross for a household of two and would have qualified for \$0 or otherwise very low payments under IBR. While her FFEL Consolidation loan appears to have never fallen into default, she did not learn of IDR until she went to a legal aid office for help in 2018, three decades after she attended school. Instead, AES told her that her only option would be to stay in school or put her loans on forbearance or deferment. She continued her education and obtained two degrees and seven certificates. After she could no longer attend school, Marie was put into forbearances and applied for several economic hardship deferments. Legal aid helped Marie submit an Income-Based Repayment request in 2018 and it was approved for \$0 a month payment.
13. Nancy took out Parent PLUS loans starting in 1999 to pay for her three son's educations. She and her husband are both retired on a fixed pension, after working as a teacher and a corrections officer, respectively. She has been in repayment since 2000. She has had some late payments, deferments and forbearance, but thankfully has not defaulted. As is typical with PLUS loans, her balance has ballooned. She originally borrowed \$155,000 and from 1999 to 2011, she has repaid \$127,030—of that amount the majority has been for interest, only \$35,448.83 has been applied to principal. Despite being in repayment for more than two decades, she still owes \$192,000, more than her original total debt. When Nancy and her husband called their servicer to try to get help, they were told to consolidate, which added several more decades to the payment term and increased their



monthly payment. Nancy has calculated, and she will be 97 by the time she can pay the loans off. As Nancy puts it “We are not trying to shirk our responsibility. We just want to be able to pay a reasonable (legal) amount of interest.”

As these stories illustrate, older borrowers are being crushed under the weight of student loan debt, and IDR as it has been implemented has not provided a reprieve from a lifetime debt sentence. The framing of student loan debt as a young person’s issue is a mischaracterization, particularly as to the lived experience of Black borrowers. And while prospective regulatory fixes to IDR may help some borrowers moving forward, they will not provide relief to older borrowers who have carried burdensome loans for decades.

In some cases, these borrowers have been out of school for more than two decades but have been unable to pay off their loans due to servicer misconduct, including forbearance and deferment steering, and related periods of default. Borrowers often do not learn of IDR options until they have been in repayment for years, tacking on decades to their payment period. This group disproportionately includes Black borrowers, who because of systemic discrimination in all aspects of the labor, housing and overall market have less wealth than white borrowers.¹⁶ Indeed, “[t]wenty years after starting college, the median debt of White borrowing students has been reduced by 94 percent—with almost half holding no student debt—whereas Black borrowers at the median still owe 95 percent of their cumulative borrowing total.”¹⁷

Older borrowers may also include borrowers who attended post-secondary school in adulthood to better their careers and lives, or “non-traditional students.”¹⁸ These borrowers tend to have less wealth to begin with, are more likely to not complete their post-secondary education, and may face age or other types of discrimination in the work place once they exit school, making it harder to pay off their loans.¹⁹ These borrowers too are at risk of being saddled with student loan debt through retirement and even until death. IDR has not provided a pathway out.

Older borrowers also include borrowers who borrowed parent PLUS loans to assist their children in paying for college. In some cases, parents may take out loans for multiple children on top of loans they owe for their own education. As highlighted in the parent PLUS memo, death is often the only recourse to get out of this mountain of debt issued by the federal government.

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.²⁰ 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

¹⁶ <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf>.

¹⁷ *Id.* at 4.

¹⁸ See generally, https://coenet.org/press_releases_051921.shtml.

¹⁹ *Id.*

²⁰ <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>.

policy blunders to access earned relief.²¹ For tens of thousands of borrowers, that relief included immediate debt forgiveness.²²

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.²³ 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.²⁴ 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.²⁵

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.

²¹ *Id.*

²² *Id.*

²³ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

²⁴ <https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/>.

²⁵ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.