MEMORANDUM

June 16, 2022

TO: Interested Parties
FROM: Student Borrower Protection Center

RE: **Borrower Voices on the Incomplete Promise of Relief through IDR: FFEL Borrowers and Forbearance Steering**

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 U.S. Department of Education's ("Department") 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.

As part of the IDR account adjustment, the Department should ensure that Federal Family Education Loans (FFEL) borrowers get the full benefit of the adjustment. The Department could do this by instructing guaranty agencies holding FFEL loans to automatically write-off all loans whose borrowers have 20 or more years of repayment history. And the Department should proactively do outreach to FFEL borrowers, either to notify them of the automatic discharge or urge them to consolidate their loans to obtain credits towards forgiveness under the IDR account adjustment.

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 Department has entitled federal student loan borrowers in

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[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/.

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, totalling 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]

Worse, the situation for borrowers pursuing cancellation through IDR appears unlikely to

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[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-%204-8-21.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.*

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*.

FFEL Borrowers Have Disproportionately Been Driven Into Unnecessary Forbearances

Below is a selection of borrower narratives illustrating the human toll that widespread illegal and incompetent practices related to IDR have had on FFEL borrowers.[22] These stories have appeared in previous memoranda we have submitted. For these borrowers, and for millions more just like them, the promise that Congress made through IDR remains unfulfilled.

1. 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 legal aid'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 legal aid's help. They immediately submitted an IDR request which was granted, with a $0 monthly payment.

2. Kathleen is in default on her loans, and before the pandemic, experienced wage garnishment. Kathleen's loan servicer never communicated her real options to her—she was repeatedly encouraged to use forbearance and deferment. When they told her to do so, she followed their advice. The interest on her loans has caused the balance to balloon. Kathless now realizes that she was not counseled appropriately. Similarly, she has worked for a 501(c)(3) for her entire career and was never approved for public student loan forgiveness—she did not realize until the pandemic that she had a FFEL loan and how that impacted her PSLF eligibility as her servicer did not explain this.

3. Teddy's loans are in default, he has had them for over 20 years—they were in forbearance for 12 of those years. Teddy has always worked just over minimum wage jobs, but did not realize there were affordable payment options through IDR. In 2019, his wages were garnished—the Department took 1/3 of his gross pay each payment period as payment. Garnishment made it really hard to get by. Teddy lost his apartment and was temporarily homeless until his parents let him move in with them in Texas. He was months behind on my car payments. If his parents were to pass away, Teddy feels he would end up homeless and living in his car, because his current job, where he makes $13/hour, does not provide me enough money to have his own place.

4. 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—

[22] Stories on file with the Student Borrower Protection Center; the National Consumer Law Center; the Student Debt Crisis Center; Housing and Economic Rights Advocates; and the Legal Aid Foundation of Los Angeles. Names have been changed for client privacy.

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.

5. 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 percent 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 pays $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.

6. 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. Additionally, because California Institute regularly and unlawfully kept refunds that should have been returned to the Department after students withdrew, legal aid also submitted an unpaid refund request application to

her guaranty agency, Ascendium. The guaranty agency denied the application, and there are no appeal rights.

As these stories illustrate, FFEL lenders/servicers have repeatedly driven borrowers into long-term forbearances rather than into low-cost, affordable IDR plans. The Department's settlement and compromise authority clearly applies to the FFEL loan portfolio—indeed, the Secretary's statutory authority to settle or compromise loans is outlined in the section of the Higher Education Act establishing the FFEL program.[23] The Secretary as such should direct guaranty agencies to automatically write-off FFEL loans with 20 or more years of repayment history. Requiring a proactive consolidation from FFEL borrowers is unnecessary for these borrowers, and means that millions of borrowers will be unfairly excluded from relief.

Additionally, the Department should proactively do outreach to all FFEL borrowers to notify them of the IDR account adjustment, particularly for borrowers with less than 20 year repayment who will not see automatic relief. Regardless of whether the Department chooses to implement the automatic discharge, the Department should ensure that all FFEL borrowers receive correspondence outlining the steps they need to take to benefit from the account adjustment and/or the automatic relief these borrowers will experience.

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.[24] 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.[25] For tens of thousands of borrowers, that relief included immediate debt forgiveness.[26]

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.[27] 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.[28] 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

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[23]20 U.S.C.§ 1082.
[24]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.
[25]*Id.*
[26]*Id.*
[27]https://protectborrowers.org/wp-content/uploads/2022/02/Final-IDR-Waiver-Coalition-Letter-2_9_2022.pdf.
[28]https://protectborrowers.org/borrower-advocates-demand-that-education-department-restore-the-promise-of-income-driven-repayment/.

student borrowers and workers across the country.[29] 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, and ensure that FFEL borrowers are fully included in this relief.

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