



MEMORANDUM

May 19, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center
RE: **Borrower Voices on the Incomplete Promise of Relief through IDR:
Deferments after 2013**

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. While we applaud the Department of Education’s recent efforts to remedy the past failures of IDR,¹ the steps outlined in the policy announcement only partially address longstanding IDR failures. As we have previously stated, to fully remedy the administrative failures and servicer misconduct around IDR, the policy must provide automatic IDR credit for *all* of a borrower’s time in repayment, including all time in forbearance, deferment, and default.

The current account adjustment proposal only partially addresses borrower’s struggles with being steered into deferment. Servicers have routinely placed borrowers struggling with repayment in deferments both before and after 2013—including for borrowers engaged in public service such as the Peace Corps or military service, those sick with cancer, or borrowers experiencing unemployment, among other situations. An IDR policy that does not recognize that borrowers after 2013 were regularly steered into various and prolonged deferments rather than to more beneficial income-based plans falls short.

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.² 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.³ In implementing the latter precept, the U.S. Department of Education (“the Department”) has

¹ <https://studentaid.gov/announcements-events/idr-account-adjustment>; <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

² <https://journals.sagepub.com/doi/abs/10.1177/0002716217701673>.

³ <https://protectborrowers.org/idr-history-report/>.



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.⁴

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.⁵ 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.⁶ 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.⁷

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, a recent Government Accountability Office (“GAO”) report found that only 132 borrowers have *ever* successfully achieved loan cancellation via IDR.⁸ 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.⁹ Using the Department’s limited data, the GAO found that at least 7,700 loans, totaling around \$49 million in repayment, could potentially be eligible for IDR forgiveness.¹⁰ The failure of servicers and the Department to accurately track repayment data means that the GAO was not able to perform a full analysis of what loans are potentially eligible for IDR forgiveness.¹¹ The report found that the Department’s data prior to 2014 is largely incomplete to accurately count a borrower’s time in qualifying repayment.¹² Despite the Department’s knowledge that payment counts could not be accurate, it continued to instruct servicers to consider previous servicer counts as accurate.¹³ Relatedly, the GAO report found that the Department does not provide sufficient information to borrowers about what constitutes a qualifying payment towards IDR forgiveness, including that periods of forbearance and most types of deferments do not count.¹⁴ Similarly, servicers and the Department do not notify borrowers of their progress towards IDR forgiveness, nor that borrowers can request to verify these counts.¹⁵

⁴ <https://studentaid.gov/manage-loans/repayment/plans/income-driven>.

⁵ <https://protectborrowers.org/idr-unaffordability-report/>.

⁶ <https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2018/07/Help-or-Hardship.pdf>.

⁷ <https://bfi.uchicago.edu/insight/finding/the-distributional-effects-of-student-loan-forgiveness/>.

⁸ <https://www.gao.gov/assets/gao-22-103720-highlights.pdf>; <https://www.gao.gov/assets/gao-22-103720.pdf> at 10.

⁹ <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%20204-8-21.pdf#page=2>.

¹⁰ *Id.*

¹¹ *Id.*

¹² <https://www.gao.gov/assets/gao-22-103720.pdf> at 11; 12.

¹³ *Id.* at 13; 14.

¹⁴ *Id.*

¹⁵ *Id.*

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 2025.¹⁶ 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.”¹⁷

The systematic collapse of the promise of relief that Congress made to borrowers flows from decades of inaction, incompetence, and unfortunately frequent malfeasance from the Department, 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.¹⁸ 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 variety of abusive practices with long-term consequences for borrowers.¹⁹ 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.²⁰ 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.”²¹

¹⁶ https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=18.

¹⁷ *Id.*

¹⁸ https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

¹⁹ <https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/>.

²⁰ <https://edtrust.org/resource/jim-crow-debt/>.

²¹ *Id.*

Deferment Steering After 2013 has Been Routine

Below is a selection of borrower narratives illustrating human toll that widespread illegal and incompetent practices relating to deferment use have had on borrowers pursuing IDR . For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled

1. Cindy is a nurse in NYC. She borrowed two FFEL loans and a Direct loan between 2008-2010. Her loans were initially serviced by Sallie Mae, transferred to Navient, and are currently with FedLoans. She's had several periods of deferment between 2010 and 2014, but she would've continued repaying if Sallie Mae hadn't automatically kicked her off her repayment plan. Cindy's loans fell into default in 2017—ED garnished that year's tax refund to the tune of \$8,000. She completed rehabilitation between 2018 and 2019, and entered a standard repayment plan in January 2020.²²
2. “[W]hen I first began paying my federal student loans, I was never offered any income-based repayment plans. I was informed of these plans by family and friends, not by my [servicer]. Once I discovered these options, and that my criteria fit them, I signed up. Before this time, I used the only options given to me by my [servicer] : Unemployment deferment, Economic Hardship Deferment, Internship Forbearance, etc. Each one of these options charged a fee in order to enroll. Each one of these options still charged me interest of some kind, and did not offer the same types of benefits as the income-based repayments. My salaries at the time were always provided, including proof of payment, etc. I would have qualified for income-based repayment at any point during these year.”²³
3. “My name is Sarah []. . . From 2006 through 2008, I taught English to grades five through 11 In Ukraine. . . I was not aware until October 2021, that a portion of my Peace Corps service could have been creditable for PSLF. For years prior, PSLF volunteers were advised by Federal loan servicers and Peace Corps to defer their loans and this is exactly what I did. . . . And what became of those other 8000 volunteers, not to mention the 1000s that followed us in service. I can quite confidently say that they were not counseled on their loan forgiveness options either. . . Peace Corps service can be incredibly challenging. Volunteers struggle with internet access. Most volunteers rely on phones that require them to pay for each minute of talk time, some of us have lived without a critical utility like electricity or running water. Transportation is spotty, illness and isolation are commonplace. We hands down do not have the ability to deal with loan servicing companies overseas . . . I have spoken with over 100 volunteers about their experiences. Our biggest concern is that over the years volunteers have been advised by loan servicers to simply defer their loans. . . some [volunteers] were actually given misinformation by loan servicers that influenced them to inappropriately defer their loans despite being aware of and seeking PSLF forgiveness. These concerns began from 2007 to present . . .”²⁴

²² Story on file with the Student Borrower Protection Center. Names changed for privacy.

²³ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3524947>.

²⁴ <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nov1pm.pdf>.



4. “My name is Megan . . . I served as a Peace Corps volunteer in Guatemala from 2010 to 2012. I lived in an indigenous village in the mountains, which was a six hour bus ride from the in-country Peace Corps office. Starting my service in 2010, I had less than \$30,000 in educational debt. . . Peace Corps advised us volunteers to defer payments. Peace Corps went so far as to include in our Guatemala welcome book that we obtain and submit loan deferment paperwork before our arrival in the country. I trusted that advice. I trusted that the same government I was serving would be the same government that ultimately forgave my loans. . . . Beyond what Peace Corps volunteers provide as a service to our host countries, we provide a public service to the UnitedStates. . . I worked hard. I followed the rules. I did what Peace Corps told me to do. Yet here I am, begging, not to be compensated, but begging that my two years I volunteered for our country counts towards my loan forgiveness. . . I live in a large city in New York as a public defender, make \$65,000 a year and have over a quarter million dollars in debt.”²⁵

5. “My name is Mona . . . I served in Jordan 27 months from 2011 to 2013, in Mongolia for eight months from 2009 to 2010. . . . As the child of immigrants, I was encouraged to go to school but had no support. I worked through community college and as a result did not qualify for any financial aid at the university I attended. Loans were a means to an end for me. I was the first to graduate in my family and much to my industrious parents' dismay, I chose a life of service. The value of service was important, but more than anything, my parents wanted me to be comfortable. I assured them that Peace Corps would take care of us since we were sacrificing two years of our lives to serve our country. . . I attended graduate school, reapplied for Peace Corps, and was placed in Jordan within two years of coming home. Before departing [] for both Mongolia and Jordan, I researched loans since that was a significant concern for me. I was pleased to learn from both Peace Corps and loan servicers that my loans could be deferred. I wanted to serve and deferment, although not ideal, made it possible. Materials from the Peace Corps and staff at staging confirmed that deferral was my only option. In Jordan, I actually consulted with a Peace Corps administrator a couple of times regarding loan concerns. I was getting older and saw the amount I owed grow significantly and feared a life of debt. Peace Corps staff told me that I should consider consolidating my loans privately at a lower rate. Thankfully, I did not consolidate my loans privately despite that advice. Peace Corps staff, although caring and helpful, didn't have the tools or knowledge to assist volunteers in making these critical decisions.”²⁶

6. “Upon leaving college, I struggled to attain a stable job in the disciplines and fields that I studied in and obtain ANY full-time employment at all for years, approximately nine, which has almost been the entire life of my loans with Navient. . . I experienced long term hardships . . . Each time that I called [] Sallie Mae [], I was urged by the customer service representatives to choose hardship/unemployment deferments. After I exhausted all of those, I was urged to request forbearance. On multiple occasions, I specifically asked what would be my best financial option and was told that the two previous methods would serve my situation best. Even after multiple years of unemployment, Navient still lead me towards these two options. I was not introduced to the IBR payment process until

²⁵ <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec7pm.pdf>.

²⁶ <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec9pm.pdf>.



I had fully exhausted the above methods. Had I been given IBR as an option, I could have greatly minimized my accrued interest, specifically multiple instances of compound interest. As I previously stated above, I have been unemployed or under employed for almost the entire duration of my consolidated loan period with Navient, but yet they misdirected me to more financially disadvantage[ous] options. . . . I am of the strong belief that my student loans have been grossly mishandled and that Sallie Mae/Navient's tactics have bordered on fraud. . . . Navient has caused me an immeasurable level of stress and an incalculable amount of financial damage as a result of their errors and questionable accounting practices.”²⁷

7. “I’m trying to resolve this issue with the department of education for almost 30 years. . . . After a few months of attending [] school I came down with the flu . . . After about 2 weeks I felt much better and went back to school and they told me I could not go back to class because I had missed too many days. . . . Months pass and I try to call. . . and I was not able to speak to anyone about getting back to school. . . I went in person and try to speak to anyone and to my surprise, the school had closed [] So I called [my servicer] and they told me to apply for an Economic hardship deferment request and at the time I was not working so they told to apply for an Unemployment Deferment. . . . After a few years of dealing my [previous servicer] and no solution to my problem, I received a letter saying that my loan had been acquired by Sallie Mae, so I started calling and speaking to Sallie Mae representatives and I explain the problem that I had with my student loan and they also ask me to send an . . . Economic Hardship [application].”²⁸

Additionally, here are stories that have previously been used in our memoranda on servicer deferments and forbearance steering.

8. “Michele hasn’t been able to afford payments under a standard plan, and has been in default. She could lose her teaching certificate. Ever since she started repayment on her loans, whenever she calls Navient about a lower payment, they push her into forbearance or a deferment. Michele was diagnosed with an autoimmune disease after college and her monthly medical bills prevent her from making student loan payments. Navient has told her there is no medical consideration unless she is 100% disabled. As a teacher, Michele brings home \$2600 a month and that has to cover car, insurance, rent, utilities, food and an average of \$250 a month in ongoing medical costs that will never go away.”²⁹
9. Kathleen: “I didn’t even know my loan was FFEL before the pandemic. I had no financial counseling when going to school. They told us sign here. My loan servicer never communicated anything. I have worked for a 501 3 c my entire career and was never approved for the public student loan forgiveness. I was encouraged to use my forbearance and deferment. I am default with wage garnishment. . . . I followed advice from my servicer for years. And now I realize I was not counseled appropriately.”

²⁷ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3936674>.

²⁸ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4108640>.

²⁹ Story on file with the Student Debt Crisis Center. Name changed for privacy.



10. 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.

As these stories illustrate, the IDR account adjustment fails to acknowledge that deferment steering, apart from in school deferment, has been common since 2013. While the Department’s announced policy proposes to count borrowers’ time in deferment before 2013, the policy fails to acknowledge that servicer incompetence and failures of government policy have continued to lead borrowers into frequent periods of deferment since then. Just as forbearance steering has been common, servicers routinely advise borrowers to put their loans in deferment rather than advising them to enroll in low-cost IDR plans. For instance, borrowers who participated in the Peace Corps have routinely been misadvised by servicers and the government to place their loans in deferment for the two year period of their service, despite their eligibility for \$0 or very low payments on an IDR plan: this advice was so common as to be in orientation handbooks. Moreover, servicers since 2013 routinely pushed borrowers into deferments when they struggled with payments. Indeed, borrowers who are in military service, unemployed, or sick with cancer are routinely put in deferments. These practices did not cease in 2013.

Additionally, the Department’s proposal is administratively unworkable and will create hurdles for borrowers to obtain the relief they are entitled to. A borrower’s student loan data file on Federal Student Aid does not even show what type of deferment a loan was in—whether in school, economic hardship, or otherwise. A borrower will not be able to verify the type of deferment they were under, and what they should receive credit for.

While the policy announced by the Department will certainly help thousands of people, it leaves out some of the most vulnerable borrowers. To be fair, effective, and administratively feasible, an IDR account adjustment must count all time since the end of a borrower’s grace period towards IDR forgiveness.

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.³⁰ 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.³¹ For tens of thousands of borrowers, that relief included immediate debt forgiveness.³²

The Department’s account adjustment announcement is a powerful step forward but simply falls short. Borrowers and a broad coalition of advocates have been calling on the Biden administration to use authorities already at its disposal to initiate a bold IDR relief program to deliver justice and relief to the millions of borrowers who have been denied the promise of IDR.³³ 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 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.³⁴ This proposal is supported by 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.³⁵ The Department’s piecemeal IDR adjustment leaves out far too many borrowers and will create a kafkaesque implementation nightmare in which borrowers who are entitled to relief will not receive it because of administrative hurdles. The Department must enact a simple, straightforward IDR waiver that counts all of a borrower’s time elapsed since their grace period.

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.

³⁰ <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>.

³¹ *Id.*

³² *Id.*

³³ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

³⁴ <https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/>.

³⁵ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.