

Congress of the United States
Washington, DC 20510

July 14, 2021

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

Dear Secretary Cardona:

We write today to request information about the Department of Education’s (ED or “the Department”) collections practices that harm student borrowers. Even before the coronavirus disease 2019 (COVID-19) pandemic, collections on defaulted student loans were catastrophic for borrowers in default, who saw their wages, tax refunds, and even Social Security checks confiscated, in addition to being forced to pay exorbitant fees.¹ During the COVID-19 pandemic these collections were supposed to be suspended,² but ED improperly collected millions of dollars on defaulted loans despite this moratorium, inflicting undue financial hardship on hundreds of thousands of borrowers.³ With student loan and interest payments scheduled to resume on October 1, 2021,⁴ and a wave of loan delinquencies and defaults likely to follow,⁵ we are concerned about the Department resuming these payment collections and are seeking information about how ED plans to avoid long-term financial harm to borrowers.

When federal student loan borrowers have not made a loan payment for more than 270 days and do not make arrangements to repay this debt, ED has a number of administrative options to collect the outstanding debt on these defaulted student loans.⁶ Through wage garnishments, ED is able to collect up to 15% of a borrower’s disposable pay through the borrower’s employer to repay the debt.⁷ Through Treasury offset, ED refers the loan to the

¹ CNBC, “Here’s what happens—and what to do—if you can’t pay your federal student loans,” Abigail Johnson Hess, May 31, 2021, <https://www.cnbc.com/2021/05/31/what-happens-when-you-do-not-pay-your-federal-student-loans.html>.

² Politico, “DeVos halts collection of defaulted federal student loans,” Michael Stratford, March 24, 2020, <https://www.politico.com/news/2020/03/24/exclusive-devos-halts-collection-of-defaulted-federal-student-loans-146929>.

³ The Washington Post, “Looming end to student loan payment moratorium raises fears among defaulted borrowers,” Danielle Douglas-Gabriel, November 23, 2020, <https://www.washingtonpost.com/education/2020/11/23/defaulted-student-loans-collections-coronavirus-aid/>.

⁴ Federal Student Aid, U.S. Department of Education, “Coronavirus and Forbearance Info for Students, Borrowers, and Parents,” <https://studentaid.gov/announcements-events/coronavirus>.

⁵ CNBC, “The pause on federal student loan payments ends Sept 30 – here’s how to prepare,” Abigail Johnson Hess, April 23, 2021, <https://www.cnbc.com/2021/04/23/when-federal-student-loan-payments-pause-ends-how-to-prepare.html>.

⁶ Federal Student Aid, “Student Loan Delinquency and Default: Collections”, accessed on June 2, 2021, <https://studentaid.gov/manage-loans/default/collections>.

⁷ *Id.*

Treasury Department, which is able to withhold a borrower's tax refunds (including the newly expanded Child Tax Credit [CTC] and Earned Income Tax Credit [EITC]), Social Security, or other federal payments checks to repay the debt.⁸ If a borrower does not enter into a repayment agreement on their defaulted federal student loans, then ED refers these defaulted loans to private collections agencies (PCAs) that charge a collection fee amounting to 17.92% of the outstanding balance, significantly increasing the total amount owed and making it more difficult for borrowers to pay off the interest and principal on the loan.⁹

These student debt collection policies impose significant financial hardship on borrowers who are already struggling. As of March 2020 when the pandemic and economic downturn was just beginning, about 7.7 million borrowers defaulted on their loans.¹⁰ A disproportionate number of these borrowers were people of color, first-generation college students, veterans, parents, students with disabilities, and students who do not complete college.¹¹ These vulnerable borrowers' credit scores were negatively affected¹², making housing and job opportunities even more difficult to secure.¹³ Low income families that have their CTC and EITC refund checks seized by the federal government are often in worse situations with limited access to jobs and housing and less resources to cover essentials like food, electricity, and health care costs.¹⁴

Unsurprisingly, nearly 45% of borrowers in default report that they have not found a path to return their loan to good standing,¹⁵ indicating that the collections process is not successful at transitioning borrowers into sustainable repayment plans, instead trapping them in an economically untenable situation.¹⁶ This process is also not cost effective for taxpayers: in some cases, PCAs can earn \$40 for every \$1 recovered, despite having no incentive to prevent borrowers from defaulting again in the months following their rehabilitation.¹⁷

⁸ *Id.*

⁹ *Id.*

¹⁰ Department of Education, "Federal Student Loan Portfolio," <https://studentaid.gov/data-center/student/portfolio>.

¹¹ 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-faces-student-loan-default/>.

¹² CNBC, "The average credit score of student loan borrowers just went up, but here's why that's a red flag," Elizabeth Gravier, June 8, 2021, <https://www.cnbc.com/select/coronavirus-how-student-loans-affect-your-credit-score/>.

¹³ Student Borrower Protection Center, "New Data Show Student Loan Defaults Spiked in 2019 – A Warning to Industry and DeVos Amid Economic Fallout," Ben Kaufman, March 13, 2020, <https://protectborrowers.org/every-26-seconds/>; Wall Street Journal, "A Year Without Student-Loan Payments," Amber Burton and Julia Carpenter, March 20, 2021, <https://www.wsj.com/articles/a-year-without-student-loan-payments-11616252402>.

¹⁴ National Consumer Law Center, "Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic," Persis Yu, July 2020, pp. 5, https://www.nclc.org/images/pdf/student_loans/voices-of-despair-seizing-eitc-in-pandemic.pdf.

¹⁵ Center for American Progress, "Who Are Student Loan Defaulters?" Ben Miller, December 14, 2017, <https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/student-loan-defaulters/>.

¹⁶ Pew Research Center, "Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest," Kim Parker, Rachel Minkin, and Jesse Bennett, September 24, 2020, <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/#:~:text=Overall%2C%2025%25%20of%20U.S.%20adults,has%20occurred%20in%20their%20household>.

¹⁷ Consumer Financial Protection Bureau, "Annual report of the CFPB Student Loan Ombudsman," October 2016, pp. 5,

These punitive debt collection practices also slow our nation's economic growth by hindering the finances of people of all ages for decades. In 2016, the Government Accountability Office (GAO) found that approximately 114,000 borrowers over age 50 had more than \$171 million in Social Security benefits withheld because of defaulted student loans.¹⁸ A 2016 Treasury Department report showed that more than a quarter of borrowers in default had five or more prior referrals to collections and that these loans had been in default for an average of 17 years.¹⁹ Even the CEO of the Navient Corporation – which has its own troubling record of mistreating borrowers²⁰ – has testified that borrowers who have been in default for more than a decade should have their loans forgiven, saying, “there is no comparable practice in consumer lending for the federal government to hold on to delinquent or defaulted debt without a limit. Even past-due federal income taxes are canceled after 10 years.”²¹ ED and Treasury have discretion over how to prioritize their collections activities, and for borrowers who have been in default for an extended period of time, it is unlikely that the Federal government will see significant enough repayment from these borrowers to justify the cost of continuing to attempt to collect on their loan debts.

Although the *Coronavirus Aid, Relief, Economic Security Act* (CARES Act) established relief for borrowers by suspending payments and halting debt collections on defaulted loans,²² ED and Treasury still improperly garnished and withheld more than at least \$200 million from approximately 390,000 borrowers during this time.²³ The Department's failure to fully implement the collections moratorium raises concerns about how it will handle the upcoming scheduled resumption of collections and payments on October 1, 2021. This concern is further corroborated by reports that ED was slow to send formal letters to borrowers' employers

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

¹⁸ U.S. Government Accountability Office, “Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief,” December 2016, pp. 2-18,

<https://www.gao.gov/assets/gao-17-45.pdf>.

¹⁹ Treasury Department, “Report on Initial Observations from the Fiscal-Federal Student Aid Pilot for Servicing Defaulted Student Loan Debt,” July 1, 2016, <https://www.treasury.gov/connect/blog/Documents/student-loan-pilot-report-july-2016.pdf>. See pp. 2 of the report: 1,508 borrowers out of 5,729 total had 5 or more previous referrals (about 26%).

²⁰ The New York Times, “Navient, a student loan company, is ordered to repay \$22 million to the government,” Stacy Cowley, February 2, 2021, <https://www.nytimes.com/2021/02/02/business/navient-a-student-loan-company-is-ordered-to-repay-22-million-to-the-government.html>.

²¹ Testimony of Jack Remondi, President and CEO of the Navient Corporation, before the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Economic Policy, April 13, 2021, pp. 11, <https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf>.

²² Federal Student Aid, U.S. Department of Education, “Coronavirus and Forbearance Info for Students, Borrowers, and Parents,” accessed on May 25, 2021, <https://studentaid.gov/announcements-events/coronavirus>.

²³ More than \$200 million is the sum of \$186 million from wage garnishment and \$19 million from tax refunds. The Washington Post, “Looming end to student loan payment moratorium raises fears among defaulted borrowers,” Danielle Douglas-Gabriel, November 23, 2020, <https://www.washingtonpost.com/education/2020/11/23/defaulted-student-loans-collections-coronavirus-aid/>; The Washington Post, “Trump administration withheld nearly \$19 million in tax refunds from student loan borrowers after Congress ordered halt, lawsuit says,” Danielle Douglas-Gabriel, May 29, 2020, <https://www.washingtonpost.com/education/2020/05/29/trump-administration-withheld-nearly-19-million-tax-refunds-student-loan-borrowers-after-congress-ordered-halt/>.

notifying them of the wage garnishment relief in March 2020,²⁴ which was especially harmful since “it can take employers weeks to fully process and cease collection, making it critical to get the notices out as fast as possible.”²⁵ Even more concerning, over 10,000 borrowers had \$19 million in tax refunds improperly withheld by the Treasury Department because ED also had challenges preventing Treasury from offsetting borrowers’ debts.²⁶ These seized tax payments likely include EITC payments to low-income working families—blunting the effectiveness of one of America’s largest anti-poverty programs.²⁷ Similarly, the recent expansion of the CTC is projected to cut child poverty by nearly half - but its impact will also be undermined if low-income borrowers continue to have benefits like these taken away.²⁸

The Department declared it would refund any wages and tax refunds collected after March 13, 2020,²⁹ but over 23,000 borrowers who had their wages garnished had still not received their refunds by January 2021 because ED did not have valid addresses on file for them.³⁰ These problems illustrate that the collections system is not well prepared to adapt to changing rules and situations, making ED’s preparations for the upcoming transition all the more important. We have asked ED to use the payment pause as an opportunity to automatically rehabilitate defaulted loans, providing these borrowers with a fresh start;³¹ however, this will not

²⁴ The Washington Post, “Looming end to student loan payment moratorium raises fears among defaulted borrowers,” Danielle Douglas-Gabriel, November 23, 2020,

<https://www.washingtonpost.com/education/2020/11/23/defaulted-student-loans-collections-coronavirus-aid/>

²⁵ U.S. Department of Education, “Secretary DeVos Directs FSA to Stop Wage Garnishment, Collections Actions for Student Loan Borrowers, Will Refund More Than \$1.8 Billion to Students, Families,” press release, March 25, 2020, <https://content.govdelivery.com/accounts/USED/bulletins/2831e5c>; The Washington Post, “Looming end to student loan payment moratorium raises fears among defaulted borrowers,” Danielle Douglas-Gabriel, November 23, 2020, <https://www.washingtonpost.com/education/2020/11/23/defaulted-student-loans-collections-coronavirus-aid/>.

²⁶ The Washington Post, “Trump administration withheld nearly \$19 million in tax refunds from student loan borrowers after Congress ordered halt, lawsuit says,” Danielle Douglas-Gabriel, May 29, 2020, <https://www.washingtonpost.com/education/2020/05/29/trump-administration-withheld-nearly-19-million-tax-refunds-student-loan-borrowers-after-congress-ordered-halt/>.

²⁷ Center on Budget and Policy Priorities, “EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children’s Development, Research Finds,” Chuck Marr, Chye-Ching Huang, Arloc Sherman, and Brandon Debot, October 1, 2015, <https://www.cbpp.org/research/federal-tax/eitc-and-child-tax-credit-promote-work-reduce-poverty-and-support-childrens>; National Consumer Law Center, “Report: Student Loan Borrowers Teetering on the Edge of Catastrophe after Having Tax Refunds Seized,” July 15, 2020, <https://www.nclc.org/media-center/report-student-loan-borrowers-teetering-on-the-edge-of-catastrophe-after-having-tax-refunds-seized.html>.

²⁸ NPR, “With One Move, Congress Could Lift Millions Of Children Out of Poverty,” Cory Turner and Anya Kamantz, February 26, 2021, <https://www.npr.org/2021/02/26/970999998/with-one-move-congress-could-lift-millions-of-children-out-of-poverty>.

²⁹ Forbes, “54,000 People Had Their Paychecks Seized To Pay Student Loans, Despite Pause,” Zack Friedman, May 12, 2020, <https://www.forbes.com/sites/zackfriedman/2020/05/12/student-loans-garnishment-devos/?sh=1cf2271b7154>; The 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/>.

³⁰ National Consumer Law Center, Student Loan Borrower Assistance, “Lawsuit Against DeVos Ends; Fight for Defaulted Borrowers Continues,” March 22, 2021, <https://www.studentloanborrowerassistance.org/lawsuit-against-devos-ends-fight-for-defaulted-borrowers-continues/>.

³¹ Office of Senator Elizabeth Warren, “Warren, Warnock, Colleagues Urge Education Department to Automatically Rehabilitate All Federally-Held Student Loans in Default,” press release, 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>.

prevent future defaults unless ED and student loan servicers also prioritize supporting vulnerable and at-risk borrowers.

As we near the currently scheduled end of the suspension of payments and collections, we are concerned about plunging borrowers back into an untenable financial situation, causing long-term damage to their credit and financial stability and a sudden unnecessary drag on our recovering economy. In order to better understand the actions ED has taken and plans to take to support these borrowers in default, we are requesting answers to the following questions no later than July 28, 2021:

1. How many borrowers had their wages actively garnished as of March 13, 2020?
 - a. Does the Department have information on the demographics of these individuals? If so, please provide this information.
 - b. How many borrowers had their wages garnished after March 13, 2020? Please include a break down by each private collection agency (PCA).
 - i. What was the total value of these garnished wages?
 - ii. How many of these borrowers have received a refund?
 - iii. What is the total value of these refunds?
 - c. What problems has ED faced in preventing improper garnishments and administering refunds?
 - d. Please provide copies of the notices that ED sent to borrowers' employers about the pause on wage garnishments.
 - e. How does ED plan to update or modify its practices to prevent improper garnishment and provide refunds for individuals that had wages improperly garnished?
 - f. How many impacted borrowers has the Department received responses from?
2. How many borrowers had a Treasury offset as of March 13, 2020? Please break down by each PCA. Does the Department have information on the demographics of these individuals? If so, please provide this information.
 - a. How many borrowers had a Treasury offset after March 13, 2020?
 - i. What was the total value of these offsets?
 - ii. How many of these borrowers have received a refund?
 - iii. What is the total value of these refunds?
 - b. What problems has Treasury faced in preventing improper offsets and administering refunds?
 - c. Please provide copies of all documentation sent between ED and the Treasury Department about the collections halt.
 - d. How do ED and Treasury plan to update or modify its practices to prevent improper Treasury offsets and provide refunds for individuals who had federal payments improperly confiscated during the moratorium?
 - e. How many impacted borrowers has the Department received responses from?
3. Please provide additional information about borrowers in default.
 - a. How many borrowers have been in default for more than ten years?
 - b. How many borrowers in default fall below 150% of the federal poverty line?

- c. How many borrowers have successfully rehabilitated their loans since March 13, 2020?
 - d. How many borrowers are paying more by having their wages garnished than if they were enrolled in an income driven repayment plan?
 - e. In the Treasury offset program, how many borrowers have made a larger annual payment through tax refund or Social Security withholding than they would have if they were enrolled in an income driven repayment plan?
 - f. In the Treasury offset program, how many borrowers have had payments seized from tax refunds that included the CTC or EITC?
4. Does ED plan to instruct PCAs, employers, and Treasury to cap collections at the amount the borrower would owe under an income driven repayment plan?
 5. Does ED plan to prevent Treasury from collecting any amount from Social Security Benefits or from the CTC or EITC?
 6. What steps, if any, does ED plan to take to ensure borrows eligible for Total and Permanent Disability discharge, including service-disabled veterans, are not subject to wage garnishment?
 7. Does ED plan to deprioritize or pause collections on loans that have been in default for an extended period of time?
 8. What steps, if any, does ED plan to deprioritize borrowers receiving EITC and borrowers receiving the newly expanded CTC?
 9. What consequences, if any, does an employer face by the Department if they garnish wages improperly?
 10. What was the total amount of commission paid to PCAs? Please include a break down by each PCA.
 11. What preparations has ED made to prevent borrowers who rehabilitate their loans during the COVID-19 payment pause from re-entering default when payments resume?

Sincerely,


Elizabeth Warren
United States Senator


Cory A. Booker
United States Senator


Ayanna Pressley
Member of Congress

/s/
Robert Menendez
United States Senator

/s/
Ron Wyden
United States Senator

/s/
Mazie K. Hirono
United States Senator

/s/
Brian Schatz
United States Senator

/s/
Jeffrey A. Merkley
United States Senator

/s/
Yvette D. Clarke
Member of Congress

/s/
Henry C. "Hank" Johnson, Jr.
Member of Congress

/s/
Diana DeGette
Member of Congress

/s/
Pramila Jayapal
Member of Congress

/s/
Rashida Tlaib
Member of Congress

/s/
Janice D. Schakowsky
Member of Congress

/s/
Juan Vargas
Member of Congress

/s/
Katie Porter
Member of Congress

/s/
James P. McGovern
Member of Congress

/s/
Eleanor Holmes Norton
Member of Congress

/s/
Jahana Hayes
Member of Congress

/s/
Alexandria Ocasio-Cortez
Member of Congress

/s/
Mary Gay Scanlon
Member of Congress

/s/
Peter DeFazio
Member of Congress

/s/
Suzanne Bonamici
Member of Congress