STUDENT BORROWER
PROTECTION CENTER

May 17, 2024

U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

VIA ELECTRONIC SUBMISSION

RE: Docket ID ED–2023–OPE–0123

Dear Secretary Cardona,

The Student Borrower Protection Center (SBPC), a national policy non-profit organization committed to ending the student debt crisis, submits this comment in response to the U.S. Department of Education's (the Department) Notice of Proposed Rulemaking (NPRM), published to the Federal Register on April 17, 2024.[1] This comment responds to the Department's request for feedback on its proposal to enact student loan debt relief to millions of Americans using available authorities under the Higher Education Act (HEA).

SBPC applauds the Department's commitment to delivering on President Biden's promise of sweeping student loan debt relief and working to repair the harms of the broken student loan system. For too long, the student loan debt crisis has hindered homeownership,[2] inhibited retirement savings,[3] stifled small business formation,[4] exacerbated racial and economic inequities, and widened the racial wealth gap.[5] The debt crisis has also prevented generations of Americans from living their best lives—preventing people from starting or growing their families,[6] pursuing a new career, or moving on to retirement. A growing body of research has

---

[1] U.S. Dep't of Educ., *Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program* (ED-2023-OPE-0123), 89 Fed. Reg. 27564-27617 (Apr. 17, 2024) ("NPRM").
[2] Board of Governors of the Federal Reserve System, *Consumer & Community Context* (Volume 1, Issue 1, 2019), available at https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf.
[3] Matthew Rutledge, Geoffrey T. Sanzenbacher, and Francis M. Vitagliano, *How Does Student Debt Affect Early-Career Retirement Saving?* Working Paper 2016-9, Center for Retirement Research at Boston College (2016) available at https://crr.bc.edu/how-does-student-debt-affect-early-career-retirement-saving/.
[4] Brent W. Ambrose, Larry Cordell, and Shuwei Ma, Federal Reserve Bank of Philadelphia, *The Impact of Student Loan Debt on Small Business Formation* (July 2015), available at https://www.philadelphiafed.org/the-economy/the-impact-of-student-loan-debt-on-small-business-formation.
[5] Suzanne Kahn, Mark Huelsman, and Jen Mishory, Roosevelt Institute, *Bridging Progressive Policy Debates: How Student Debt and the Racial Wealth Gap Reinforce Each Other* (Sept. 9, 2019), available at https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Student-Debt-and-RWG-201909.pdf.
[6] Arielle Kuperberg and Joan Maya Mazelis, *Social Norms and Their Influence on the Student Loan* Crisis (2022), available at https://libres.uncg.edu/ir/uncg/f/A_Kuperberg_Social_Norms_2022.pdf.

also shown that student debt is worsening health disparities and exacerbating the mental health crisis.[7] We have been proud to see the Administration prioritize this relief and work to end these injustices and inequalities.

Over the last three years, the Biden Administration has made history by delivering an unprecedented $160 billion in student loan debt relief to more than 4.5 million student loan borrowers. It has done this by ensuring that borrowers finally get the relief they have been entitled to under federal law.[8] While this relief has been monumental, the decision by the conservative majority of the Supreme Court to callously strike down President Biden's original debt relief program has forced millions of borrowers and their families to wait.[9] The Biden Administration's proposed NPRM represents a long-awaited opportunity for millions of borrowers to get the much-needed relief they deserve. Therefore, it is critical that the Department move swiftly and urgently to finalize and implement these rules and deploy necessary relief to these working families. **It is also critical that the Department unveil its proposed NPRM related to supporting borrowers experiencing hardship. While the Administration has stated publicly that this proposal will be released in the coming months, the Administration must prioritize relief for borrowers experiencing hardship and ensure that they are not left behind.**

The present NPRM proposes several different regulations in accordance with the HEA and specifies the Secretary's authority to provide student loan debt relief to borrowers in certain circumstances. These include automatic relief for borrowers crushed by runaway interest, borrowers who have been stuck in the student loan repayment system for 20 or more years, borrowers who are eligible for loan relief but have not been able to successfully apply or enroll in such programs, and borrowers who took out loans to attend a low-value school. When implemented, the Administration estimates that 30 million Americans could benefit from these life-changing proposals.[10] We applaud the Department for proposing a thorough array of regulations that could provide automatic—and life-changing—relief to tens of millions of borrowers. We strongly encourage the Department to consider the following recommendations to further strengthen the underlying NPRM.

---

[7] Arielle Kuperberg and Joan Maya Mazelis, *Taking Out Student Loans Make You Unhealthier Than Your Debt-Free Peers, Groundbreaking Study of 3,200 College Kids Finds*, Fortune, (Aug. 5, 2023), available at https://fortune.com/2023/08/05/student-debt-loans-make-you-less-healthy-study-medical-stress.

[8] U.S. Dep't. of Educ., Press Release, *Biden-Harris Administration Approves $6.1 Billion Group Student Loan Discharge for 317,000 Borrowers Who Attended Art Institutes* (Aug. 5, 2023), available at https://www.ed.gov/news/press-releases/biden-harris-administration-approves-61-billion-group-student-loan-discharge-317000-borrowers-who-attended-art-institutes.

[9] Nina Totenberg and Meghanlata Gupta, *Supreme Court Kills Biden's Student Debt Plan in a Setback for Millions of Borrowers*, National Public Radio (June 30, 2023), available at https://www.npr.org/2023/06/30/1182216970/supreme-court-student-loan-forgiveness-decision-biden.

[10] White House, *Fact sheet: President Biden Announces New Plans That Would Provide Relief to Borrowers Disproportionately Burdened by Student Loan Debt*, (Apr. 8, 2024), available at https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/08/fact-sheet-president-biden-announces-new-plans-that-would-provide-relief-to-borrowers-disproportionately-burdened-by-student-loan-debt/.

Strengthening proposals to provide relief to borrowers crushed by runaway interest. [§30.81 & §30.82]

For too long, millions of borrowers have been stuck in a debt trap, facing rapidly growing balances despite making years of on-time, monthly payments due to the accumulation of unpaid interest.[11] Research has shown that the burden of runaway interest and perpetual debt falls most heavily on Black and Latino borrowers. Twelve years after beginning college, two-thirds of Black borrowers owe more than they had originally borrowed, while only 1-in-9 fully repaid their debts.[12] In contrast, fewer than 1-in-3 white borrowers face larger balances over this same time period.[13] Recently, the Biden Administration has taken steps to address ballooning balances for borrowers moving forward, including through the creation of the Saving on a Valuable Education (SAVE) Plan, which protects enrolled borrowers from runaway interest while they make required monthly payments. The Department's proposed NPRM would build on these efforts by providing one-time cancellation of the total amount above their original balance to borrowers on an Income-Driven Repayment (IDR) plan due to past interest accrual and meeting certain income limits;[14] and cancellation of up to $20,000 in interest for all other borrowers, regardless of income or repayment plan.[15]

We strongly encourage the Department to streamline and consolidate *§30.81 and §30.82* in order to create a strengthened and more generous rule to cancel all runaway interest for all borrowers regardless of their income and enrollment in an IDR plan.

We applaud the Department for proposing an automatic and universal proposal that could provide interest relief to all borrowers who have experienced runaway interest, regardless of income in ***§30.82***. However, the Department's decision to cap this relief at $20,000 in an attempt to prevent a "windfall" benefit for higher earners by limiting the relief to lower-balance borrowers perpetuates misconceptions that all higher-balance borrowers fare better and are less likely to struggle to repay their debt.

Research has demonstrated that higher loan balances can be associated with lower incomes.[16] This is, at least in part, due to the fact that lower-income borrowers are more likely to repay their loans using an Income-Driven Repayment plan, which until recently put them at risk of negative amortization and ballooning balances. These high loan balances can affect a borrower's credit

---

[11] Mark Huelsman, Student Borrower Protection Center, *Driving Runaway Debt: How IDR's Current Design Buries Borrowers Under Billions of Dollars in Unaffordable Interest*, (Sept., 2021), available at https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf.
[12] *Id.*
[13] *Id*.
[14] NPRM at 27614 (proposed 34 C.F.R. § 30.81).
[15] NPRM at 27614 (proposed 34 C.F.R. § 30.82).
[16] Martin Gervais and Nicolas L. Ziebarth, *Life After Debt: Post-Graduation Consequences of Federal Student Loans* 35 (2018); Justin Weidner, *Does Student Debt Reduce Earnings?* 2 (2016).

profile, and constrain a borrower's career choices, which can lead to lower earnings and lower earnings growth which affects borrowers' ability to pay down their loans.[17] Cumulative undergraduate and graduate debt for Black borrowers who pursue graduate degrees ranges from $68,000 to over $200,000, and Black borrowers are far more likely to attend graduate school at for-profit institutions, where median debt exceeds $100,000.[18] In fact, according to the Department's longitudinal data, Black borrowers are more likely to still owe interest on federal loans over a decade after starting college,[19] and are far more susceptible to runaway loan balances in further years. One analysis found that an additional $10,000 in student loan debt is associated with 1 to 2 percent lower income after graduation, and evidence suggests that borrowers do not catch up over time.[20] Thus, capping interest relief to borrowers at $20,000 could leave behind borrowers of color who are most likely to struggle with ballooning balances regardless of their income.

Finally, the Department's example of interest growth for a low-balance borrower—stating that a borrower taking out $9,500 at a 4.32 percent interest rate will only accrue $4,104 in 10 years[21]—understates the problem of interest growth for low-balance borrowers in that it fails to take into consideration the Department's past policy of interest capitalization.

We are also concerned by the Department's decision to limit eligibility for full and automatic runaway interest relief under ***§30.81*** to borrowers earning below a certain income[22] and enrolled in an IDR plan. Placing income restrictions creates an unjust scenario where a similarly situated borrower earning just over the income limit is left behind or eligible for far less relief. Further, the Department's decision to base eligibility for full relief on a borrower's current income fails to recognize prior instances of financial hardship that may have led to interest capitalization—such as periods of nonpayment, forbearance, delinquency, or default—and even instances when a borrower may have been subject to servicing errors or misconduct that exacerbated a borrower's ballooning balance. SBPC shares the same goals as the Department to address past instances of interest accrual, which can be accomplished by *"waiving the borrower's obligation to pay such*

[17] Marco Di Maggio et al., *Second Chance: Life Without Student Debt* 26–27 (2019), available at https://www.nber.org/system/files/working_papers/w25810/revisions/w25810.rev1.pdf.
[18] Suzanne Kahn, Mark Huelsman, and Jen Mishory, Roosevelt Institute, *Bridging Progressive Policy Debates: How Student Debt and the Racial Wealth Gap Reinforce Each Other* (Sept. 9, 2019), available at https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Student-Debt-and-RWG-201909.pdf.
[19] Calculations from the U.S. Department of Education Beginning Postsecondary Students Longitudinal Survey (BPS 04/09 follow-up).
[20] Martin Gervais and Nicolas L. Ziebarth, *Life After Debt: Post-Graduation Consequences of Federal Student Loans* 35 (2018); Justin Weidner, *Does Student Debt Reduce Earnings?* 2 (2016).
[21] NPRM at 27574.
[22] The proposed NPRM limits access to full and automatic interest relief to borrowers on an IDR plan if the borrower's income is at or below $120,000 if the borrower's filing status is single or married filing separately, $180,000 if a borrower files as head of household, or $240,000 if the borrower is married and files a joint Federal tax return or the borrower files as a qualifying surviving spouse.

interest accrual after a borrower has entered repayment[.]"[23] We urge the Department to offer this retroactive interest relief opportunity to all borrowers.

Finally, the Department's decision to limit the relief in ***§30.81*** to borrowers enrolled in IDR creates a tremendously challenging scenario for Parent PLUS Loan borrowers, who are not eligible for any IDR plan without first consolidating (and then are only eligible for the Income Contingent Repayment (ICR) plan, which is unaffordable to many), and defaulted borrowers who are unable to navigate or never find out about the Fresh Start program. By strengthening the proposed NPRM to provide full and automatic runaway interest relief to all borrowers regardless of income and enrollment in an IDR plan, more borrowers will have the opportunity to see much-needed relief, including Parent PLUS and defaulted borrowers.

Alleviating excess interest is a notable step forward, but the Department can and should ensure that borrowers receive cancellation of their underlying balances as well.

Critically, it is not enough to merely bring millions of borrowers back to the loan amount they originally owed upon initially entering repayment. Millions of borrowers have spent years making payments only to barely keep their heads above water due to the unfair and broken student loan system. In particular, bringing borrowers back to their original balance fails to address the problem of runaway interest for the borrowers who have paid their original balance several times or whose payments may have covered the interest but never touched the principal on their loan. One such borrower who reached out to the SBPC had originally borrowed roughly $35,000. She had defaulted on her loans and had nearly $75,000 garnished from her paycheck over a period of 12 years. As a result of interest accrual and capitalization, she still owes $60,000 on her loans. Bringing her balance down to the original $35,000 is simply insufficient to reach the Department's stated goals of alleviating the financial and psychological challenges borrowers face as they try to pay down their runaway student loan balances. Instead, providing cancellation of a borrower's underlying balance beyond the dollar amount they initially borrowed will help alleviate the mental health crisis associated with student debt, improve the financial well-being of borrowers and their families, and stimulate the broader economy.

Strengthening proposal to provide debt relief to borrowers with loans older than 20 or 25 years. [§30.83]

We applaud the Biden Administration's unprecedented work repairing the harms of the broken student loan system and ensuring that millions of borrowers get the debt relief they were promised under federal law through the IDR Account Adjustment.[24] So far, nearly 1 million

[23] NPRM at 27571.
[24] U.S. Dep't of Educ., Press Release, *Department of Education Announces Actions to Fix Longstanding Failures in Student Loan Programs* (Apr 11, 2024), available at

borrowers have received more than $49 billion in debt relief under the IDR Account Adjustment alone.[25] While the IDR Account Adjustment has made it easier for borrowers to get credit towards relief, currently defaulted borrowers are unable to automatically reap these benefits and borrowers who previously spent time in default are unable to count this time towards relief. The Department's proposed NPRM is a critical opportunity to ensure any borrower that has been stuck in repayment—regardless of their time spent in default—is able to see automatic debt relief after 20 or 25 years. This is especially critical for borrowers who generally do not qualify for other relief opportunities, such as borrowers with Joint Spousal Loans, or who face insurmountable logistical barriers to accessing relief, such as incarcerated borrowers.

Enable the Secretary to grant automatic relief for borrowers with loans older than 20 or 25 years on a rolling basis.

We echo the concerns expressed by negotiators during the rulemaking sessions on the Department's decision to hinge eligibility for this relief based on the date on which the loan entered repayment. Doing so sets a "cliff effect" that will unfairly leave millions of borrowers behind who may have missed this time frame by a mere month. Instead, we propose allowing the Secretary on an ongoing basis to provide relief to borrowers whose loans are at least 20 or 25 years old, regardless of when the loan first entered repayment. Doing so would build on the improvements the Department has made to the student loan repayment system and set a critical backstop to the efforts under the IDR Account Adjustment. As the Department acknowledged in the proposed NPRM, while many borrowers will continue to benefit from the IDR Account Adjustment going forward, the time counted by the adjustment is limited and excludes all time in default.[26] Providing this relief for borrowers on a rolling basis will ensure borrowers are not falling through the cracks.

The Department should not penalize borrowers who have recently consolidated their loans by using a less generous calculation when determining when a loan entered repayment.

As drafted, for consolidation loans made before July 1, 2023, the Department would consider the loan to have "enter[ed] repayment" based on the *earlier* of the day that any undergraduate loan's grace period ended or any underlying graduate or parent loan was fully disbursed. For consolidation loans made on or after July 1, 2023, however, the Department would use the *later*

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

[25] Adam Minsky, *Borrowers Get $49.2 Billion in Student Loan Forgiveness as One-Time Biden Program Winds Down,* Forbes, April 23, 2024, available at https://www.forbes.com/sites/adamminsky/2024/04/23/borrowers-get-492-billion-in-student-loan-forgiveness-as-one-time-biden-program-winds-down/?sh=329972db51d2.

[26] NPRM at 27576.

of these same dates.[27] The Department's justification for giving borrowers who consolidated more recently less generous terms in order to prevent "strategic consolidation" is misguided.[28] In reality, few, if any, borrowers are likely to have consolidated in response to the President's announcement—which lacked any detail that would have prompted borrowers to consolidate—on July 1, 2023. The effect of this arbitrary delineation will be to postpone relief to millions of borrowers who have consolidated to utilize the programs that this Administration has heralded, such as the SAVE plan, Public Service Loan Forgiveness (PSLF), and the IDR Account Adjustment. This is unjustifiably unfair to these borrowers, especially since borrowers have been encouraged to consolidate in advance of the June 30, 2024, IDR Account Adjustment deadline.[29] The Department should eliminate this distinction and extend the earlier time frame calculation formula to all consolidation loans, regardless of when made.

Strengthening proposals to provide cancellation to borrowers eligible for loan relief but have not been able to successfully apply or enroll in such programs. [§ 30.84 & § 30.85]

Despite the Biden Administration's monumental progress in repairing the student loan repayment system and ensuring it works better for student loan borrowers, borrowers continue to struggle to access IDR plans and benefit from relief to which they are entitled. Research has also confirmed that borrowers eligible for relief under various discharge programs have struggled to benefit due to application processes and other administrative barriers. We strongly support the Department's proposed NPRM, which will help make the process of accessing relief via an IDR plan or existing student loan discharge programs less burdensome for borrowers and allow the Secretary to ensure relief gets to all eligible borrowers, not just those who are able to navigate lengthy application processes and government bureaucracy.

Enable the Secretary to enter into comprehensive data sharing agreements across federal and state government agencies to ensure relief reaches as many borrowers as possible.

The Department has been able to greatly expand the universe of borrowers that have received relief through Total and Permanent Disability discharge through a data match with the Social Security Administration. The Department should facilitate data matches with as many federal and state agencies as possible to help deliver relief to eligible borrowers. Such data sharing agreements could include one with the Department of Defense to determine active servicemembers who could benefit from relief under the PSLF program.

[27] Proposed § 30.83(b)(2) and (b)(3) currently both reference "paragraphs (c)(1) or (2) of this section," however § 30.83 has no paragraph (c). We believe this reference should be to paragraph (b), and wish to call this to the Department's attention. *See* NPRM at 27614 (proposed 34 C.F.R. § 30.83).
[28] NPRM at 27576.
[29] Esha Walia, *Tuesday Is A Key Deadline For Student Loan Relief. Here's What You Need To Know,* The Boston Globe, April 29, 2024, available at https://www.bostonglobe.com/2024/04/29/business/student-debt-consolidation-biden/.

We applaud the Department's decision to ensure that eligible borrowers with commercially-held loans under the Federal Family Education Loan (FFEL) Program are not left behind. [§ 682.403]

For too long, FFEL borrowers have been excluded from previous rounds of debt relief—ineligible for the most generous repayment options and unable to benefit from critical protections like the pandemic pause on student loan payments. The Department's proposed NPRM would help correct this injustice by establishing a process to provide automatic relief to FFEL borrowers if they have been stuck in repayment for 25 years or more, or if they attended a low-value institution of higher education. Through these actions alone, nearly one million borrowers will be able to see much-needed relief.

We encourage the Department to provide relief to borrowers who are victims of servicing errors.

For more than a decade, borrowers, advocates, state attorneys general, and consumer protection officials have documented widespread mismanagement and abuse by student loan servicers and private collection agencies hired by the Department to administer the student loan system. Recent federal and state actions against student loan servicers affirm that these widespread servicing abuses do not just cause immediate financial harm to borrowers, they also undermine borrowers' rights to the debt relief they are entitled to under federal law.

We strongly urge the Department to include explicit waiver authority for the Secretary to provide relief to borrowers whose ability to access loan relief has been compromised due to servicing failures and misconduct.

Earlier this year, AFT and SBPC released a report entitled *The MOHELA Papers*, which uncovered that 4 in 10 borrowers serviced by the Higher Education Loan Authority of the State of Missouri (commonly known as MOHELA) were subject to a servicing failure over the course of the return to repayment.[30] While the Biden Administration has taken some steps to hold MOHELA and other servicers accountable by withholding payments and requiring servicers to place some of these affected borrowers into short administrative forbearances while errors are fixed, it is not enough. As the Administration acknowledged with the IDR Account Adjustment, servicing abuses can have long-term effects on a borrower. The Administration can and must do more by providing additional pathways to cancel student debt for victims of servicer error. The contractors paid to administer the student loan program cannot continue to act as barriers to much-needed debt relief for millions of borrowers.

[30] AFT and Student Borrower Protection Center, *The MOHELA Papers* (Feb. 2024), available at https://www.mohelapapers.org/.

Over the course of the negotiated rulemaking sessions, negotiators representing state attorneys general, legal assistance organizations, consumer advocates, and others submitted a robust proposal to the Department on how it can codify the Secretary's waiver authority to provide relief to borrowers whose ability to access relief has been compromised due to servicing failures and misconduct.[31] We strongly urge the Department to adopt this proposed regulatory text in order to provide a relief pathway for borrowers who, as a result of servicing errors, have been made financially worse off.

The SBPC applauds the Biden Administration's work to finalize President Biden's debt relief proposal that could benefit 30 million Americans. The proposed NPRM presents a monumental opportunity to ensure the student debt relief promised by President Biden becomes a reality once and for all. We stand ready to work in partnership with the Biden Administration to push this relief across the finish line.

Sincerely,

Student Borrower Protection Center

[31] Supplemental Servicer Error Proposal Submitted by Yael Shavit, primary negotiator for State Attorneys General, to the U.S. Department of Education, 2023, available at https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/supplemental-servicer-error-proposal-submitted-by-yael-shavit.pdf.