MEMORANDUM

November 3, 2023

TO: Interested Parties

RE: [Negotiated Rulemaking 2023] Incarcerated Student Loan Borrowers

OVERVIEW

As the U.S. Department of Education (the Department) and negotiators continue the negotiated rulemaking process around student debt relief, we urge the Department to consider an overlooked borrower population: incarcerated student borrowers. These borrowers likely fit under multiple categories that negotiators have discussed,[1] but this memo focuses on borrowers who are eligible for relief under programs like income-driven repayment (IDR) but have not applied and borrowers experiencing hardship that is not otherwise addressed by the existing student loan system.

BACKGROUND

The scale of the carceral student loan crisis is unknown because the Department does not record the number of borrowers who are incarcerated, and the carceral state is fragmented among federal, state, county, and local facilities. Advocates, economists, and researchers estimate there are likely 200,000-250,000 incarcerated individuals with student loans.[2] The available empirical studies have found that the majority of these borrowers have low balances (under $10,000) and default at disproportionately high rates compared to their peers.[3]

Without an intervention made by the Department, these borrowers are likely to continue to struggle to keep pace with even modest debt balances. It is increasingly clear that communications and income-earning options in prison are uniquely ill-suited to the time-consuming and costly task of seeking and acting on information from student loan servicers.[4]

COMMUNICATION BARRIERS

As the restart of student loan repayments has highlighted, the inability of borrowers to communicate with their student loan servicers and receive timely, accurate information can spell disaster. For borrowers facing incarceration, these problems are even more extreme since the imposed barriers limit their communication beyond prison walls. Here are some of the hardships

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[1] https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/session-2-borrower-hardship-issue-paper.pdf
[2] https://spi-data.bjs.ojp.gov/dashboard; https://protectborrowers.org/wp-content/uploads/2022/07/Collection-at-All-Costs_Final.pdf.
[3] https://protectborrowers.org/wp-content/uploads/2023/06/Incarcerated-Borrowers-Report-June-2023.pdf
[4] https://www.opencampusmedia.org/2022/04/26/student-loan-defaults-are-a-big-barrier-to-prison-education-the-government-is-offering-new-help/

incarcerated borrowers may face while attempting to access relief under IDR plans or other programs:[5]

- During the COVID-19 pandemic, many facilities limited or eliminated access to computer labs. This has resulted in incarcerated borrowers having even less access to the Internet, and removing the ability to apply for IDR online. Even borrowers incarcerated in facilities with access to “inmate tablets” allowing limited access to a small number of pre-approved websites may find that no student loan servicer sites are pre-authorized.
- Many facilities prohibit residents from making calls to toll-free or “1-800” phone numbers altogether, but servicers and the Department often offer no alternatives to contact them via the phone.
- Many jails and prisons impose a range of access restrictions, including designated telephone hours, caps on call time, and inability to receive incoming calls. This prevents borrowers from waiting on hold or receiving a callback. Costs associated with telephone calls can be prohibitively high. A single 15-minute in-state phone call can cost more than five dollars in some correctional facilities and calls from local and county jails sometimes cost up to 50 cents per minute.
- Some jurisdictions confiscate residents’ paper mail, leaving them with only photocopies of their incoming mail and privacy concerns. Other facilities deny residents access to letter correspondence entirely, instead limiting all incoming and outgoing postal mail to postcards, which makes applying for IDR via paper application impossible.
- Many incarcerated borrowers lack or have no access to a financial advisor or counsel. Without the ability to discuss their financial options, many believe they have none at all.

For far too long, these borrowers have been locked out of student debt relief like IDR due to barriers limiting the most basic communication with servicers. Redress for these borrowers must take these limitations into account and not rely on the borrower-initiated application processes that will inevitably continue to leave nearly all incarcerated individuals behind.

FINANCIAL HARDSHIP BARRIERS

In addition to being unable to apply for long-term relief, incarcerated borrowers should be eligible for cancellation because many will be unable to pay the full amount of their debts in a reasonable time. More than half of Americans who become incarcerated will likely spend their entire lives, in and out of prison, in poverty.[6]

Those who become incarcerated are much more likely to come from poor, segregated neighborhoods and low-income families. Data from the IRS reveals that three years before incarceration, about half of prime-age men are unemployed. The median earnings of those working were $6,250, and only 13 percent earned more than $15,000.[7] All of these people would qualify for a $0 IDR plan.

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[5] https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf
[6] Based on trends from 15 years of tax records. https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf
[7] https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf, pg 1

In prison, borrowers have almost no income. Many states do allow work for pay, and the ones that allow this offer wages well below the standard minimum wage (see appendix).[8] In the prison context, it is nearly guaranteed that close to 100 percent of incarcerated borrowers would qualify for a $0 IDR plan.

After prison, median wages remain well below the cutoff for a $0 IDR payment. Only 55 percent of the formerly incarcerated have any reported earnings a year after exiting. Those working had median earnings of $10,090, while only 20 percent earned more than $15,000 that year.[9] The US Department of Justice issued a report finding that 33 percent of those released from federal prison in 2010 found no employment at all over four years post-release.[10] The criminal record further stacks the deck against these borrowers, as employers are nearly 50 percent less likely to call back an applicant with a criminal history.[11]

The extreme prevalence of unemployment and poverty means that the federal government is unlikely to ever earn money on these loans. Yet the Department's collection efforts leave already disadvantaged borrowers with damaged credit scores, garnished wages,[12] and a much harsher return to society.

CHANGES PROPOSED FOR THE RULEMAKING

Forgive the debt of borrowers who have spent or will spend five cumulative years incarcerated

Borrowers with cumulative sentences over five years are likely to suffer from the problems of life-long impoverishment, due in part to the inadequate servicing while incarcerated. Incarceration-related defaults cause significant financial harms upon reentry for these borrowers. Student loan defaults not only hurt the borrower's credit, making it even more difficult to secure housing and employment after release, but it also increases their debt and puts them at risk of wage garnishment—precisely when they are most financially unstable. They deserve retrospective forgiveness, both as an acknowledgment of the uncollectable nature of their debts and atonement for the harm caused by insufficient help avoiding default.

The Department's current 10-year write-off policy should be revisited based on new economic research focused on the financial hardships incarcerated individuals face both pre- and post-incarceration. This research finds that employment and earnings among the reentering population are uniformly low, regardless of sentence length.[13] A first-time incarceration spell, regardless of length, is correlated with lifetime earnings of a third to a half lower.[14] In fact, a five year cut-off likely misses many incarcerated and formerly incarcerated borrowers who are never going to be able to repay their loans: the median prison spell, at least among state prisoners in 2018, was 2.7 years.[15] Borrowers who are incarcerated for five years or more are highly unlikely to be able to

[8] https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf, pg 12
[9] https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf, pg 2
[10] https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf
[11] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3583356/
[12] https://www.newamerica.org/education-policy/briefs/trapped-by-default/
[13] https://www.nber.org/system/files/working_papers/w12003/w12003.pdf
[14] https://www.sciencedirect.com/science/article/abs/pii/S1094202523000327
[15] https://bjs.ojp.gov/content/pub/pdf/tssp18.pdf

repay their student debt, and in many instances, it is likely that collection costs will exceed what little they are able to pay.

The Department should be able to cancel some borrowers' debt immediately thanks to administrative records, and it may need to set up data sharing agreements to catch remaining borrowers. Currently, borrowers who have remaining sentences over ten years can get their debt written-off, and borrowers with sentences over 9 months can get their debt marked "uncollectible," for approximately the duration of their time in prison. Neither written-off nor uncollectable debt is cancelled. In fact, collections on "uncollectible" loans are turned back on just as (or before) the borrower returns to society.[16] Recently, borrowers with written-off debt who enroll in Fresh Start have found that this so-called relief resulted in their collections being reopened.[17] In short, the policy of writing off and pausing—rather than cancelling—this debt causes financial hardship just when incarcerated individuals are trying to get back on their feet.

The written-off and uncollectable statuses are a formal recognition that debtors are unable to pay the full amount of their loans in a reasonable time, making them clearly eligible for loan cancellation through the Department's authority to compromise and terminate debt collection waiver authority.[18] Borrowers with written-off debt or debt marked uncollectable with a sentence of five or more years should receive full cancellation. The Department maintains records for borrowers it has identified are incarcerated, meaning that this forgiveness can be automatic.[19]

Incarcerated borrowers who reach the five year threshold but did not receive a write-off or a demarcation of uncollectable debt also deserve retrospective forgiveness. We encourage the Department to use this negotiated rulemaking to clarify its authority to cancel the debt of borrowers who spend years incarcerated, regardless of their current access to this data on the entire incarcerated population. Once the authority is established, the Department can enter into data-sharing agreements to begin automatically canceling the debt of remaining eligible borrowers. Potential sources of information include data collected by the IRS for audit purposes,[20] N-DEx,[21] commercial datasets, and federal, state, and local agreements.[22]

Align one-time retrospective forgiveness to the SAVE cancellation timeline

The Department should go beyond a 25-year period when providing one-time retroactive forgiveness, and align the number of years required for this one-time forgiveness with the years required for forgiveness in the new Saving on a Valuable Education (SAVE) plan.[23] This would

[16] https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf, pg 16-17
[17] https://fsapartners.ed.gov/sites/default/files/2023-09/FactSheetFreshStartforIncarceratedStudents.pdf
[18] 31 § 902.2(a)
[19] Borrowers incarcerated for more than nine months but less than 10 years are coded as "Incarceration-Collectable," or "INC"; borrowers incarcerated for 10 years or more are coded "Incarceration-Write Off," or "INW."
[20] https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_appendix_final.pdf
[21] https://www.ndex.fbi.gov/
[22] https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf, pg 21
[23] https://studentaid.gov/announcements-events/save-plan

ensure incarcerated borrowers who spent years in statuses ineligible for forgiveness—largely default—are provided the same protections as future borrowers.[24]

Conduct a one-time count adjustment to count time in default towards forgiveness

Borrowers who took out their loans too recently to receive the above one-time forgiveness should still receive credit for time in default. Incarcerated borrowers in default almost certainly would have qualified for a $0 IDR payment, had they been better served, but instead ended up in default. The Department should use this rulemaking to conduct a one-time count adjustment that counts time in default towards IDR forgiveness.[25]

CONCLUSION

Collecting on incarcerated borrowers yields minimal returns for the Department but maximum harm for these vulnerable borrowers. Borrowers incarcerated in the past almost inevitably ended up in default—suffering greater harm to their credit scores, earning potential, and ability to return to school—due to poverty and inadequate student loan servicing. The negotiated rulemaking represents an opportunity to clear the slate for incarcerated borrowers who have long suffered from the failures of multiple systems. If you have any questions, please contact Satra D. Taylor, satra.taylor@younginvincibles.org.

[24] This policy would also help older borrowers. See recommendation 7. https://www.newamerica.org/education-policy/edcentral/policies-help-seniors-in-student-debt/

[25] An on-going count adjustment does not count time in default. https://studentaid.gov/announcements-events/idr-account-adjustment

APPENDIX: Incarcerated Wages and IDR Payments

State	Hourly Wage	Weekly Wage	Annual Earnings	Monthly IDR Payment
Alabama	$0.00	$0.00	$0.00	$0
Alaska	$1.25	$50.00	$2,600.00	$0
Arizona	$0.50	$20.00	$1,040.00	$0
Arkansas	$0.00	$0.00	$0.00	$0
California	$0.37	$14.00	$728.00	$0
Colorado	$0.38	$15.20	$790.40	$0
Connecticut	$1.00	$40.00	$2,080.00	$0
Delaware	$2.00	$80.00	$4,160.00	$0
Florida	$0.32	$12.50	$650.00	$0
Georgia	$0.00	$0.00	$0.00	$0
Hawaii	$0.25	$10.00	$520.00	$0
Idaho	$0.90	$30.00	$1,560.00	$0
Illinois	$0.89	$11.25	$585.00	$0
Indiana	$0.25	$18.75	$975.00	$0
Iowa	$0.68	$27.20	$1,414.40	$0
Kansas	$0.16	$6.40	$332.80	$0
Kentucky	$0.33	$13.20	$686.40	$0
Louisiana	$1.00	$40.00	$2,080.00	$0
Maine	$3.50	$140.00	$7,280.00	$0
Maryland	$0.46	$18.40	$956.80	$0

Massachusetts	$1.00	$40.00	$2,080.00	$0
Michigan	$0.56	$22.40	$1,164.80	$0
Minnesota	$2.00	$80.00	$4,160.00	$0
Mississippi	$1.30	$52.00	$2,704.00	$0
Missouri	$1.25	$7.50	$390.00	$0
Montana	$1.25	$25.00	$1,300.00	$0
Nebraska	$1.08	$23.60	$1,227.20	$0
Nevada	$5.15	$206.00	$10,712.00	$0
New Hampshire	$1.50	$10.00	$520.00	$0
New Jersey	$2.00	$8.00	$416.00	$0
New Mexico	$1.00	$40.00	$2,080.00	$0
New York	$0.33	$9.90	$514.80	$0
North Carolina	$0.38	$15.20	$790.40	$0
North Dakota	$0.88	$35.20	$1,830.40	$0
Ohio	$0.17	$6.00	$312.00	$0
Oklahoma	$0.54	$6.77	$352.04	$0
Oregon	$0.47	$20.50	$1,066.00	$0
Pennsylvania	$1.00	$40.00	$2,080.00	$0
Rhode Island	$0.86	$34.40	$1,788.80	$0
South Carolina	$0.00	$0.00	$0.00	$0
South Dakota	$0.38	$15.20	$790.40	$0
Tennessee	$0.75	$30.00	$1,560.00	$0

Texas	$0.00	$0.00	$0.00	$0
Utah	$1.75	$70.00	$3,640.00	$0
Vermont	$0.40	$16.00	$832.00	$0
Virginia	$0.45	$18.00	$936.00	$0
Washington	$0.36	$13.75	$715.00	$0
West Virginia	$0.58	$20.25	$1,053.00	$0
Wisconsin	$0.42	$16.80	$873.60	$0
Wyoming	$1.00	$40.00	$2,080.00	$0
Federal Prison	$0.40	$16.00	$832.00	$0
Average	**$0.63**	**$25.20**	**$1,310.40**	**$0**

Sources:

Hourly wage for incarcerated workers by state, calculated using highest pay for regular jobs: https://www.prisonpolicy.org/blog/2017/04/10/wages/

Number of hours in a work week and earnings caps for incarcerated workers by state: https://www.prisonpolicy.org/reports/wage_policies.html

Federal poverty guidelines: https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines

IDR formula and percent of protected income: https://studentaid.gov/manage-loans/repayment/plans/income-driven