

# Congress of the United States

Washington, DC 20515

December 8, 2023

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary Cardona:

We are writing in support of the Department of Education’s (the Department or ED) ongoing efforts to pursue student loan relief through the negotiated rulemaking (“neg-reg”) process. This regulation has the potential to improve the financial security of tens of millions of hard-working Americans who are currently trapped by crushing student debt. However, we are concerned that the latest draft of the rule would fall far short of providing the full scale of debt relief that low- and middle-income Americans urgently need.<sup>1</sup> As the negotiating committee prepares for its final session, we urge ED and the committee to consider six recommendations for maximizing the impact of the proposed rule for vulnerable borrowers.

We are pleased that ED is taking steps to provide debt relief to millions of struggling borrowers, especially in the wake of the Supreme Court’s disappointing and unjustified decision to strike down the Biden Administration’s initial student debt relief plan.<sup>2</sup> In light of that goal, the draft regulatory text emerging from the neg-reg should act to deliver meaningful relief to these borrowers. Under the Higher Education Act of 1965 (HEA), the Secretary of Education has the clear authority to “enforce, pay, compromise, *wave*, or release” federal student loans.<sup>3</sup> This rulemaking process presents a significant opportunity to address pervasive problems within the student loan system by fortifying the authority to waive and compromise debt, in order to ensure that postsecondary education becomes accessible to all students. We urge you to leverage this authority to its fullest extent, maximizing relief for the greatest number of borrowers facing financial hardship.

Student loan debt is a burden carried on the shoulders of 43.6 million borrowers who collectively owe an astronomical \$1.65 trillion in federal student loans.<sup>4</sup> This debt crisis impedes

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<sup>1</sup> U.S. Department of Education, “Proposed Regulatory Text Student Debt Relief Negotiated Rulemaking, Session 3: December 11-12, 2023,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/new-student-loan-debt-relief-proposed-regulatory-text-session-3-v1.pdf>.

<sup>2</sup> *Biden v. Nebraska*, 143 S. Ct. 2355 (2023).

<sup>3</sup> The Higher Education Act of 1965, Section 432(a)(6), 20 U.S.C. § 1082(a)(6) (emphasis added); *see also* 34 C.F.R. § 30.70(e); 31 C.F.R. § 902.2(a); Letter from The Harvard Law Project on Predatory Student Lending to U.S. Senator Elizabeth Warren, September 14, 2020, <https://www.warren.senate.gov/imo/media/doc/Ltr%20to%20Warren%20re%20admin%20debt%20cancellation.pdf>.

<sup>4</sup> Education Data Initiative, “Student Loan Debt Statistics,” Melanie Hanson, August 20, 2023, <https://educationdata.org/student-loan-debt-statistics>.

millions of families from achieving financial security; student debt delays homeownership, reduces savings, hinders payment of medical bills, and casts a long shadow of financial anxiety.<sup>5</sup> While the average borrower carries a staggering \$37,338 in federal student loan debt,<sup>6</sup> the weight of student loan debt is not evenly distributed. Among undergraduate-degree holders, Black students are more likely to borrow federal loans and hold an average of \$25,000 more debt than White borrowers.<sup>7</sup> Four years after graduation, 48 percent of Black borrowers owe more than they initially borrowed, compared to just 17 percent of their White counterparts.<sup>8</sup> As of 2021, 40 percent of Latino borrowers defaulted on their loans at some point, as compared to only 29 percent of White borrowers.<sup>9</sup> Furthermore, a shocking third of Americans with student loans have no degree at all.<sup>10</sup> Indeed, as ED has acknowledged, student debt can be so crushing that “[s]ome borrowers are left worse off than if they had never attended college at all.”<sup>11</sup> These disparities underscore the urgent need to tackle the student loan crisis as a matter of racial and economic justice.

We celebrated President Biden’s August 2022 announcement that he would use his authority under the HEROES Act to cancel up to \$20,000 in student loan debt for over 40 million Americans.<sup>12</sup> While the President’s decision fell short of our calls for more extensive cancellation of student debt,<sup>13</sup> it was an important step in the right direction. Within just weeks of

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<sup>5</sup> *Id.*; University of California, “Financial Hardship Among Student Borrowers,” Sultana Fouzia, Marshall Steinbaum, Dalié Jiménez, and Jonathan Glater, December 2023, p. 6, 12, <https://www.slli.org/databrief3>.

<sup>6</sup> Education Data Initiative, “Average Student Loan Debt,” Melanie Hanson, May 22, 2023, <https://educationdata.org/average-student-loan-debt#:~:text=The%20average%20federal%20student%20loan,them%20have%20federal%20loan%20debt>; The Hill, “Here’s how Biden has tackled student loan debt so far,” Adam Barnes & Shirin Ali, March 8, 2022, <https://thehill.com/changing-america/enrichment/education/597318-heres-how-biden-has-tackled-student-loan-debt-so-far/>.

<sup>7</sup> White House Initiative on Educational Excellence for African Americans, “Fact Sheet: Black College Graduates and the Student Debt Gap,” p. 1, <https://sites.ed.gov/whblackinitiative/files/2016/11/Black-College-Graduates-and-the-Student-Debt-Gap.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> The Pew Charitable Trusts, “Student Loan Borrowers With Certain Demographic Characteristics More Likely to Experience Default,” Lexi West, Ama Takyi-Laryea, & Ilan Levine, January 24, 2023, <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/01/24/student-loan-borrowers-with-certain-demographic-characteristics-more-likely-to-experience-default>.

<sup>10</sup> The White House, “FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” press release, August 24, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

<sup>11</sup> National Association of Student Financial Aid Administrators, “ED Kicks Off First Negotiated Rulemaking Session for Student Debt Relief,” Maria Carrasco, October 11, 2023, [https://www.nasfaa.org/news-item/31860/ED\\_Kicks\\_Off\\_First\\_Negotiated\\_Rulemaking\\_Session\\_for\\_Student\\_Debt\\_Relief](https://www.nasfaa.org/news-item/31860/ED_Kicks_Off_First_Negotiated_Rulemaking_Session_for_Student_Debt_Relief).

<sup>12</sup> The White House, “FACT SHEET: Biden-Harris Administration Releases New Data Showing 26 Million People in All 50 States Applied or Were Automatically Eligible for One-Time Student Debt Relief,” press release, January 27, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-releases-new-data-showing-26-million-people-in-all-50-states-applied-or-were-automatically-eligible-for-one-time-student-debt-relief/>; The White House, “FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” press release, August 24, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

<sup>13</sup> Letter from Senator Elizabeth Warren et al., to President Joseph R. Biden, March 31, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.03.31%20Letter%20to%20President%20Biden%20re%20Payment%20Pause%20and%20Cancellation1.pdf>; Senator Elizabeth Warren, “Warren, Schumer, Pressley, Colleagues: President Biden Can and Should Use Executive Action to Cancel up to \$50,000 in Federal Student Loan Debt Immediately,” press release, February 4, 2021,

the program's launch, nearly 26 million borrowers had submitted applications for relief and 16 million had been approved.<sup>14</sup> However, extremist judges halted the program based on dubious legal challenges, and in June 2023 the conservative majority of the Supreme Court overturned the program, unjustly denying relief to millions of struggling borrowers.<sup>15</sup>

In response to the Supreme Court's ruling, the Biden Administration swiftly initiated two steps to provide debt relief for "as many borrowers as possible, as quickly as possible."<sup>16</sup> First, recognizing the urgent need to support student loan borrowers, the Department of Education finalized the Saving on a Valuable Education (SAVE) Plan, the newest income-driven repayment (IDR) plan,<sup>17</sup> which eliminates monthly debt payments for borrowers below 225 percent of the federal poverty line, cutting payments on undergraduate loans in half, and more.<sup>18</sup> As of November 2023, nearly 5.5 million borrowers had enrolled in SAVE, including 2.9 million who qualify for \$0 monthly payments.<sup>19</sup>

Second, the Secretary of Education exercised authority under the HEA to initiate a negotiated rulemaking process "aimed at opening an alternative path to debt relief for as many working and middle-class borrowers as possible."<sup>20</sup> ED may pursue the neg-reg process in order to issue a new regulation for programs authorized under Title IV of the HEA.<sup>21</sup> This process

<https://www.warren.senate.gov/newsroom/press-releases/warren-schumer-pressley-colleagues-president-biden-can-and-should-use-executive-action-to-cancel-up-to-50000-in-federal-student-loan-debt-immediately>.

<sup>14</sup> The New York Times, "Supreme Court to Hear Student Debt Forgiveness Case," Adam Liptak, December 1, 2022, <https://www.nytimes.com/2022/12/01/us/politics/supreme-court-student-loan-forgiveness.html>; The White House, "FACT SHEET: Biden-Harris Administration Releases New Data Showing 26 Million People in All 50 States Applied or Were Automatically Eligible for One-Time Student Debt Relief," press release, January 27, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-releases-new-data-showing-26-million-people-in-all-50-states-applied-or-were-automatically-eligible-for-one-time-student-debt-relief/>.

<sup>15</sup> *Biden v. Nebraska*, 143 S. Ct. 2355 (2023).

<sup>16</sup> U.S. Department of Education, "FACT SHEET: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers," press release, June 30, 2023, <https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-new-actions-provide-debt-relief-and-support-student-loan-borrowers>.

<sup>17</sup> *Id.*

<sup>18</sup> The White House, "FACT SHEET: The Biden-Harris Administration Launches the SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments for Millions of Borrowers," press release, August 22, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/>.

<sup>19</sup> U.S. Department of Education, "Biden-Harris Administration Announces Nearly 5.5 Million Borrowers Are Enrolled in the SAVE Plan," press release, November 8, 2023, <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-nearly-55-million-borrowers-are-enrolled-save-plan>.

<sup>20</sup> U.S. Department of Education, "FACT SHEET: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers," press release, June 30, 2023, <https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-new-actions-provide-debt-relief-and-support-student-loan-borrowers>; see also U.S. Department of Education, "Intent to Establish a Negotiated Rulemaking Committee," July 6, 2023, <https://www.federalregister.gov/documents/2023/07/06/2023-14329/negotiated-rulemaking-committee-public-hearing>.

<sup>21</sup> U.S. Department of Education, "FACT SHEET: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers," press release, June 30, 2023, <https://www.ed.gov/news/press-releases/fact-sheet-president-biden-announces-new-actions-provide-debt-relief-and-support-student-loan-borrowers>; <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.

brings together ED and stakeholders from the higher education community for a series of negotiations to develop a Notice of Proposed Rulemaking (NPRM), which then becomes available for public comment.<sup>22</sup> In the words of Education Undersecretary James Kvaal, this rulemaking process has the potential to help “tackle pervasive problems in the [student loan] system, and help ensure that postsecondary education is a path to opportunity for more students.”<sup>23</sup>

ED is currently in the midst of three sessions of this student debt neg-reg process. In advance of the third session, the Department issued a draft of the rule that would make four subsets of borrowers eligible for student debt relief: (1) borrowers with outstanding federal student loan balances that exceed their original principal balance, due to interest; (2) borrowers with loans that have been in repayment for over 20 or 25 years; (3) borrowers who are eligible for forgiveness under an enumerated repayment plan or loan program but have not enrolled; and (4) certain borrowers who took on loans to attend programs that provide insufficient financial value, lost Title IV eligibility, or were found to have committed misconduct.<sup>24</sup>

ED has also released an issue paper indicating the potential need for the rule to address a fifth category: “those experiencing hardship that is not otherwise addressed by the existing student loan system.”<sup>25</sup> The paper lists examples of other forms of hardship that the rule could capture and poses questions for negotiators to consider, including which indicators would minimize the application burden for borrowers, and would extend relief to borrowers not already covered by existing programs.<sup>26</sup>

These actions build on the work the Biden Administration has already done to improve the student loan program and make higher education more affordable, including approving \$127 billion in relief for more than 3.6 million borrowers.<sup>27</sup> While we commend the Biden Administration for taking key steps to fix the broken student loan system through the regulatory process, we believe that the regulatory text could be improved to better take advantage of the Department’s full authority under the HEA. The new rule should fulfill the Administration’s original goal following the Supreme Court’s decision, of creating an alternative that would “provid[e] for as many borrowers as possible with debt relief,” and provide *meaningful* relief for

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<sup>22</sup> U.S. Department of Education, “The Negotiated Rulemaking Process for Title IV Regulations - Frequently Asked Questions,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.

<sup>23</sup> National Association of Student Financial Aid Administrators, “ED Kicks Off First Negotiated Rulemaking Session for Student Debt Relief,” Maria Carrasco, October 11, 2023, [https://www.nasfaa.org/news-item/31860/ED\\_Kicks\\_Off\\_First\\_Negotiated\\_Rulemaking\\_Session\\_for\\_Student\\_Debt\\_Relief](https://www.nasfaa.org/news-item/31860/ED_Kicks_Off_First_Negotiated_Rulemaking_Session_for_Student_Debt_Relief).

<sup>24</sup> U.S. Department of Education, “Proposed Regulatory Text Student Debt Relief Negotiated Rulemaking, Session 3: December 11-12, 2023,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/new-student-loan-debt-relief-proposed-regulatory-text-session-3-v1.pdf>.

<sup>25</sup> U.S. Department of Education, “Borrower Hardship Issue Paper Negotiated Rulemaking, Session 2, November 6-7, 2023,” p. 1, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/session-2-borrower-hardship-issue-paper-pdf-accessible.pdf>.

<sup>26</sup> *Id.* at p. 2.

<sup>27</sup> U.S. Department of Education, “Biden-Harris Administration Continues Efforts to Provide Debt Relief for More Student Loan Borrowers,” press release, October 30, 2023, <https://www.ed.gov/news/press-releases/biden-harris-administration-continues-efforts-provide-debt-relief-more-student-loan-borrowers#:~:text=This%20includes%20approving%20%24127%20billion,payments%20that%20qualify%20toward%20forgiveness>.

families struggling to pay their bills.<sup>28</sup> As we lend our support to your diligent efforts to provide debt relief through regulatory procedures, we urge you to consider several recommendations to strengthen the Department’s debt relief rule. Specifically, we propose the following actions:

**1) Eliminate all debt that exceeds the original principal balance of the loan.**

Millions of borrowers have a student loan balance that is *higher* than their original balance was when they entered repayment.<sup>29</sup> This negative amortization occurs when a borrower cannot “pay even the accumulating interest on their debt, let alone make progress on the principal.”<sup>30</sup> In recent years, roughly 50-60 percent of outstanding student loans have had a higher balance than when they were first issued.<sup>31</sup> Women and people of color disproportionately struggle to pay down their balances over time.<sup>32</sup>

The current draft of the rule states that the Secretary may waive the amount by which a borrower’s total outstanding balance exceeds the original principal balance of the loan (“excess interest”), subject to strict limitations: certain borrowers on the SAVE Plan or IDR could access up to \$20,000 in excess-interest relief and other borrowers — including low-income borrowers not enrolled in an IDR plan — could access up to only \$10,000 in relief.<sup>33</sup> These limits unnecessarily deprive ED of discretion to provide more extensive relief under compelling circumstances, such as for the teacher or nurse who cannot keep up with debt payments due to an expensive degree and a modest salary and faces a cascade of negative consequences as a result.<sup>34</sup> Instead, the proposed rule should, at a minimum, permit ED to eliminate *all* debt that exceeds the initial principal due to runaway interest. This approach would acknowledge that the existence of any student loans in repayment with balances that *grow* over time reflects a failure of the student loan system. These failures include student loan servicers’ predatory practices and plain negligence, such as steering borrowers into forbearance and away from IDR plans, as well as misrepresenting loan and program terms,<sup>35</sup> which have contributed to unmanageable student loan

<sup>28</sup> The White House, “Remarks by President Biden on the Supreme Court’s Decision on the Administration’s Student Debt Relief Program,” speeches and remarks, June 30, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/30/remarks-by-president-biden-on-the-supreme-courts-decision-on-the-administrations-student-debt-relief-program/>.

<sup>29</sup> Pew, “Student Loan System Presents Repayment Challenges,” Student Borrower Success, November 6, 2019, <https://www.pewtrusts.org/en/research-and-analysis/reports/2019/11/student-loan-system-presents-repayment-challenges>.

<sup>30</sup> The New York Times, “America’s Student Loans Were Never Going to Be Repaid,” Laura Beamer and Marshall Steinbaum, July 13, 2023, <https://www.nytimes.com/interactive/2023/07/13/opinion/politics/student-loan-payments-resume.html>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> U.S. Department of Education, “Proposed Regulatory Text Student Debt Relief Negotiated Rulemaking, Session 3: December 11-12, 2023,” p. 9-10, 15-16, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/new-student-loan-debt-relief-proposed-regulatory-text-session-3-v1.pdf>.

<sup>34</sup> *See, e.g.*, Medium, “Years in the classroom finally add up to student loan relief,” AFT, October 14, 2022, <https://aftvoices.org/years-in-the-classroom-finally-add-up-to-student-loan-relief-4eb60d312fc7>; Mark Huelsman, “DRIVING RUNAWAY DEBT: How IDR’s Current Design Buries Borrowers Under Billions of Dollars in Unaffordable Interest,” p.13-14, September 2021, [https://protectborrowers.org/wp-content/uploads/2021/09/SBPC\\_Driving\\_Runaway\\_Debt.pdf](https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf).

<sup>35</sup> U.S. Department of Education, “Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs,” April 19, 2022, <https://www.ed.gov/news/press-releases/departments-education-announces-actions-fix-longstanding-failures-student-loan-programs>; Consumer Financial Protection Bureau, “Supervisory

burdens. This problem also stems from a key policy failure; while the new SAVE plan prevents balances from increasing due to unpaid interest,<sup>36</sup> previous IDR plans historically did not; they permitted balances to balloon over time when a borrower's monthly loan payments were insufficient to cover the interest, perpetuating the growth of the debt over time.<sup>37</sup> Capping relief from this excess interest would inadequately address the systemic failures that have led to runaway accumulation of student loan interest.

**2) Provide full cancellation, not just a waiver of excess interest, for borrowers who have repaid enough to cover their original principal.**

Many borrowers have paid enough over time to cover the entire amount of their original principal balance, yet remain in debt due to the accumulation of interest. Indeed, the average public university student borrower pays an extra \$7,800 over the standard 10-year repayment period in interest alone.<sup>38</sup> The current draft rule does not extend relief to borrowers who have diligently repaid enough to cover their original principal; instead, it leaves them in the same precarious position as interest continues to accrue. ED could extend relief to the class of borrowers who have already repaid the principal amount they borrowed yet are still trapped in debt. For those borrowers, the Department should provide full cancellation, not just a waiver of excess interest.

**3) Eliminate the sudden cliff that would give full relief to borrowers whose loans first entered repayment at least 20 or 25 years ago, and no relief to similarly situated borrowers.**

The draft regulatory text states that “[t]he Secretary may waive the outstanding balance of a loan if the loan first entered repayment on or before July 1, 2005” (for undergraduate loans) and “on or before July 1, 2000” (for non-undergraduate loans).<sup>39</sup> In other words, only undergraduate borrowers who entered repayment at least 20 years before July 1, 2025 (or 25 years for graduate

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Highlights Student Loan Servicing Special Edition,” fall 2022, [https://files.consumerfinance.gov/f/documents/cfbp\\_student-loan-servicing-supervisory-highlights-special-edition\\_report\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfbp_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf); National Consumer Law Center, “Student Loan Servicers Now Subject to Borrowers’ State Law Claims,” Persis Yu Kendra Cobb, August 14, 2019, <https://library.nclc.org/article/student-loan-servicers-now-subject-borrowers-state-law-claims>.

<sup>36</sup> The White House, “FACT SHEET: The Biden-Harris Administration Launches the SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments for Millions of Borrowers,” press release, August 22, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/>.

<sup>37</sup> Forbes, “An Attorney Explains Who May Qualify For Student Loan Forgiveness Under New Biden Plan,” Adam S. Minsky, October 25, 2023, <https://www.forbes.com/sites/adamminsky/2023/10/25/an-attorney-explains-who-may-qualify-for-student-loan-forgiveness-under-new-biden-plan/?sh=223a19d12a66>.

<sup>38</sup> Business Insider, “Student-loan borrowers’ interest rates would be ‘immediately eliminated’ if Democratic lawmakers’ new bill is passed,” Ayelet Sheffey, August 2, 2023, <https://www.businessinsider.com/eliminate-interest-rates-student-loan-debt-democrat-bill-relief-2023-8#:~:text=%22In%20fact%2C%20the%20average%20public,saving%20for%20a%20stronger%20retirement.%22>.

<sup>39</sup> U.S. Department of Education, “Proposed Regulatory Text Student Debt Relief Negotiated Rulemaking, Session 3: December 11-12, 2023,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/new-student-loan-debt-relief-proposed-regulatory-text-session-3-v1.pdf>.

borrowers) would qualify for relief.<sup>40</sup> However, a borrower who hits the 20- or 25-year mark on July 2, 2025 would be ineligible for relief. ED should remove the cutoff date for relief for borrowers who have been in repayment for decades, and instead permit borrowers to become eligible for this relief on a rolling basis. Alternatively, if ED decides that a cutoff date is necessary in order to limit the universe of borrowers who could access relief, a fairer cutoff date could be set such that any borrower who enrolled in the student loan portfolio by July 1, 2024 can become eligible once in repayment for 25 years (i.e. permit borrowers to become eligible on a rolling basis until July 2049).

#### **4) Extend relief to borrowers with financial hardship and create a catch-all category for unforeseen forms of hardship.**

ED has a unique opportunity to extend relief to borrowers who are experiencing financial hardship but who may not be eligible for any other source of student debt relief. But as drafted, the rule would leave many such borrowers in their same precarious financial position, shortchanging the President’s core goal of making higher education a ticket to the middle class rather than a source of burdensome debt that “deprives them of that opportunity.”<sup>41</sup> The Department is already considering addressing forms of hardship that could qualify a borrower for relief.<sup>42</sup> ED should ensure that the rule permits relief for borrowers whose student debt creates serious financial hardship, and should consider using student-debt-to-income ratios as an indicator of hardship. Research from the University of California found that middle-income borrowers with a student-debt-to-income ratio over 30% are likely to face serious financial hardship, while low-income households making below \$71,000 typically face hardship repaying student loans regardless of their ratio.<sup>43</sup> In addition to the debt-to-income ratios, ED can look to other indicators of hardship, such as whether a borrower has filed for bankruptcy, did not complete their degree, owns Parent PLUS loans while still repaying their own loans, has chronically been in default, or is over a certain age and has limited income. ED should also extend relief based on whether a borrower was a Pell grant recipient or had an Expected Family Contribution of \$0 when applying for loans, given evidence that a borrower’s need when entering school is correlated with the degree of hardship faced in paying off debt.<sup>44</sup> Finally, the rule should also include a catch-all provision to capture other forms of hardship in the interest of justice, while steering away from historically restrictive criteria for relief eligibility.<sup>45</sup> This would

<sup>40</sup> *Id.*

<sup>41</sup> The White House, “FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” press release, August 24, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

<sup>42</sup> U.S. Department of Education, “Borrower Hardship Issue Paper Negotiated Rulemaking, Session 2, November 6-7, 2023,” <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/session-2-borrower-hardship-issue-paper-pdf-accessible.pdf>.

<sup>43</sup> University of California, “Financial Hardship Among Student Borrowers,” Sultana Fouzia, Marshall Steinbaum, Dalié Jiménez, and Jonathan Glater, December 2023, <https://www.slli.org/databrief3>.

<sup>44</sup> The White House, “FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” press release, August 24, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/#:~:text=Nearly%20every%20Pell%20Grant%20recipient,their%20debt%20than%20other%20borrowers.>

<sup>45</sup> The *Brunner* test has been used by most bankruptcy courts to assess student loan debtors’ financial hardship but has been criticized for making it “too difficult for debtors experiencing severe financial stress to discharge their student loans in bankruptcy,” in part given its rigid, fact-intensive nature. Congressional Research Service, “Bankruptcy and Student Loans,” report, July 18, 2019, p. 42, <https://sgp.fas.org/crs/misc/R45113.pdf>.

give the Secretary the flexibility to waive debt for other unanticipated forms of financial hardship that justify relief, without having to return to the neg reg process as new needs emerge.

**5) Extend relief to borrowers who have been victims of student loan servicer misconduct or error.**

The rule should also capture victims of student loan servicer misconduct or error. The draft text does not yet build in protections for borrowers who have faced predatory loan servicer practices, such as forbearance steering, overcharging, or failing to enroll borrowers in IDR plans for which they were eligible, upon their request.<sup>46</sup> As a result of such servicer errors, many borrowers are now struggling to repay their loans, and some have even defaulted, exposing them to severe consequences such as wage garnishment, treasury offsets, collection fees, loss of professional licenses, and notation on credit reports.<sup>47</sup> Even ED has acknowledged the long history of forbearance steering by student loan servicers.<sup>48</sup> The Department should extend relief to borrowers who have been victims of student loan servicer misconduct or error. This change would be consistent with ED’s extension of relief to borrowers who have been victims of misconduct by educational institutions and would acknowledge the role of servicers in similarly causing many of the systemic harms that borrowers currently face.

**6) Eliminate the need for borrowers to submit burdensome applications by basing eligibility for relief on information that ED already has or that it can acquire from other agencies.**

The rule should extend relief to borrowers automatically, without requiring them to submit applications. ED’s past experiences with debt cancellation have revealed that burdensome applications depress the number of eligible borrowers who actually access relief.<sup>49</sup> ED can largely base relief on information already in its possession through payment history databases, Free Application for Federal Student Aid (FAFSA) applications, and more. Such information could include whether a borrower has Parent PLUS loans while still repaying their own loans, received a Pell grant, or has paid enough to cover their initial principal. Additionally, ED can provide hardship relief based on information from other federal agencies. ED could enter a new Memorandum of Understanding (MOU) with the IRS or other agencies to access — with borrowers’ consent — up-to-date information to determine which borrowers are below 225

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<sup>46</sup> Consumer Financial Protection Bureau, “Supervisory Highlights Student Loan Servicing Special Edition,” report, September 2022, p. 22, [https://files.consumerfinance.gov/f/documents/cfpb\\_student-loan-servicing-supervisory-highlights-special-edition\\_report\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf); U.S. Department of Education, “Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs,” April 19, 2022, <https://www.ed.gov/news/press-releases/departament-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

<sup>47</sup> Pew, “At What Cost? The Impact of Student Loan Default on Borrowers,” Ilan Levine, Ama Takyi-Laryea and Phillip Oliff, February 16, 2023, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/02/at-what-cost-the-impact-of-student-loan-default-on-borrowers>.

<sup>48</sup> U.S. Department of Education, “Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs,” April 19, 2022, <https://www.ed.gov/news/press-releases/departament-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

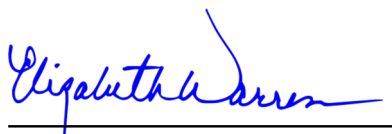
<sup>49</sup> National Bureau of Economic Research, “Waivers for the Public Service Loan Forgiveness Program: Who Would Benefit from Takeup?,” Diego A. Briones, Nathaniel Ruby and Sarah Turner, report, July 2022, p. 18, [https://www.nber.org/system/files/working\\_papers/w30208/w30208.pdf](https://www.nber.org/system/files/working_papers/w30208/w30208.pdf).



percent of the federal poverty line or receive means-tested benefits, and to calculate debt-to-income ratios. ED has taken steps to streamline the FASFA and IDR application processes in the past, and it should implement similar streamlining efforts here. Automatically granting relief would ensure that assistance reaches borrowers promptly and without unnecessary hurdles.

We are encouraged by the Department’s critical efforts to provide student debt relief through negotiated rulemaking. However, we believe more must be done to improve the draft regulatory text to meet President Biden’s objective of “provid[ing] student debt relief to as many borrowers as possible as quickly as possible.”<sup>50</sup> The Biden Administration should take every opportunity to use the authority Congress has already given it to deliver on the promises made to student loan borrowers.

Sincerely,



Elizabeth Warren  
United States Senator



Charles E. Schumer  
United States Senator



Bernard Sanders  
United States Senator



Ayanna Pressley  
Member of Congress

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<sup>50</sup> The White House, “Remarks by President Biden on the Supreme Court’s Decision on the Administration’s Student Debt Relief Program,” speeches and remarks, June 30, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/30/remarks-by-president-biden-on-the-supreme-courts-decision-on-the-administrations-student-debt-relief-program/>.



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Alex Padilla  
United States Senator



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Frederica S. Wilson  
Member of Congress  
Ranking Member,  
Subcommittee on Higher  
Education and Workforce  
Development



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Ilhan Omar  
Member of Congress