

From: Kyra Taylor, Primary Negotiator on Behalf of Legal Assistance Organizations That Represent Students or Borrowers; Jessica Ranucci, Primary Negotiator on Behalf of Consumer Advocates; John Whitelaw, Primary Negotiator on Behalf of Individuals with Disabilities or Groups Representing Them  
To: Student Loan Relief Negotiation Committee  
Date: November 14, 2023  
Re: Relief For Distressed Borrowers Using Existing Authority

As the legal assistance organizations' primary negotiator raised during the first two negotiation sessions, the Department currently has the authority to provide relief to distressed borrowers using its compromise authority under the Federal Claims Collection Standards (FCCS). At a minimum, the Department could fully compromise the below groups of borrowers' debts under the FCCS basis that the Department is "unable to collect the debt in full within a reasonable time by enforced collection proceedings." Under the FCCS, the Department has the discretion to differentiate what constitutes a "reasonable amount of time" for different borrowers based on the circumstances they present and the data the Department has in its possession. The Department could use the borrower's time in repayment, default, FAFSA data, payment history, or potential eligibility for \$0 payments or cancellation under an IDR plan to determine when a reasonable amount of time to collect the borrower's debts in full has been exceeded.<sup>1</sup>

We strongly recommend that, at a minimum, the Department use either its authority under the FCCS to cancel these debts now, or include language within its new regulations to fully discharge the debts of the following borrowers.

- A) The borrower's debt was in default before the payment pause took effect in 2020 and
  - (1) The Department either
    - (i) Garnished the borrower's wages pursuant to 34 CFR Part 34 or has used administrative offset to offset federal benefits pursuant to 34 CFR Part 30, Subpart C for a year or more and the payments have not exceeded the amount of interest and collection fees charged to the borrower during that time frame
    - (ii) Offset the borrower's IRS tax refunds pursuant to 34 CFR § 30.33 for a year or more and the payments have not exceeded the amount of interest and collection fees charged to the borrower during that time frame.
  - (2) The borrower's loans entered default 3 or more years prior to the payment pause in 2020;
  - (3) The borrower has been in receipt of means-tested state or federal public

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<sup>1</sup> For data indicating that these populations of borrowers may never repay their debts in full within a reasonable period of time, see Abby Shafroth & Kyra Taylor, [Delivering Distress to Borrowers in Default](#), National Consumer Law Center (October 2023).

benefits for 3 years or more during the time his or her loans have been in repayment.

- (4) The borrower owes Parent PLUS loans and the child that received the loans had an Estimated Family Contribution (EFC) of \$0 on their FAFSA application;
- (5) The borrower is currently over the age of 62 and their income is primarily based on Social Security or is less than 225% of the federal poverty line;
- (6) The borrower has been eligible for a \$0 monthly payment amount for 3 years or more on in an income-contingent repayment plan, income-based repayment plan, income-sensitive repayment plan, or alternative plan provided in 34 CFR §§ 685.208, 685.209, 685.221, 682.209, or 682.215;
- (7) The borrower's loans entered payment:
  - i. 10 years ago for borrowers with an original principal balance of \$12,000 or less, plus one year for every additional \$1,000 borrowed up to 20 years for borrowers that only borrowed undergraduate loans or 25 years for borrowers who borrowed one or more graduate loan,
  - ii. 20 years ago for borrowers with an original principal balance of \$22,000 or more for only undergraduate loans, or
  - iii. 25 years ago for borrowers with an original principal balance of \$27,000 or more for loans that include graduate loans; or
- (8) The borrower filed for bankruptcy after the borrower's loans were disbursed.

B) The borrower has debts that were in repayment before the payment pause began and

- (1) The borrower is over the age of 62 and their income is primarily based on Social Security or has income that is less than 225% of the federal poverty line;
- (2) The borrower has been in receipt of means-tested state or federal public benefits for 3 years or more during the time his or her loans have been in repayment;
- (3) The borrower has been eligible for a \$0 monthly payment amount for 3 years or more on in an income-contingent repayment plan, income-based repayment plan, income-sensitive repayment plan, or alternative plan provided in 34 CFR §§ 685.208, 685.209, 685.221, 682.209, or 682.215;
- (4) For 10 years or more, the borrower has been in forbearance, deferment, delinquency, default, or has been eligible for an income-contingent repayment plan, income-based repayment plan, income-sensitive repayment plan, or alternative plan provided in 34 CFR §§ 685.208, 685.221, 682.209, or 682.215 where payments have not been applied to the borrower's original principal; or
- (5) The borrower filed for bankruptcy within the prior 7 years and after

the borrower's loans were disbursed.