



MEMORANDUM

May 4, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: Borrower Voices on the Incomplete Promise of Relief through IDR: Missing and Inaccurate Loan Payment Histories

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 regardless of their repayment status *since a borrower exited their grace period*.

The current IDR account adjustment proposal assumes that servicers, the Department, and borrowers have access to full and accurate payment histories. And yet, by the Department’s own admissions, neither the Department, servicers, nor borrowers have this history. An IDR adjustment that relies on accurate monthly payment histories is administratively unworkable and falls short. To fully remedy the failures of IDR, the account adjustment must count all months that have elapsed since a borrower exited their grace period towards IDR forgiveness.

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 And despite the Department’s knowledge that payment counts could not be accurate, it continued to instruct servicers to consider previous servicer counts as accurate.¹² 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.¹³ Similarly, servicers and the Department do not notify borrowers of their progress towards IDR forgiveness, nor that borrowers can request to verify these counts.¹⁴

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

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-%202024-8-21.pdf#page=2>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 13; 14.

¹³ *Id.*

¹⁴ *Id.*

the more than 8.5 million borrowers whose federal student loans it manages, only 48 are projected to receive debt cancellation under IDR by 2025.¹⁵ 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.”¹⁶

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.¹⁷ 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.¹⁸ 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.

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.¹⁹ 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.”²⁰

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

¹⁶ *Id.*

¹⁷ https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf#page=15.

¹⁸ <https://protectborrowers.org/student-borrower-protection-center-statement-on-navients-settlement-with-39-states-cancelling-1-7-billion-in-predatory-private-student-loans/>.

¹⁹ <https://edtrust.org/resource/jim-crow-debt/>.

²⁰ *Id.*

The Current Waiver Proposal is Based on the Myth of Accurate Payment Histories

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on borrowers, particular as to the Department's and servicer's failure to retain accurate loan payment records and data. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled, and the account adjustment as currently conceived is insufficient to remedy the harm done.

1. Hilary is a 70 year old borrower in California. She had \$42k in debt at graduation and now owes about \$178k due to interest accruals. She has worked without stopping since graduation while being a single mother, including working for years at a preschool from 2005 to 2019. This preschool happened to be a private for-profit company, so she does not qualify for the Public Service Loan Forgiveness ("PSLF") program. Student debt has prevented Hilary from getting a home, supporting her family, and retiring comfortably.

Hilary has been in IDR since 1998 after being in forbearance for ~10 year before that. She consolidated in 2000, and it appears her loans were transferred from ACS to MOHELA in 2008. It appears certain records of payments before this transfer were lost. MOHELA recognizes Hilary's first IDR payment as being in February 2001. At least some points during her repayment sequence Hilary received a \$0 payment under IDR. MOHELA claims she has 191 months of payments toward IDR forgiveness (she is in REPAYE and has grad loans).

Hilary can't get a straight answer about how her payments are being counted. She says: "My loan should have been forgiven in 2018 . . . but when I inquired about it, I was told that because my loan was transferred from one servicer to another, I forfeited all the years I had accrued prior to the transfer! I am now 70 years old and have no idea if or when my loan will ever be forgiven-- goodness forbid it should be transferred again!"²¹

2. "After graduating in 2013, I began paying back my student loans in 2013 to Navient. When I requested a payment history, 3 years of payments, totaling \$15,000 were missing."²²
3. "I am requesting the following actions . . . that the DOE review and correct erroneous information on my payment history, especially the years . . . where [my servicer] recorded me as being in forbearance. . . I am writing as a student loan borrower and a public servant. I have been teaching since XXXX, first in public schools and now in a public university. My first student loans were taken out in XXXX and then were consolidated in XXXX. These student loans have caused a lifetime of debt, stress, and worry for me. . . Throughout the time that XXXX serviced my loans, they made a multitude of errors on my records. Those mistakes are still in my payment history, and XXXX refuses to correct them, as my loans were transferred to FedLoan for PSLF."²³

²¹ Story on file with the Student Borrower Protection Center.

²² <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5111194>.

²³ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5221350>.



4. “My loans/payment [were] serviced by [] . . . transferred to Direct Loans, then again to [their] final destination[,] FedLoans. My payment history only goes back to XX/XX/XXXX! [but] I finished undergrad XX/XX/XXXX. . . I have no history of payments from XXXX. . . . [I] sent request for [history] of payments, hoping it goes further than Dept education records which stops . . . My bank from that period is obsolete, bank has been closed or bought out . . . I have no record of payments. Direct Loans is not even in business to retrieve payment history. I don’t see how my payment history would not be transferred to FedLoans . . . I had put too much trust into system to keep tracking for me . . . ”²⁴
5. “My account was just purchased by another lender. I had documented on my previous account all my payments and payoffs but now none of that is available online. The account originally is through [year] and recently just transferred to [a new servicer]. There is no payment history and my [balance] seems a lot higher than it was originally about a year ago . . . I also have to pay for 4 children now single without child support, working as a state government employee and was interested in loan forgiveness and seeing what new options I have, and I am soon about to change careers along with considering re-entering into school for masters degree, but I am now figuring out I may just be growing a large monster bill.”²⁵
6. “I am so confused at this point as to whether my loan would even qualify for forgiveness. Both [my servicer’s website and the Federal Student Aid website] confuse me. I don't know whether I really have [an] accurate picture as to what happened with my loan. I originally received a disbursement in 2002 for [approximately \$45,000] which I believe was when I [] consolidated thinking that it would be to my benefit. I can't even find on the website[s] when I first entered into the IDR repayment plan. I thought I was in it from the beginning and I was told today that I entered it in 2011. So now I only have 115 qualifying payments towards the 20 years when I actually made 211 payments during the lifetime of my loan. My loan has now grown to over \$95,000 dollars and they tell me I have 10+ years of payments. My age is approaching 60 and I cannot see how I will be able to continue making my \$500+ a month payments as I will be receiving medicare before that! Oh, and on the FedGov website it says I was disbursed a total of \$117,000! What?!!”²⁶
7. “Since I've entered repayment, I have always been on an income-driven repayment plan. The repayment plans have always been on IBR, ICR, or REPAYE. With the exception of transitioning to what was then the new REPAYE plan, I have never been in any forbearance or deferment. However, FedLoan provides 16 ineligible PSLF payments with the indicator " You Do Not Have A Bill Due For This Payment Period ". My loans were with then XXXX (no longer a servicer[]). These were definitely qualifying payments. My Direct Loan servicers were as follows : XXXX : XX/XX/XXXX through XX/XX/XXXX XXXX : XX/XX/XXXX through XX/XX/XXXX FedLoan/PHEAA :

²⁴ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5185261>.

²⁵ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5112810>.

²⁶ Story on file with the National Consumer Law Center.



XX/XX/XXXX through present. FedLoan is missing so many months between XX/XX/XXXX through XX/XX/XXXX but has some records of my payment. That is incredibly strange that they retained and are only able to reconstruct part of my payment history with XXXX but not for other months.”²⁷

8. “Navient is showing that I have missed a payment in XXXX and XXXX of 2020, which is inaccurate and misleading information. I have never paid late on this account . . . The payment history is also showing to be inconsistent. The month of XX/XX/2020 it shows that I was 90 days late and XXXX shows XXXX days late. How is that possible?”²⁸
9. “I have been paying on my Direct student loan for over 22 years. I have been on the IDR plan for almost that long. I graduated from Columbia College in Chicago in 1991. My student loan was originally about \$56,000 and eventually grew to \$141,000 as of today. I was very poor and the first one in my family to attend college. I didn't have any money other than financial aid to help me pay for my studies. I was required to take out loans to help cover the cost of my tuition and books each semester. . . . Once I graduated, I was unable to find a job in journalism . . . I eventually took the only job that was offered to me as a summer teacher at my old elementary school. Then I became a substitute teacher and teacher assistant with the Chicago Public Schools for several years because I could not find a better job. My salary was about \$500 weekly. Years later, I went on to accept a job as a customer service representative for AT&T for \$12 an hour. My wage eventually grew to \$55,000 a year before I was laid off in March 2021 after 20 years of service. I never made enough money to pay off my loans. Luckily, I was approved to pay under the IDR plan many years ago and was able to pay a small amount based on my salary. Now, I am hoping that I have enough years under IDR to be eligible to have my student loan forgiven. I spoke to my student loan servicer Mohela several weeks ago and was told that they are unable to determine how long I have been paying on my loan, and that according to their records, I am nowhere near close to paying them off.”²⁹
10. “I am totally confused regarding who and who is handling my student loan activities. I took out a loan for graduate school . . . with XXXX XXXX, then XXXX XXXX contracted my loan to a XXXX and now to Ascendium. . . . [I] [h]ave been paying on my loan since graduation except for [some time] due to XX/XX/XXXX crashed when I lost my job . . . and I requested forbearance until I had another job . . . Further after examining the loan I downloaded it states a loan date of XX/XX/XXXX and disbursement date of XXXX. I graduated from XXXX University in XXXX. I did not take out any loan in XX/XX/XXXX. I was not in any school whatsoever. . . I can not get through to anyone at Ascendium . . . Since it's had to get someone at Ascendium, I went on-line to check my payment history and I am surprise[d] there is NO PAYMENT HISTORY whatsoever.”³⁰

²⁷ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5069934>.

²⁸ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4952630>.

²⁹ Story on file with the SBPC.

³⁰ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4147277>.



11. “My original servicer was Sallie Mae. Navient took over and my payment history of over 10 plus years disappeared. . . . I have never been delinquent on my student loans. Everytime I inquire I am being given the run around and told that I did not start paying the loans until XXXX. This is untrue because I graduated in XXXX and started making payments 6 months later.”³¹

As these stories illustrate, borrowers’ loan payment and status histories are often missing or incomplete. The current IDR waiver proposal is predicated on the myth that the Department, servicers, and borrowers have full, accurate records of borrowers’ payment histories. Specifically, the account adjustment assumes that servicers can track 12 or more months of consecutive forbearance, 36 or more months of cumulative forbearance, and all months spent in deferment prior to 2013 in a borrower’s payment history. Similarly, the policy assumes that borrowers have access to accurate payment history records in mandating that borrowers who were steered into shorter-term forbearances can proactively seek account review.

The proposed policy is contrary to the facts: servicers plainly do not have accurate records of borrowers’ loan histories. As has been documented, Affiliated Computer Services (“ACS”), the only student loan servicer for federal loans until 2009, consistently failed to keep accurate records of borrowers’ payments.³² But the problem of inaccurate payment history goes far beyond ACS and stretches to the present. As the GAO identified and the Department conceded, servicers do not have accurate records of borrowers’ payment histories, especially before 2014, including time spent in deferment and forbearances.³³ As the stories above indicate, transfers between servicers are routine and, when these transfers are effectuated, servicers and borrowers often lose borrowers’ payment histories.³⁴ These problems are only likely to continue given that four major servicers are currently in the process of exiting the student loan market, and approximately 16 million³⁵ borrowers’ accounts are being transferred to new servicers.

Furthermore, as a recent GAO report demonstrated and by the Department officials’ own admissions, the Department has known for years that it does not have accurate borrower payment histories, especially before 2014.³⁶ The Department’s National Student Loan Data System (“NSLDS”) is riddled with missing data—so much so that the GAO could not accurately perform its analysis of how many loans are eligible for IDR forgiveness.³⁷ Indeed, “[a]ccording to Education officials, prior to 2014, NSLDS did not contain complete and reliable data on delinquencies or information on repayment plans, which is needed to determine whether a loan is

³¹ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4915688>.

³² https://protectborrowers.org/wp-content/uploads/2020/12/Broken-Promises_ACS-12_9.pdf;
https://protectborrowers.org/wp-content/uploads/2020/09/ACS_Findings.pdf.

³³ <https://www.gao.gov/assets/gao-22-103720.pdf> (at 12). (“In particular, a 2016 Education monitoring report found that months when loans were in an economic hardship deferment or when the approved monthly payment was \$0 may not have been consistently counted as qualifying payments. Several servicers also said some counts they received from the original servicer were missing economic hardship deferments or other types of qualifying payments.”)

³⁴ See https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf. (at 61-65).

³⁵ <https://www.forbes.com/sites/adamminsky/2021/10/01/student-loan-servicing-transfers-begin-this-week-as-servicer-upheaval-expands-key-details/?sh=5908650260ee>.

³⁶ <https://www.gao.gov/assets/gao-22-103720.pdf> at 11-12, 28 (“NSLDS did not include information on repayment plans prior to 2014.”)

³⁷ <https://www.gao.gov/assets/gao-22-103720.pdf>.

on a plan that could qualify for IDR forgiveness. Education took steps to address these data limitations starting in 2014; however, the changes do not retroactively apply to older data according to Education officials. . . . while NSLDS also includes cumulative counts of qualifying payments toward IDR forgiveness, officials advised against using them in our analysis because they are not sufficiently accurate.”³⁸ While the Department took steps in 2014, 2018, and 2020 to improve data collection practices, these changes were not retroactive and did not fully solve the problems.³⁹

Without accurate information from the Department or their servicers, borrowers are left to piece together payment histories from their bank account records or receipts. Borrowers’ may have closed their bank accounts and lost payment histories, and banks are not required to keep account records beyond five years⁴⁰ And, as with all broken policies, the most vulnerable borrowers—or those who do not have the time, resources, or technical savvy to maintain and comb through years of bank and personal records—will be left without recourse for failures of the Department’s account adjustment policy.

While the policy announced by the Department will certainly help thousands of people, its design assures it will fall severely short. Even assuming that payment history errors could be fixed, correcting inaccurate IDR payment counts is a complex and time intensive practice: by the Department’s own estimate, “the manual review process to verify qualifying payment counts would have taken 8 to 10 hours per loan.”⁴¹ **Considering that 4.4 million borrowers may be eligible for IDR forgiveness, the Department’s current proposal for servicers and borrowers to count months of forbearance and certain deferments is unworkable.** An IDR waiver that genuinely seeks to solve the failures of IDR should count all months since the start of repayment, or since a borrower exited their grace period, regardless of payment status. A policy that requires the Department, servicers, or borrowers to parse through years of payment histories does not acknowledge the reality of borrowers’ lived experiences with our broken student loan system and denies realities the Department has itself acknowledged.

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.⁴² 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.⁴³ For tens of thousands of borrowers, that relief included immediate debt forgiveness.⁴⁴

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

³⁸ *Id.* at 11.

³⁹ <https://www.gao.gov/assets/gao-22-103720.pdf> (12-13).

⁴⁰ 31 CFR 1010.430(d).

⁴¹ <https://www.gao.gov/assets/gao-22-103720.pdf>.

⁴² <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>.

⁴³ *Id.*

⁴⁴ *Id.*

relief to the millions of borrowers who have been denied the promise of IDR.⁴⁵ 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.⁴⁶ 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.⁴⁷

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 since the month a borrower exited their grace period.

⁴⁵ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.

⁴⁶ <https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/>.

⁴⁷ https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.