



STUDENT BORROWER
PROTECTION CENTER

COLLECTION AT ALL COSTS

Unlocking Cancellation for Incarcerated
Borrowers

June 2023

About the Student Borrower Protection Center

The Student Borrower Protection Center is a nonprofit organization focused on eliminating the burden of student debt for millions of Americans. We engage in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance racial and economic justice.

About This Report

This report examines new evidence of the challenges faced by borrowers caught at the intersection of the student debt crisis and mass incarceration. Building on previous research and in partnership with incarcerated student advocates and educators, we discovered a 100 percent default rate for student loan borrowers enrolled in Higher Education in Prison (HEP) programs operating within a number of correctional facilities on the east coast.¹ Our investigation also found that the President's student loan cancellation plan would be particularly beneficial to these incarcerated borrowers—94 percent of whom would see their debts totally erased under the plan. These findings are an indictment of the Department's current treatment of incarcerated borrowers and demand reform if President Biden's efforts to overhaul and improve the student loan system are to be successful for all borrowers. Our findings suggest that without cancellation incarcerated borrowers will remain locked out of higher education and denied the improved post-release outcomes it brings.

Methodology

This brief draws on data representing more than 300 students enrolled at a number of correctional facilities on the east coast. Specifically, SBPC examined loan data for 57 students who owe federal student loans and discovered that every one of them is in default. To anonymize the data, administrators removed all identifying student information, randomly sorted the data, and made small value adjustments to individual and total loan balances. Administrators and SBPC found that these small, random value changes did not impact the overall analysis.



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Executive Summary

For decades, incarcerated individuals have been intentionally and systematically locked out of higher education. The federal student aid program has played a critical role in this exclusion by blocking Title IV access for would-be students behind bars, a denial most harmful in the longtime prohibition on incarcerated students accessing the Pell Grant. This restriction has had dire effects on incarcerated individuals, who are more likely to find gainful employment and housing and are less likely to return to prison if they participate in Pell Grant-funded Higher Education in Prison (HEP). The U.S. Department of Education's (Department) recent announcement that incarcerated students will soon have renewed access to the Pell Grant and Prison Education Programs (PEPs) is a step in the right direction, but leaves behind many of those most in need of reform. Incarcerated student loan borrowers remain locked out of higher education as they enter the criminal legal system already in federal student loan debt and, thus, are likely to slip into default with devastating consequences even beyond Pell Grant ineligibility.

This report builds on a prior Student Borrower Protection Center (SBPC) and National Consumer Law Center (NCLC) report, *Collection At All Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis*, about the ways incarcerated student loan borrowers have been locked out of the federal debt relief programs and overwhelmingly locked into a nightmare of default on loans that should have been their key to the American Dream. In particular, this crisis has a devastating impact on communities of color due to the deep racial inequities entrenched in both the student loan and criminal legal systems. Our first report concluded that the Department's insistence on collecting student loan payments from borrowers who are incarcerated is a fruitless endeavor due to the myriad financial and communication challenges inherent to student loan servicing within the carceral context. Even the Department appears to acknowledge that servicing defaulted loans is a waste of taxpayer dollars as demonstrated by its practice of writing off the defaulted loans of borrowers incarcerated for periods of 10 or more years as uncollectible.

Our analysis of new data from student loan borrowers enrolled in HEP substantiates our earlier conclusion that an overwhelming majority of incarcerated borrowers are likely in default and calls for reform of the Department's current approach to managing their loans, revealing that:

- **More than 90 percent of these borrowers owed less than \$20,000 and could therefore see their debt completely wiped out by the President's cancellation plan.**

- **Fully 100 percent of the borrowers in this case study were in default on their federal student loans, compared to only about 20 percent of all student loan borrowers before COVID-19.**
- **Without student loan cancellation, most incarcerated borrowers will be locked out of higher education and the improved post-release outcomes it brings, since PEPs will be reliant upon federal student aid and will likely turn away Pell Grant-ineligible individuals who are unable to fund their own educations.**

Incarcerated borrowers are uniquely situated to benefit from President Biden's student debt relief plan. But while the plan and the millions of federal student loan borrowers whose lives would be transformed by it remain in limbo as the U.S. Supreme Court considers striking it down at the request of partisan actors, there are actions the Department must take right now to alleviate the extraordinary debt burden exposed by these findings as weighing on incarcerated borrowers.

Most immediately, **the Department can and must cancel all student debt owed by borrowers who are incarcerated.** The Department is not limited to the statutory mechanisms underpinning the President's student debt relief plan to bring relief to this cohort. Instead, both the Secretary of Education's expansive waiver and compromise authority and the Department's current practice of "writing off" the debts of borrowers who are in default while serving sentences of 10 or more years should serve as starting points for making the necessary policy or regulatory changes to bring relief and borrowers out of default.

Background

America's student debt crisis is one of epic proportions. More than 43 million borrowers owe roughly \$1.6 trillion in federal student loan debt, and before the payment pause relieved some of the financial burdens caused by the COVID-19 pandemic, 9.5 million (about one-in-five) of those borrowers were in default on nearly \$200 billion of federally-held student loans.² Many of these borrowers fell into and remained trapped in default due to years of rampant mismanagement and industry abuses by student loan servicers, burdensome requirements to access debt relief programs, and unduly punitive debt collections practices.³

Federal student loan borrowers who are incarcerated are often overlooked and are more likely to struggle to overcome these challenges due to the unique conditions of incarceration. As the SBPC and NCLC first reported in *Collection At All Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis*, incarcerated people often lack access to the most basic tools needed to address the servicing failures and onerous requirements that lead them overwhelmingly to default—and the consequences of defaulting on a federal student loan can be particularly dire for currently and formerly incarcerated borrowers.⁴ The burden of student loan debt while incarcerated and the resulting inevitable slide into default is just one more eventual impediment to incarcerated borrowers' successful reentry into their communities.⁵

As Americans from all walks of life continue to recover from the COVID-19 pandemic and its devastating economic fallout, the Biden Administration has introduced several student loan debt relief programs to help remedy these long-standing systemic failures. The Department's efforts to ensure that no student loan borrower is left worse off by the economic upheaval caused by the pandemic, alongside preparations for millions of borrowers to return to repayment for the first time in over three years, have sparked a moment of reckoning ripe for systemic change. Among the several initiatives meant to ease the strain on both borrowers and our broken student loan system, the President's plan to help tens of millions of borrowers recover from the economic harms caused by COVID-19 has the potential to be particularly impactful for incarcerated borrowers.⁶ This one-time cancellation of \$10,000 in federal student loans for borrowers earning less than \$125,000 per year, with an additional \$10,000 for borrowers who received a Pell Grant, will be hugely impactful for incarcerated borrowers—all of whom likely earn significantly less than the plan's income threshold and who are likely Pell Grant-eligible as long as they are not in default.

While the Department does not record the number of borrowers who are incarcerated, experts estimate

that as many as a quarter million borrowers are confined within federal, state, county, and local facilities.⁷ Our analysis of the 57 borrowers enrolled in HEP programs educating more than 300 incarcerated students in total shows that 94 percent of the borrowers could see their debts totally erased under the maximum \$20,000 of cancellation and that nearly 75 percent of the borrowers owe less than the \$10,000 minimum the President has promised to cancel for non-Pell Grant recipients. Given the financial realities of incarceration, and the fact that these borrowers likely received Pell Grants prior to incarceration, it is likely that all of these borrowers would qualify for the \$20,000 in cancellation as Pell Grant recipients.

Astonishingly, every one of the 57 borrowers is in default on their federal student loans. While these specific borrowers were able to continue their education behind bars despite default status, most PEPs are reliant upon federal student aid and thus tend to turn away defaulted borrowers who are ineligible for the Pell Grant and unable to fund their own educations.⁸ This finding is consistent with the conclusions in the *Collection At All Costs* report, which found that it was nearly impossible to stay out of default while incarcerated. A federal student loan default means that most borrowers will not only see their balances and interest snowball while incarcerated, but they are also denied access to further education and miss out on the increased chances of successful reentry that come with it.⁹

Individuals who participate in education programs while incarcerated are nearly 50 percent less likely to return to prison than their peers who do not.¹⁰ The Administration is well aware of these data and recently recognized that access to education is a critical tool in reducing recidivism by eliminating the long-standing prohibition on incarcerated students accessing education through the Pell Grant.¹¹ This renewed commitment to prison education and the expansion of Pell Grant eligibility make our findings about how default impacts education access behind bars particularly timely. And critically, reform on this issue also presents a unique opportunity for the Administration to address the disproportionate harmful effects that the student loan and mass incarceration crises have on communities of color.¹²

Thus far, the Department's efforts to improve student loan servicing and decrease defaults for incarcerated borrowers have failed. Until recently, the Department had not developed any policies or practices specific to servicing incarcerated borrowers with loans in good standing. The few programs that did exist were geared entirely toward borrowers already in default and included the write-off of defaulted loans owed by borrowers incarcerated for 10 or more years and collection suspensions for defaulted borrowers with shorter sentences.¹³ Neither of these options created a pathway out of default or removed the barrier to education access for incarcerated borrowers. And more recent programs like the "Fresh Start" initiative to help borrowers exit default and even the President's one-time cancellation plan seem poised to continue to fall short of reaching all incarcerated borrowers.¹⁴

Given these circumstances, ongoing automatic and systematic cancellation must be a critical component of the President's promise to support incarcerated and formerly incarcerated individuals as they prepare to reenter their communities.¹⁵ Borrowers who are incarcerated have limited financial means or technical ability to keep their student loans in good standing and little recourse to get out of default once they inevitably fall into it. Further, they have a heightened need *not* to be in default so that they may access PEPs and so that the myriad post-release collateral consequences like housing and employment discrimination will not be exacerbated by a black mark on a credit report or the federal government swooping in to seize whatever public benefits they may qualify for or wages they may earn.

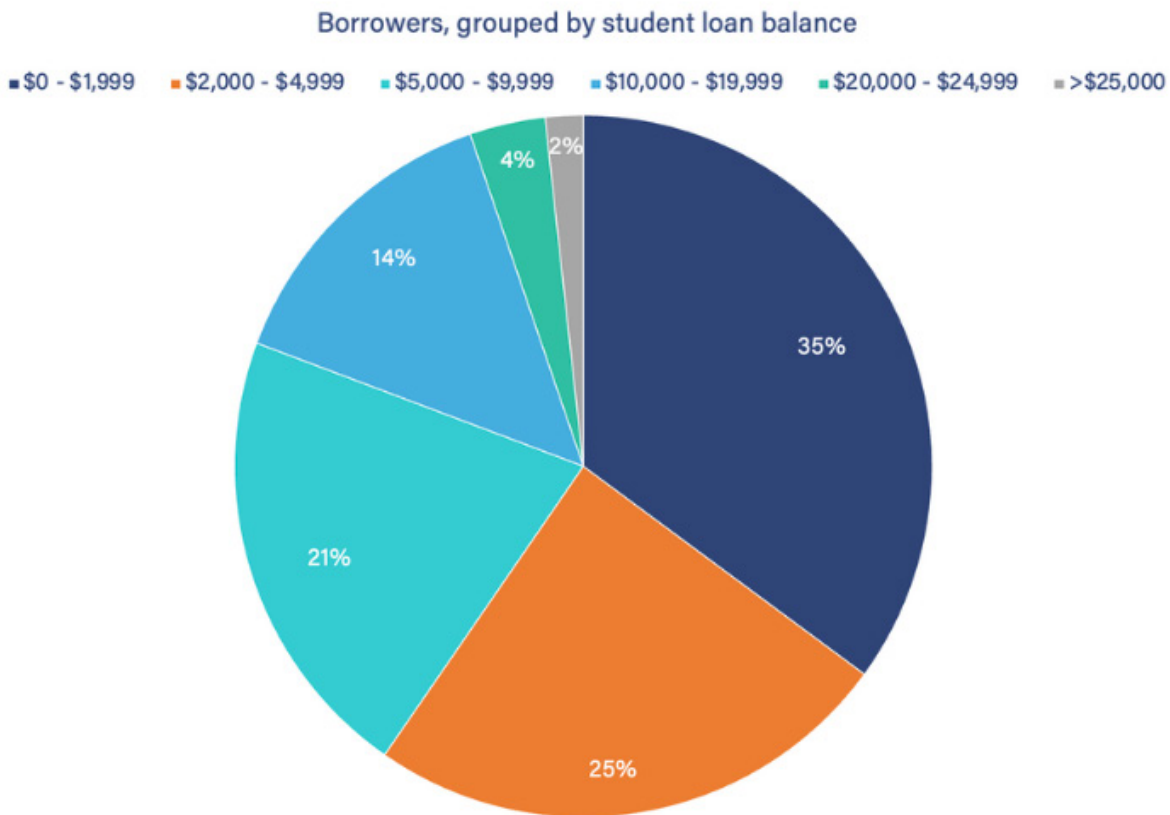
The conditions of incarceration demand cancellation for this vulnerable group of borrowers.

Case Study Findings

The SBPC analyzed data collected from HEP programs operating at several correctional facilities on the east coast. This analysis shows that incarcerated borrowers default on their federal student loans at an alarming rate; in fact, 100 percent of these student loan borrowers are in default on their loans, compared to 18 percent of federal student loan borrowers overall before COVID-19.¹⁶ The breadcrumbs the Department has tossed towards this vulnerable group of borrowers thus far are clearly not up to the task of keeping their loans in good standing—cancellation is desperately needed.

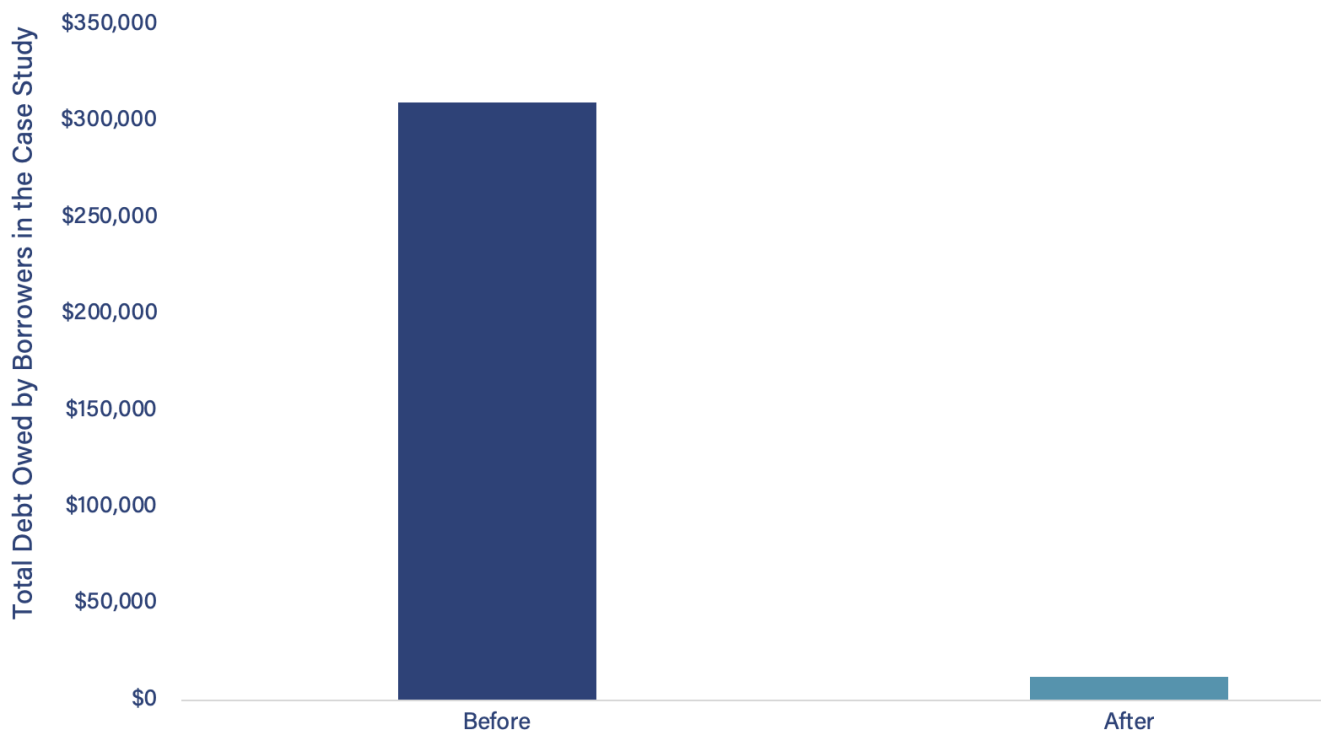
The vast majority of these borrowers have relatively low debt amounts. In fact, about one-in-three borrowers in our case study have a balance that is less than \$2,000, while two-thirds of borrowers have a balance under \$5,000, and roughly three-in-four borrowers owe less than \$10,000.

Figure 1: 94 percent of incarcerated borrowers owe less than \$20,000 and nearly 75 percent owe less than \$10,000.



However, our findings on the distribution of balances among incarcerated borrowers implies that incarcerated borrowers in default and their families will experience sweeping benefits from President Biden's cancellation plan when it is enacted. In particular, we estimate that every incarcerated student loan borrower in our dataset would be eligible to receive cancellation under President Biden's cancellation plan, and that over 90 percent of these borrowers would see their debt entirely erased. Those with remaining balances would owe only a few hundred or thousand dollars of debt left outstanding.

Figure 2: President Biden's cancellation plan would eliminate the vast majority of federal student loan debt attributable to incarcerated borrowers.¹⁷



Lifting 93 percent of incarcerated borrowers out of default through cancellation will tremendously ease the administrative burden of many volunteers, non-profit workers, and legal aid attorneys working tirelessly to assist incarcerated populations. It will also increase the workers' capacity to assist with issues beyond escaping crushing debt, such as ensuring incarcerated folks have access to all the resources and support they need to ensure successful reentry into their communities, and will decrease recidivism driven by financial stressors. The Biden Administration has declared its dedication to addressing these issues before,¹⁸ and debt cancellation would remove a significant obstacle to success upon reentry. Moreover, cancellation will save taxpayers massive sums of money that would otherwise be spent by the Department and its

contractors trying to recover the debts of incarcerated borrowers who simply will never be able to pay down this debt. Finally, an indescribable burden will be lifted off the shoulders of these borrowers and their families when their debt is erased by President Biden.

Incarceration Demands Cancellation

It is nearly impossible for incarcerated borrowers to avoid default

Against the backdrop of decades of student loan system breakdowns, many borrowers struggle to keep their loans in good standing. Incarcerated borrowers, however, are uniquely vulnerable to the risk and consequences of student loan default. An examination of the barriers to effective communication and extremely limited income-earning opportunities borrowers face while incarcerated reveals why default is so likely and why automatic and systematic student loan cancellation is the only way for the Biden Administration to realize its promise to ensure incarcerated and formerly incarcerated individuals are supported as they reenter their communities.¹⁹

Contacting the Department or its student loan servicing companies to resolve common student loan problems while incarcerated can be nearly impossible due to costs and communication restrictions that put calling, emailing, and even postal mailing outside of the prison walls out of reach.²⁰ Compounding these difficulties, incarcerated workers earn pennies on the dollar when they are fortunate enough to be compensated for their labor at all—meaning most would qualify for zero dollar Income Driven Repayment (IDR) plans if able to access and complete the application.²¹

Unfortunately, there are administrative hurdles for incarcerated borrowers that make completing such an application exceedingly difficult. For example, borrowers report that IDR program requirements, like annual recertification of their income for each loan that they owe, create numerous opportunities for them to fall off the path towards cancellation.²⁵ In fact, more than half of all

"I have outstanding debts for school loans and I want to return to school to get my associate degree for starters. I am unable to repay these debts, and I will definitely need the assistance of FAFSA in order to further my education."²²

**- A Formerly
Incarcerated Borrower**

borrowers who enroll in IDR plans fail to recertify their incomes each year as required.²⁶

Due to these restrictions and limitations, the conditions in correctional facilities uniquely drive student loan borrowers into default and out of education programs. This analysis confirms that conclusion, showing that

“I was incarcerated and my loans went into default because I could not get the documentation needed to stop the default from happening. Currently I have been re-admitted to school and have exceeded my undergraduate aid. I really need the degree to get a half decent job.”²³

- A Formerly Incarcerated Borrower

100 percent of these borrowers would be barred from pursuing higher education if federal student loan default status was a limiting factor on enrollment. And since most PEPs *do* limit enrollment to students who are Pell Grant-eligible,²⁷ student loan default (which results in Pell Grant-ineligibility) is a barrier to any incarcerated borrower seeking education access.

Default status continues to negatively impact an incarcerated person’s life even after their release from prison. Formerly incarcerated people who already face discrimination in searches for employment, housing, and other basics for

successful reentry due to their criminal records can ill-afford the addition of a federal student loan default.²⁸ Unfortunately, it is much harder to exit default as an incarcerated borrower than it is to fall into it.

It is nearly impossible for incarcerated borrowers to exit default

Traditionally, there are two pathways out of default available to federal student loan borrowers who are unable to simply repay their debt.²⁹ Borrowers in default may rehabilitate their loans by making nine reduced payments over a ten month period.³⁰ In addition to fulfilling this financial obligation, borrowers

must overcome several administrative hurdles before even entering a rehabilitation agreement, including completing onerous paperwork and identifying and contacting their loan holder. **All of these conditions are nearly impossible to meet while incarcerated.** Borrowers may also apply to consolidate their defaulted loans into a new Direct Consolidation Loan if they agree to either enroll in an IDR plan or make three full, consecutive, voluntary, on-time monthly payments on the defaulted loans.³¹ Although the Department recently removed rules prohibiting incarcerated borrowers from consolidating out of default, they will now face the difficulties accessing consolidation as they do rehabilitation.³² This and other policy reforms suggest that while the Biden Administration is committed to improving outcomes for incarcerated borrowers, the

implementation of these efforts still needs refinement.

In April 2022, the Department announced a temporary third path out of default: Fresh Start.³³ This initiative will grant borrowers, including those who are incarcerated, a temporary one-time opportunity to restore their defaulted loans to good standing and the continuing opportunity to consolidate their loans in default. Unfortunately, even this relief, purportedly designed with incarcerated borrowers' inclusion in mind, falls short of the necessary conditions for incarcerated borrowers to actually benefit.

To access Fresh Start, borrowers must make contact with their default loan servicer by phone or mail and express their intent to exit default through the program.³⁴ As a

“... While incarcerated I earned a Masters Degree ... and I was bombarded by U.S. Department of Education, private collectors, with letters of default notification constantly. The ... pressure and stress ... and being hounded, stressed and anxiety ridden that not only [d]o I have to pay this loan back ([while] interest keeps piling up) but I have to do this time and who is going to hire me?... I did set up a [rehabilitation] payment plan of 5.00 dollars [per month] while I was incarcerated ... but the restrictions were if I missed a month I would have to start all over. If you are able to do that your loan becomes current. The problem for me was relying on the Inmate Accounts of the facility, to process my request on time ... [I did this for] 9 months when they delayed a disbursement going out and I had to start over.”²⁴

- A Formerly Incarcerated Borrower

second step, borrowers must also enroll in an IDR or other repayment plan in order to *stay* out of default.³⁵ The process may be easier to manage for incarcerated borrowers who are seeking to enroll in a qualifying PEP as accessing federal student aid³⁶ is the only way for borrowers to passively trigger Fresh Start; however, early reports from HEP administrators responsible for doing the work on the backend suggest that overriding a borrower's default tag in the National Student Loan Data System is no easy feat. Further, this subgroup of borrowers will once again be subject to burdensome IDR maintenance requirements after completion of their PEP.

Reforms to Pell Grant-eligibility and temporary access to Fresh Start suggest that the Biden Administration is committed to improving outcomes for incarcerated borrowers. But until the Department permanently addresses the problem of default due to incarceration, incarcerated borrowers will continue to suffer its extremely punitive effects, including being locked out of education, and these efforts will fall short.

Conclusion and Recommendation

Our case study analysis and the reports from affected borrowers included here tell a story of desperately needed reform for federal student loan borrowers stuck at the intersection of mass incarceration and the student debt crisis. The Department should not passively watch from afar as incarcerated borrowers inevitably slide into default when it has the tools necessary to cancel their debt and spare them additional unduly punitive consequences which will thwart their future success. The Department has the authority to cancel incarcerated borrowers' federal student loans and vastly improve their outcomes upon release—refusing to do is to actively choose to fail these borrowers and break the Administration's promise to "support reentry, empower formerly incarcerated persons, enhance public safety, and strengthen our communities and our economy."³⁷ Additionally, the resulting disparity in education opportunity between incarcerated borrowers and other incarcerated students will only deepen the existing racial inequities entrenched in the student loan and criminal legal systems.

As our analysis shows, President Biden's plan to cancel up to \$20,000 in federal student loans could completely relieve the strain of the student debt crisis from the shoulders of more than 90 percent of incarcerated borrowers assessed. While the one-time cancellation plan is a welcome and necessary first step, temporary measures are not sufficient when the conditions of incarceration will continue to lead to default long after the expiration of the cancellation plan. Given the lack of guidance and support that characterizes the Department's and its servicers' relationships with incarcerated borrowers and the myriad communication and financial barriers to these borrowers navigating repayment and relief programs on their own, ongoing and automatic cancellation is the only way for the Administration to fully realize its commitments to decreasing rates of recidivism and relieve the strain of student debt crisis from the shoulders of incarcerated borrowers.

A prime example of the need for automatic cancellation is provided by the confusion and difficulties that plagued advocates assisting incarcerated borrowers in applying for one-time cancellation in the brief window before partisan attacks in the federal judiciary ground the program to a halt. While the online application for cancellation launched in October 2022, the paper application that is more accessible to incarcerated borrowers was not made available until November—an inexcusable delay when partisan attacks put cancellation on hold a mere seven days later.³⁸ Further, the remaining barriers to downloading

the application online and the types of information required for borrowers to complete it expose the fundamental incongruence between the Department's bureaucratic processes and the realities of the prison environment.³⁹

Half-measures like the Department's little-known and hard to access policy of writing off the federal student loans of defaulted borrowers incarcerated for periods of 10 years or more are not enough to overcome these systemic issues.⁴⁰ To be effective, cancellation for incarcerated borrowers must be initiated by the Department and must extend beyond the current one-time cancellation plan. The barriers and difficulties endemic to the prison environment will not resolve themselves with one-time cancellation. Worse, the borrower-initiated application process will inevitably leave some incarcerated individuals behind. As such, the Secretary of Education should use any relevant authority, including his broad discretion to "compromise, waive, or release" claims against borrowers to cancel federal student loan debt for all incarcerated borrowers.⁴¹ This automatic cancellation should include a lookback period within which formerly incarcerated borrowers may apply for cancellation after their release since many will not learn of the relief until then.

It is long past time for the Department to acknowledge that collecting on these debts yields minimal returns for the Department but maximum harm for vulnerable borrowers. As the federal student loan system currently operates, default is yet another unduly punitive collateral consequence of incarceration. The Department can and must release incarcerated borrowers from this debt trap.

Endnotes

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- 34 *Fresh Start*, CAMPAIGN TO CANCEL MY STUDENT DEBT, <https://www.cancelmystudentdebt.org/fresh-start> (last visited June 9, 2023).
- 35 *Id.*
- 36 Federal student aid is available only in the form of the Pell Grant for incarcerated individuals.
- 37 US. Dep't of Educ. Apr. 26, 2022 Press Release, *supra* note 11.

- 38 Amber Saddler and Amy Czulada, *Sham Lawsuits Blocking Student Debt Cancellation from Millions of Borrowers Have Massive Legal Holes*, STUDENT BORROWER PROT. CTR. (Nov. 23, 2022), <https://protectborrowers.org/sham-lawsuits-blocking-student-debt-cancellation-from-millions-of-borrowers-have-massive-legal-holes/>.
- 39 See *One-time Federal Student Loan Debt Relief*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info> (last visited June 9, 2023). Note that there is no direct link to download a pdf of the application, instead borrowers must click through several pages of the FSA's website to locate the application, at which point they are confronted with requests for information they are unlikely to have, like a phone number, email address, or even their social security numbers.
- 40 *Loan Servicing and Collection Frequently Asked Questions*, FED. STUDENT AID, at IB-Q5, <https://fsapartners.ed.gov/knowledge-center/faqs/loan-servicing-and-collection-frequently-asked-questions> [<https://perma.cc/4AQP-7CGQ>]; Loonin et al., *Collection at all Costs*, *supra* note 1, at 8-12.
- 41 31 C.F.R. § 902.2(d); 20 U.S.C. § 1082(a)(6); Loonin et al., *Collection at all Costs*, *supra* note 1, at 19-20.