

# United States Senate

WASHINGTON, DC 20510

April 22, 2022

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

Dear Secretary Cardona:

We write requesting additional information on your plans to address the status of defaulted borrowers when student loan payments resume. We were pleased with the Department of Education's (ED) announcement on April 6, 2022, to extend the payment pause and provide borrowers with "a 'fresh start' on repayment by eliminating the impact of delinquency and default and allowing them to reenter repayment in good standing."<sup>1</sup> This move, which we requested in a November 2021 letter, has the potential to provide significant relief to millions of borrowers, particularly those who have most struggled with repaying their loans.<sup>2</sup> We now write to request further detail about the steps ED intends to take to implement this plan and protect borrowers who have been in default for an extended period of time.

More than 7 million federal student loan borrowers are currently in default on their federal student loans.<sup>3</sup> A disproportionate number of these borrowers are low income, people of color, first generation college students, veterans, student parents, students with disabilities, and people who did not complete college.<sup>4</sup> Removing these borrowers from default when student loan payments and collections resume means that millions will not be immediately subject to wage garnishment, tax refund withholding, and aggressive collections practices that undermine their economic security.<sup>5</sup> Placing borrowers in good standing also makes them eligible to enroll in Income-Driven Repayment (IDR) plans, where families earning less than 150% of the federal poverty line would have a \$0 payment on their student loans.<sup>6</sup>

<sup>1</sup> U.S. Department of Education, "Biden-Harris Administration Extends Student Loan Pause Through August 31," press release, April 6, 2022, <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31>.

<sup>2</sup> The Office of Senator Elizabeth Warren, "Senator Warren Urges Department of Education to Remove Millions of Student Loan Borrowers from Default," press release, November 18, 2021, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-urges-department-of-education-to-remove-millions-of-student-loan-borrowers-from-default>.

<sup>3</sup> 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>; 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/forgottenfacesstudent-loan-default/>.

<sup>4</sup> 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/forgottenfacesstudent-loan-default/>.

<sup>5</sup> 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/>.

<sup>6</sup> Finaid.gov, "Income-Based Repayment," <https://finaid.org/loans/ibr/>.

The *Higher Education Act of 1965* gives ED clear settlement and compromise authority which it can use to remove those with federally managed loans from default status and discharge cases of long-term default.<sup>7</sup> The available evidence suggests that a significant number of borrowers in default have been subject to collections for a lengthy amount of time – implying that there are miniscule benefits for taxpayers to continue trying to collect on these loans. One study found that 30% of borrowers in default remained there for at least five years.<sup>8</sup> According to ED data, more than 2.1 million borrowers who were in default or at least 91 days delinquent on their federal student loans at the end of 2019 had been in repayment for 20 years or more. Another 3.4 million borrowers in default or delinquency were in repayment for between 10 and 20 years.<sup>9</sup> Unlike other types of debt that are subject to a statute of limitations, there is no statute of limitations for student loan debt, and borrowers are often unable to discharge this debt in bankruptcy.<sup>10</sup> This suggests that borrowers who remain in default even after ED has garnished their wages, tax returns, Social Security, and other benefits for many years may remain in default because they do not have money to be collected, not because they are choosing not to make payments. ED could grant this group of defaulted borrowers further relief by enforcing the Federal Claims Collections Standards (FCCS), which states that agencies may compromise a debt if “the debtor is unable to pay the full amount due in a reasonable time...or the cost of collecting the debt does not justify the enforced collection of the full amount.”<sup>11</sup>

To ensure that ED achieves its goal of providing struggling borrowers “a ‘fresh start’ and... access to repayment plans that meet their financial situations and needs”<sup>12</sup> before the payment pause expires on August 31, 2022, and to inquire about ED’s additional plans to provide relief to defaulted borrowers, we request the following information by May 5, 2022.

1. How many borrowers does ED expect will benefit from the “fresh start” program?
  - a. How many borrowers does ED expect will remain in good standing after six months?
  - b. How many borrowers does ED expect will return to default within nine months?
2. Will ED automatically remove borrowers from default status, without any application or registration requirements for borrowers?

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<sup>7</sup> 20 U.S.C. § 1082(a)(4).

<sup>8</sup> 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>.

<sup>9</sup> The Office of Senator Elizabeth Warren, “Ahead of Hearing, Warren Releases New Education Dept. Data Showing Widespread Benefits of Student Debt Cancellation,” press release, April 13 2021, <https://www.warren.senate.gov/newsroom/press-releases/ahead-of-hearing-warren-releases-new-education-dept-data-showing-widespread-benefits-of-student-debt-cancellation>.

<sup>10</sup> The National Consumer Law Center, “Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond,” November 2020, [https://www.nclc.org/images/pdf/student\\_loans/report-road-to-relief.pdf](https://www.nclc.org/images/pdf/student_loans/report-road-to-relief.pdf).

<sup>11</sup> 31 C.F.R. § 902.2 (a,e)

<sup>12</sup> U.S. Department of Education, “Biden- Harris Administration Extends Student Loan Pause Through August 31,” press release, April 6 2022, <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31>.

3. Please describe how ED plans to notify borrowers about the program, particularly borrowers who have been in default for 10 or more years, and those for which ED does not have contact information available.
4. How will ED instruct collection agencies, servicers, the Debt Management and Collections System (DMCS), and guaranty agencies to administer the program?
5. How does ED plan on handling accounts with judgments from debt collections lawsuits?
6. Please describe how ED will implement the program for borrowers with commercially held FFEL, Perkins and HEAL loans.
  - a. What instructions will ED provide to the commercial managers of these loans?
  - b. Will ED automatically consolidate FFEL loans into Direct Loans once they are assigned to ED?
7. Please describe ED's plans to support borrowers in long-term default after the payment restart begins on August 31, 2022.
  - a. Will ED forgive the loans of borrowers in long-term default?
    - i. If yes, how long must borrowers be in long-term default in order to qualify for forgiveness?
8. According to the FCCS, agencies may compromise a debt if "the debtor is unable to pay the full amount due in a reasonable time...or the cost of collecting the debt does not justify the enforced collection of the full amount."<sup>13</sup>
  - a. How many borrowers in long-term default have not had income or federal benefits to garnish in the last five years? Last 10 years?

How many borrowers in default does ED expect to pay off their debt within five years based on FSA's rate of collection from these debtors over the past 10 years? How many borrowers in default does ED expect to pay off their debt within 10 years based on FSA's rate of collection from these debtors over the past 10 years?

Sincerely,



Elizabeth Warren  
United States Senator



Raphael G. Warnock  
United States Senator

<sup>13</sup> 31 C.F.R § 902.2 (a,e)



Chris Van Hollen  
United States Senator



Cory A. Booker  
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Richard Blumenthal  
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Tammy Baldwin  
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Richard J. Durbin  
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