

United States Senate
WASHINGTON, DC 20510

November 18, 2021

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

Dear Secretary Cardona:

We write to follow up on our April 2021 letter requesting that the U.S. Department of Education (“the Department”) take action to address the student debt crisis by automatically removing eligible borrowers from default status.¹ With student loan payments and collections scheduled to resume in less than three months, this action is more urgent than ever. As the Department works to correct the past failures of the student loan program, it also has an opportunity to relieve a significant burden on borrowers by developing a policy to forgive debts for borrowers who have been in default for an extended period of time. Allowing payments and collections to resume without taking these actions to protect borrowers in default would undermine our economic recovery, and I urge you to take immediate steps to prevent these borrowers from being further harmed.

More than 8 million federal student loan borrowers are in default on their federal student loans.² A disproportionate number of these borrowers are low income, people of color, first generation college students, veterans, student parents, students with disabilities, and borrowers who did not complete college.³ Many of these groups have also been disproportionately harmed by the public health and economic crises of the COVID-19 pandemic.⁴ If these borrowers remain in default when student loan payments and collections resume, they will be subject to wage garnishment, tax refund withholding, and aggressive collections practices.⁵ Millions of families could see their

¹ Senator Elizabeth Warren, “Warren, Warnock, Colleagues Urge Education Department to Automatically Rehabilitate All Federally-Held Student Loans in Default,” April 20, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-warnock-colleagues-urge-education-department-to-automatically-rehabilitate-all-federally-held-student-loans-in-default>.

² Barron’s, “A Path Forward for the One in Five Student Loan Borrowers in Default,” Sarah Sattelmeyer, November 5, 2021, <https://www.barrons.com/articles/a-path-forward-for-the-one-in-five-student-loan-borrowers-in-default-51636123063>.

³ Center for American Progress, “The Forgotten Faces of Student Loan Default,” Colleen Campbell, October 16, 2018, <https://www.americanprogress.org/issues/education-postsecondary/news/2018/10/16/459394/forgotten-facesstudent-loan-default/>.

⁴ Washington Post, “The covid-19 recession is the most unequal in modern U.S. history,” Heather Long, Andrew Van Dam, Alyssa Fowers, and Leslie Shapiro, September 30, 2020, <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>.

⁵ Washington Post, “Education Department to halt collection of defaulted student loans, refund \$1.8 billion,” Danielle Douglas-Gabriel, March 24, 2020, <https://www.washingtonpost.com/education/2020/03/24/student-loans-collection-coronavirus/>.

Earned Income Tax Credit and Child Tax Credit refund payments withheld, undermining the effectiveness of President Joseph R. Biden’s signature economic policies.⁶ If they are removed from default status, these borrowers will be eligible to enroll in income-driven plans, under which families earning less than 150% of the federal poverty line would have a \$0 payment on their student loans.⁷

The Department has clear authority to remedy this by automatically removing borrowers with federally-managed student loans from default status. Under the *Higher Education Act of 1965*, a borrower may rehabilitate their loan and exit default status if they satisfy nine consecutive, on-time monthly payment obligations.⁸ Once a borrower completes the rehabilitation process, the record of default is removed from their credit history. As a result of the nationwide payment freeze, all defaulted borrowers with federally-held student loans have now met the requirement for completing nine payment obligations and are thus eligible for rehabilitation. Despite this cost-free pathway, recently released data has revealed that more than 93% of borrowers who were in default before the pandemic are still in default today, underscoring the importance of taking administrative action to remove bureaucratic barriers and automate relief.⁹ The *Higher Education Relief Opportunities for Students (HEROES) Act of 2003* provides that the Secretary may “waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV” during a period of national emergency.¹⁰ As such, the Department can waive the requirement for borrowers to submit an application and the restriction that a borrower can rehabilitate only one time, and all federal borrowers in default can be eligible for automatic rehabilitation.

Additionally, we urge the Department to develop a policy, under its settlement and compromise authority,¹¹ for discharge of student debt in cases of long term default by a borrower and where it is unlikely that the Department will ever collect or is financially unfeasible for the Department to continue collection efforts. Other types of debt, such as medical debt, typically have a statute of limitations of three to ten years, depending on the state, for these very reasons.¹² In contrast, there is no statute of limitations for student loan debt, and borrowers often are unable to discharge this debt in bankruptcy.¹³ While there is very limited public information available

⁶ National Consumer Law Center, “Protect Tax Refunds from Offset and Garnishment: Preserve Stimulus Payments, Earned Income Tax Credits, and Child Tax Credits for Suffering Families,” February 2021, https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Protect_Tax_Refunds.pdf.

⁷ Urban Institute, “Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default,” Kristin Blagg, August 2018, https://www.urban.org/sites/default/files/publication/98884/underwater_on_student_debt.pdf.

⁸ 20 U.S. Code § 1087dd.

⁹ Student Borrower Protection Center, “Millions of Student Loan Borrowers Had a Special Chance to Exit Default During COVID. The Biden Administration Must Fix the System Failure that Led Almost No Borrowers to Access It,” Ben Kaufman, November 16, 2021, <https://protectborrowers.org/millions-of-student-loan-borrowers-had-a-special-chance-to-exit-default-during-covid-the-biden-administration-must-fix-the-system-failure-that-led-almost-no-borrowers-to-access-it/>.

¹⁰ 20 U.S. Code § 1098bb.

¹¹ 20 U.S.C. §§ 1082(a)(4).

¹² National Foundation for Credit Counseling, “What is the Statute of Limitations for Medical Debt?,” Courtney Nagle, June 3, 2021, <https://www.nfcc.org/resources/blog/what-is-the-statute-of-limitations-for-medical-debt/>.

¹³ American Bar Association, “Student Loans and Bankruptcy,” https://www.americanbar.org/groups/business_law/safeborrowing/student/bankruptcy/.

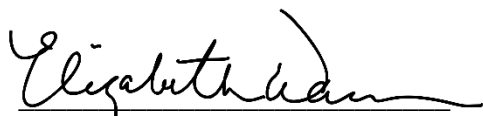
about the length of time that borrowers have been in default, the available evidence suggests that a significant number of borrowers in default have been subject to collections for a lengthy amount of time, with little upside for the federal government and taxpayers. One study found that 30% of borrowers in default remained there for at least five years.¹⁴ Attempting to collect on this debt is likely not a cost-effective use of taxpayer dollars, and forgiving this debt would result in life-changing relief for the affected borrowers that could benefit our overall economy. Cancelling \$50,000 of student debt would address this issue by relieving the student debt burden entirely for the vast majority borrowers. While you and President Biden consider options for broad-based debt cancellation, I encourage you to work to develop a permanent policy that more cost effectively incorporates the Department’s settlement and compromise authority into its collection practices on long-term defaults.

Removing borrowers from default status and forgiving debts for borrowers who have been in default for years will prevent punitive wage garnishment and collections practices from interfering with the economic recovery and undermining the Biden administration’s effective anti-poverty programs. The removal of borrowers’ records of default will improve borrowers’ credit scores, and in turn, their economic wellbeing. It may also improve their ability to find employment or rent an apartment. Borrowers will also regain eligibility for student aid, allowing them to go back to school for new education or training opportunities. At the same time, the Department should prepare a comprehensive plan to ensure that student loan servicers will provide timely, actionable, and accurate customer service to assist these borrowers with any transition back into repayment, including by providing information about opportunities for student loan cancellation or discharge and income-driven repayment.

We urge the Department to take swift action to assist student loan borrowers throughout this pandemic using every available statutory, regulatory, and administrative authority. Given that all defaulted borrowers have satisfied the statutory requirements for rehabilitation, the Department should automatically rehabilitate all federally-managed student loans without the need for application and develop a policy for discharge of debt for borrowers who have been in default for an extended period of time.

Thank you for your prompt attention to this request.

Sincerely,



Elizabeth Warren
United States Senator

/s/

Cory A. Booker
United States Senator

¹⁴ American Enterprise Institute, “Federal Student Loan Defaults: What Happens After Borrowers Default and Why,” Jason D. Delisle, Preston Cooper, and Cody Christensen, August 2018, <https://www.aei.org/wp-content/uploads/2018/08/Federal-Student-Loan-Defaults.pdf?x91208>.

/s/

Sherrod Brown
United States Senator

/s/

Bernard Sanders
United States Senator

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Richard Blumenthal
United States Senator

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Tina Smith
United States Senator

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Edward J. Markey
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