



May 2, 2022

Gail daMota  
President  
Education Finance Council  
200 Massachusetts Ave NW, Suite 700  
Washington, DC 20001

James Bergeron  
President  
National Council of Higher Education  
Resources  
1050 Connecticut Ave NW, #65793  
Washington, DC 20035

Scott Buchanan  
Executive Director  
Student Loan Servicing Alliance  
2210 Mount Vernon Ave, Suite 207  
Alexandria, VA 22301

Dear Ms. daMota, Mr. Bergeron, and Mr. Buchanan:

We write today regarding the commitment our organizations share with yours to the successful implementation of recent changes to income-driven repayment (IDR) and to compliance with all relevant state and federal laws and regulations that govern federal student loan servicing.

As you know, on April 19, 2022, the Department of Education (ED) announced a sweeping set of actions aimed at remedying “historical failures in the administration of federal student loan programs,” including IDR.<sup>1</sup> IDR was designed in part to provide an offramp for borrowers after decades of repayment to prevent student loan debt from becoming a life-long burden.<sup>2</sup> However, the promise of eventual debt relief through this protection has so far proven illusory.<sup>3</sup> Investigations by independent third parties<sup>4</sup> and government auditors<sup>5</sup> alike have found that vanishingly few borrowers have accessed debt cancellation to date under IDR even as millions of borrowers have crossed the mark of being in repayment for 20 years or more.<sup>6</sup>

Against this backdrop, the actions ED announced on April 19 mark an important first step toward relief for many of the most financially distressed borrowers in the federal student loan system. In

<sup>1</sup> <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>

<sup>2</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3928612](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3928612)

<sup>3</sup> <https://protectborrowers.org/driving-into-a-dead-end-why-idr-has-failed-millions-with-decades-old-debts/>

<sup>4</sup> <https://www.nclc.org/uncategorized/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program.html>

<sup>5</sup> <https://www.gao.gov/products/gao-22-103720>

<sup>6</sup> <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%20204-8-21.pdf#page=2>

particular, the Department estimates that these changes will allow tens of thousands of borrowers to receive immediate forgiveness through IDR and that millions more will receive “at least three years of additional credit toward IDR forgiveness.”<sup>7</sup>

Still, successfully restoring the promise of long-term relief through IDR will require that federal student loan borrowers be able to rely on the companies that your organizations represent to receive the high-quality servicing that they deserve—and that they are entitled to under the law.

Unfortunately, as the Department outlined when announcing its recent changes to IDR, there is a well-documented and decades-long record of servicers failing to implement key provisions of, and protections embedded in, the federal student loan program.<sup>8</sup> Servicers’ failures include the illegal and endemic “steering” of borrowers toward costly, endless forbearances in instances when they may have benefited from IDR.<sup>9</sup> In certain instances, these high-profile abuses broke a wide range of federal and state consumer protection laws.<sup>10</sup> Further, as the results of a recent NPR investigation revealed, these breakdowns also include the widespread failure by student loan servicers to track and manage the repayment histories that borrowers rely on to prove qualification for IDR forgiveness.<sup>11</sup> As NPR put it, these systemic errors “could delay or derail millions of the lowest-income borrowers on their way to loan cancellation.”<sup>12</sup>

Notably, ED’s actions on IDR come soon after its recent, equally sweeping waiver of provisions of the Public Service Loan Forgiveness (PSLF) program, which was plagued for years by similar mismanagement on the part of student loan servicers that blocked teachers, nurses, and servicemembers from accessing earned loan relief.<sup>13</sup> As enforcement actions dating as recently as March of this year illustrate, misconduct in this space has included companies that own loans originated under the Federal Family Education Loan Program (FFELP) deceiving borrowers into believing that they were not eligible for PSLF when, in fact, they were.<sup>14</sup> Advocates<sup>15</sup> and government agencies<sup>16</sup> alike have noted that this conduct is likely motivated by FFELP loan holders’ financial interests, as borrowers pursuing PSLF must consolidate out of any FFELP loans that they may owe on and into Direct loans, undercutting the FFELP loan holder’s bottom line.

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<sup>7</sup> <https://www.ed.gov/news/press-releases/departments-education-announces-actions-fix-longstanding-failures-student-loan-programs>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (“A review of past forbearance use shows that long-term use of forbearance was remarkably widespread. More than 13% of all Direct Loan borrowers between July 2009 and March 2020 have used forbearance for at least 36 months cumulatively.”)

<sup>10</sup> <https://protectborrowers.org/the-system-is-broken-what-more-than-a-decade-of-litigation-reveals-about-the-state-of-the-student-loan-industry/>

<sup>11</sup> <https://www.npr.org/2022/04/01/1089750113/student-loan-debt-investigation>

<sup>12</sup> *Id.*

<sup>13</sup> See [https://protectborrowers.org/wp-content/uploads/2021/12/FINAL\\_packet\\_Union-letters-to-FFELP-holders.pdf](https://protectborrowers.org/wp-content/uploads/2021/12/FINAL_packet_Union-letters-to-FFELP-holders.pdf)

<sup>14</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sanctions-edfinancial-for-lying-about-student-loan-cancellation/>

<sup>15</sup> <https://protectborrowers.org/why-ffelp-borrowers-are-routinely-denied-access-to-pslf/>

<sup>16</sup> <https://www.gao.gov/assets/gao-16-523.pdf>

Months after the PSLF waiver was announced, a coalition of consumer advocates and the nation’s biggest unions outlined in a letter to the 25 largest private holders of FFELP loans that these companies appeared to still be misrepresenting the qualifications for forgiveness under PSLF.<sup>17</sup> Protracted breakdowns along these lines simply cannot be tolerated in the implementation of ED’s recent changes to IDR, particularly to the extent that they may involve errors that, like those related to PSLF, could reflect the companies you represent putting profits ahead of borrowers’ interests and legal rights.

Immediately after ED’s April 19 announcement, your organizations released a statement alleging that by noting the historic servicer failures that have contributed to the breakdown of IDR, the Department was trying to “steer the conversation away from the root cause that [the Department’s Office of Federal Student Aid] has failed to fix the federal student loan repayment system for years.”<sup>18</sup> Few organizations have been more critical than ours regarding ED’s history of failure in student loan borrower protection.<sup>19</sup> But it was not the Department of Education that adopted a “7 minute rule” after which servicers’ call center representatives were required to hang up on student loan borrowers,<sup>20</sup> that was reprimanded as recently as March for lying to borrowers about their right to forgiveness through PSLF,<sup>21</sup> or that has generated a decade of state, federal, and private litigation and investigations exposing abusive, unfair, or otherwise harmful servicing practices.<sup>22</sup>

Rather than focusing on how to avoid accountability and deflect blame, we encourage you to focus on finally delivering borrowers the rights they have long been denied and that ED’s actions may now allow them to access.

Our organizations intend to use every tool at our disposal—including, but certainly not limited to, open records requests,<sup>23</sup> investigative reports,<sup>24</sup> and the possibility of litigation<sup>25</sup>—to ensure that borrowers’ rights are protected and to hold you and the companies you represent accountable for the faithful implementation of ED’s changes to IDR.

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<sup>17</sup> <https://protectborrowers.org/advocates-warn-student-loan-companies-seek-to-undermine-pslf-overhaul-to-pad-profits/>

<sup>18</sup> <https://twitter.com/AnnaHelhoski/status/1516490486965489674/photo/1>

<sup>19</sup> See, e.g., <https://protectborrowers.org/setting-the-record-straight-eds-failures-in-student-borrower-protection/>

<sup>20</sup> <https://podscribe.app/feeds/https-feedsmegaphonefm-against-the-rules/episodes/85e9fb54-4f1a-11e9-b762-ab1aef38147d>

<sup>21</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sanctions-edfinancial-for-lying-about-student-loan-cancellation/>

<sup>22</sup> <https://protectborrowers.org/the-system-is-broken-what-more-than-a-decade-of-litigation-reveals-about-the-state-of-the-student-loan-industry/>; <https://protectborrowers.org/income-driven-repayment/>; <https://protectborrowers.org/public-service-loan-forgiveness-2/>

<sup>23</sup> <https://twitter.com/theSBPC/status/1516541312819941377>

<sup>24</sup> <https://protectborrowers.org/customer-disservice-examining-maximus-the-federal-contractor-that-just-became-the-largest-student-loan-company-in-the-world/>

<sup>25</sup> <https://protectborrowers.org/letter-to-pheaa-warning-of-potential-consumer-protection-violations-related-to-pslf-implementation/>



Millions of student loan borrowers are depending on you and the companies you represent to get the IDR fix right. We will remain extremely vigilant over the next several months to ensure that you do.

Sincerely,

Student Borrower Protection Center  
Center for Responsible Lending  
National Consumer Law Center  
Student Debt Crisis Center

CC:

Hon. Miguel Cardona, Secretary, Department of Education  
Hon. Richard Cordray, Chief Operating Officer, Office of Federal Student Aid, Department of Education  
Hon. Rohit Chopra, Director, Consumer Financial Protection Bureau