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July 17th, 2023

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

Dear Secretary Cardona,

I am writing regarding the requirement, codified in the *Fiscal Responsibility Act of 2023*,[1] for the Department of Education's (ED or the Department) to end the more than three-year-long suspension of loan payments, interest, and collections related to the COVID-19 pandemic on August 30, 2023, and resume collecting on student loans by October 2023.[2] According to a recent study by the Consumer Financial Protection Bureau, the delinquency rate for student loan borrowers is higher now than before the pandemic, with more than one in thirteen borrowers falling behind on their payment obligations.[3] I am concerned that the end of the federal payment pause this year risks exposing borrowers who struggle to make their payments to wage garnishments, tax refund offsets, and other forms of collections which can exacerbate financial distress – particularly if, as the Department has projected, delinquencies and defaults spike in the absence of additional loan relief.[4] These concerns are heightened by the disappointing decision of the Supreme Court, which substituted politics for the rule of law and denied President Biden's initial plan to provide up to $20,000 in student debt cancellation for working Americans.[5]

I appreciate the steps the Department has announced to date to minimize harm to borrowers as they return to repayment, including establishing a "safety net" grace period for missed payments,[6] instructing loan servicers to write off borrower balances that total $100 or less,[7] simplifying the

[1] Fiscal Responsibility Act of 2023, H.R.3746, https://www.congress.gov/bill/118th-congress/house-bill/3746.
[2] POLITICO, "Biden admin will resume interest on federal student loans Sept. 1; monthly payments due in October, Michael Stratford, June 12, 2023, https://www.politico.com/newsletters/weekly-education/2023/06/12/biden-admin-will-resume-interest-on-federal-student-loans-sept-1-monthly-payments-due-in-october-00101431.
[3] Consumer Financial Protection Bureau, "Office of Research blog: Update on student loan borrowers as payment suspension set to expire," Thomas Conkling and Christa Gibbs, June 7, 2023, https://www.consumerfinance.gov/about-us/blog/office-of-research-blog-update-on-student-loan-borrowers-as-payment-suspension-set-to-expire/.
[4] State of Nebraska v. Biden (8th Circuit, 2023), Exhibit 1, p. 8, https://www.courtlistener.com/docket/65385675/27/1/state-of-nebraska-v-biden/.
[5] Biden v. Nebraska, No. 22-506 (2023)
[6] POLITICO, "Biden's next student loan headache: A cash crunch at the Education Department," Michael Stratford, April 25, 2023, https://www.politico.com/news/2023/04/25/biden-student-loans-education-department-00093302.
[7] *Id.*

loan rehabilitation process through the Fresh Start program,[8] finalizing a new income-driven repayment plan,[9] and ending contracts with private collections agencies.[10] Further, I support the Administration's latest announcement of a 12-month on-ramp transition period to support borrowers smoothly and successfully return to repayment.[11] This action will help borrowers avoid the harshest consequences of missed, partial, or late payments while the Department initiates a regulatory process to provide debt relief.[12] The Department should build on these steps and revamp its student debt collections program to protect struggling borrowers after payments resume. Specifically, the Department should consider the following actions:

1) Develop a comprehensive policy to discharge student debt in cases of long term default.

2) Develop a policy to discharge student debt in cases where ED does not have updated contact information.

3) Stop requiring the repayment of the full amount of debt when a borrower enters default.

4) Exhaust all other options and determine if a borrower is eligible for debt discharge before determining the debt as "legally enforceable" and sending it to collections.

5) Allow borrowers who apply for and are approved for Income-Driven Repayment (IDR) while in default to be immediately pulled out of default.

6) Strengthen contract terms with and enforcement of debt collectors to better protect borrowers from predatory collection practices.

The remainder of this letter provides additional detail on the need for these actions and the benefits they will have for students.

**1. Develop a comprehensive policy to discharge student debt in cases of long term default.**

Nearly 2.4 million borrowers have been in default collections for over 10 years.[13] Additionally, default rates for Black borrowers remain higher than those for their peers, regardless

[8] Federal Student Aid, "Get Out of Default With Fresh Start," https://studentaid.gov/announcements-events/default-fresh-start.
[9] Department of Education, "Secretary Cardona Statement on Supreme Court Ruling on Biden Administration's One Time Student Debt Relief Plan," press release, June 30, 2023, https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan.
[10] The National Association of Student Financial Aid Administrators, "ED Ends Contracts With Student Loan Debt Collection Companies," Owen Daugherty, November 8, 2021, https://www.nasfaa.org/news-item/26358/ED_Ends_Contracts_With_Student_Loan_Debt_Collection_Companies.
[11] Department of Education, "Secretary Cardona Statement on Supreme Court Ruling on Biden Administration's One Time Student Debt Relief Plan," press release, June 30, 2023, https://www.ed.gov/news/press-releases/secretary-cardona-statement-supreme-court-ruling-biden-administrations-one-time-student-debt-relief-plan.
[12] *Id*.
[13] Letter from the U.S. Department of Education to U.S. Senator Elizabeth Warren, January 5, 2022, p. 7, https://www.warren.senate.gov/imo/media/doc/2022.01.05%20Response%20to%20Letter%20about%20Wage%20Garnishment%20and%20Treasury%20Offet.pdf.

of the type of higher education institution they attended.[14] For Latino borrowers, the default rate is 15 percent higher than their white peers.[15] The Higher Education Act of 1965 gives ED the clear authority to automatically remove those with federally managed loans from default status and to discharge cases of long-term default.[16] Even the CEO of disgraced student loan servicer Navient, Jack Remondi, called for ED to cancel loans that have been in default for more than 10 years, noting that there is "no comparable practice" and that "[e]ven past-due federal income taxes are canceled after 10 years."[17]

Additionally, the Department should use its authority to grant borrowers in long-term default further relief by enforcing the Federal Claims Collections Standards, which state 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."[18] Lastly, ED should address the lack of a statute of limitations for the collection of past-due student debt and establish a system that is comparable to other kinds of consumer debt, such as credit card, medical, and mortgage debt, which have statute of limitations that generally range from three to ten years.[19]

**2. Develop a policy to discharge student debt in cases where ED does not have updated contact information.**

In 2022, the Government Accountability Office (GAO) published a report that examined the federal government's continued efforts to respond to, and recover from, the COVID-19 pandemic.[20] The report identified several challenges the Department will face once borrowers resume repaying their loans after years of payment inactivity, including managing repayment with incomplete information on student borrowers.[21] The Department indicated that email correspondence will be the primary communication method with borrowers to alert them to the reinstatement of interest accrual, consequences for missed payments, and opportunities to enroll in various repayment plans.[22] However, the report found that ED does not have valid email addresses

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[14] Center for American Progress, "The Continued Student Loan Crisis for Black Borrowers," Ben Miller, December 2, 2019, https://www.americanprogress.org/article/continued-student-loan-crisis-black-borrowers/.
[15] NBC News, "Almost half of Latino student loan debt is expected to be forgiven under Biden," Edwin Flores, August 24, 2022, https://www.nbcnews.com/news/latino/almost-half-latino-student-loan-debt-expected-forgiven-biden-rcna44652?cid=sm_npd_nn_tw_ma.
[16] 20 U.S.C. § 1082(a)(4).
[17] Written testimony of Jack Remondi to the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Economic Policy, April 13, 2021, https://www.banking.senate.gov/imo/media/doc/Remondi%20Testimony%204-13-21.pdf.
[18] 31 C.F.R § 902.2 (a)
[19] Consumer Financial Protection Bureau, "Can debt collectors collect a debt that's several years old?," April 14, 2023, https://www.consumerfinance.gov/ask-cfpb/what-is-a-statute-of-limitations-on-a-debt-en-1389/; The Balance Money, "Statutes of Limitations on Debt Collection by State," LaToya Irby, January 3, 2023, https://www.thebalancemoney.com/state-by-state-list-of-statute-of-limitations-on-debt-960881.
[20] The Government Accountability Office, "COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and Leading Responses to Public Health Emergencies," January 27, 2022, https://files.gao.gov/reports/GAO-22-105291/index.html#top.
[21] *Id.*
[22] *Id.*

for 25 percent of defaulted borrowers.[23] Moreover, ED did not have valid addresses for approximately 10,000 borrowers whose wages were garnished and whom ED intended to refund during the start of the COVID-19 pandemic.[24] The Department should not employ any involuntary collection tools when it is unable to get in touch with borrowers regarding repayment options and should develop a policy to discharge student debt when it has failed to confirm borrower contact information after a certain period of time.

**3. Stop requiring the repayment of the full amount of debt when a borrower enters default.**

Currently, when a borrower defaults, their entire outstanding student loan balance, which includes principal, interest, and fees, becomes due, and the Department is authorized to require the repayment of the full amount immediately in a process called "acceleration."[25] Requiring borrowers to repay the full amount of debt upon default, rather than the past-due balance on an IDR plan, significantly increases both the total repayment amount and the time required to settle the debt.[26] The Department has the authority to avoid the punitive consequences of accelerating repayment by enacting regulations that redefine the "amount due" upon default.[27] For example, the Department should rescind the regulation requiring the acceleration of the full amount of debt due upon default and replace the expected payment amount with what is past due upon default – "that is, what the borrower has not paid in the 270 days that led to default."[28]

Moreover, while the Treasury Department's (Treasury) regulations reference acceleration, it does necessarily require the practice, stating that, "agencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement from the debtor that…contains a provision accelerating the debt in the event of default."[29] Further, neither the Debt Collection Improvement Act, the Higher Education Act, nor borrowers' Master Promissory Notes require the entire balance of a borrower's loan to be due upon default.[30] This gives ED considerable flexibility to avoid requiring acceleration of the full amount of debt due upon default.

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[23] *Id.*

[24] Letter from the U.S. Department of Education to U.S. Senator Elizabeth Warren, January 5, 2022, https://www.warren.senate.gov/imo/media/doc/2022.01.05%20Response%20to%20Letter%20about%20Wage%20Garnishment%20and%20Treasury%20Offet.pdf.

[25] 40 34 C.F.R. § 685.211(d)(1).

[26] Student Borrower Protection Center, "Beyond Fresh Start: Addressing the Flaws of the Current Student Loan Collection System," August 2022, p. 17, https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf.

[27] *Id.*, p. 18.

[28] *Id*.

[29] 31 C.F.R. § 901.8 (emphasis added).

[30] Student Borrower Protection Center, "Beyond Fresh Start: Addressing the Flaws of the Current Student Loan Collection System," August 2022, p. 25, https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf.

4. **Exhaust all other options and determine if a borrower is eligible to discharge their debt before determining the debt as "legally enforceable" and sending it to collections.**

Under 31 U.S.C. 6402, if a borrower defaults on a loan, ED can notify Treasury to offset any federal payments that the borrower is eligible to receive to pay off their debt.[31] This law allows the government to offset certain federal payments, such as tax refunds and Social Security benefits, to collect on delinquent debts like defaulted federal student loans. Before a debt becomes "legally enforceable" and is eligible to be sent to collections,[32] borrowers should be made aware of all opportunities to address their defaulted loans and avoid involuntary collections, including the opportunity to discuss loan rehabilitation or consolidations with their loan servicers.

Additionally, ED should partner with Treasury to develop proposed regulations to address the unnecessarily punitive collection methods of the Treasury Offset Program and Administrative Wage Garnishment. Both of these collection methods – used to collect on defaulted federal loans – can be financially devastating for borrowers that live paycheck-to-paycheck, with the harsh realities most felt by families of color.[33] These collection methods fail to consider a borrower's underlying reason for entering delinquency or default, such as a personal or family illness, job loss, or unexpected financial hardship. Therefore, in addition to preventing this financial situation by offering flexible repayment options like IDR, the amount seized under collection programs should not exceed what would have been required in an IDR plan.

5. **Allow borrowers who apply and are approved for IDR to be immediately pulled out of default.**

For the nearly 9 million borrowers affected by student loan default,[34] rehabilitation and consolidation are the only viable paths for getting out of default.[35] Loan rehabilitation programs like the temporary Fresh Start program, which helps return borrowers back to good standing, protect defaulted borrowers from seeing their wages, tax refunds, or federal benefits garnished.[36] Fresh Start allows eligible borrowers to also have their student loan payments become more manageable by enrolling in an IDR plan.[37] While Fresh Start allows eligible borrowers to sign up to have their loans removed from default,[38] there are still several steps between default and IDR in

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[31] Bureau of the Fiscal Service, "What is the Treasury Offset Program," https://fiscal.treasury.gov/top/how-top-works.html; 26 U.S.C. 6402(d)
[32] 31 CFR § 285.1
[33] Student Borrower Protection Center, "Beyond Fresh Start: Addressing the Flaws of the Current Student Loan Collection System," August 2022, p. 9, https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf.
[34] Education Data Initiative, "Student Loan Default Rate," Melanie Hanson, January 8, 2022, https://educationdata.org/student-loan-default-rate.
[35] Memorandum from Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers to The U.S. Department of Education, October 26, 2021, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/propredefauandidr102621.pdf.
[36] Federal Student Aid, "Get out of Default with Fresh Start," https://studentaid.gov/announcements-events/default-fresh-start.
[37] *Id*.
[38] *Id.*

which a borrower may fall through the cracks.[39] I applaud the Administration for finalizing the most affordable repayment plan ever created, called the Saving on a Valuable Education (SAVE) plan, which would cut undergraduate loan payments in half and in some cases, bring monthly payments down to $0.[40] The proposed changes are necessary to make student loan repayment more affordable and prevent future delinquency and default. However, under current rules, defaulted loans are not eligible for repayment under any of the IDR plans. [41] The Department can address this by creating additional pathways for borrowers to get out default and into an improved IDR plan. For instance, ED can amend 34 C.F.R. § 685.211(d)(ii) to allow all borrowers who request to be placed in an IDR plan to no longer be subject to the penalties of default if they are able to make a payment under their new repayment plan.[42]

### 6. Strengthen contract terms with and standards for debt collectors to better protect borrowers.

I support the Department's decision to terminate the private collection agency (PCA) contracts as part of the ongoing, multiyear Next Generation Financial Services (Next Gen) initiative to overhaul student loan servicing and default collections.[43] By eliminating PCA contracts, the Office of Federal Student Aid (FSA) will have more control over the collections process, which was limited by the pricing structures imposed by PCA contracts.[44] Additionally, I have scrutinized PCAs for their targeting of low-income workers and believe that taxpayer funds should not be spent on employing predatory private collection agencies.[45] As FSA implements the Unified Servicing and Data Solution as part of its Next Gen FSA initiative to improve borrower outcomes and work to reduce borrower delinquency and default,[46] and as ED explores initiating

[39] Memorandum from Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers to The U.S. Department of Education, October 26, 2021, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/propredefauandidr102621.pdf.

[40] The White House, "FACT SHEET: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers," press release, June 30, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/; U.S. Department of Education, "New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation," press release, January 10, 2023, https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.

[41] Federal Student Aid, "If your federal student loan payments are high compared to your income, you may want to repay your loans under an income-driven repayment plan," https://studentaid.gov/manage-loans/repayment/plans/income-driven.

[42] Memorandum from Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers to The U.S. Department of Education, October 26, 2021, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/propredefauandidr102621.pdf.

[43] U.S. Department of Education Office of Inspector General, "The Department's Decision to Terminate Private Collection Agency Contracts," November 14, 2022, p. 1, https://www.oversight.gov/sites/default/files/oig-reports/ED/Department%E2%80%99s-Decision-Terminate-Private-Collection-Agency-Contracts.pdf.

[44] *Id.*

[45] Office of Senator Elizabeth Warren, "Warren, Cardin, Brown Call for an End to Federally-Funded Private Debt Collection Agencies," press release, February 14, 2018, https://www.warren.senate.gov/oversight/letters/warren-cardin-brown-call-for-an-end-to-federally-funded-private-debt-collection-agencies

[46] U.S. Department of Education, "Announcing the Next Generation of Federal Student Loan Servicing," Richard Cordray, May 19, 2022, https://blog.ed.gov/2022/05/announcing-the-next-generation-of-federal-student-loan-servicing/.

new contracts with debt collectors, the agency should require clear performance, transparency, accountability, and customer service standards for debt collectors, similar to the new standards it set for loan servicers in October 2021.[47] These standards should include specific goals around how well collection agency customer service representatives answer borrower questions, how adequately collection agencies inform borrowers of repayment options, and ensuring that collection agencies do not violate borrowers' rights with predatory or harassing tactics. ED should also prohibit collections in cases where the cost of collecting debt exceeds the amount that is likely to be collected.

**Conclusion**

As the end of the federal pause on student loan payments, interest, and collections looms, I urge the Department to take every opportunity to protect borrowers who may struggle with repayment and reform the process by which ED collects on defaulted loans.

Sincerely,

Elizabeth Warren
United States Senator

[47] U.S. Department of Education, "U.S. Department of Education Increases Servicer Performance, Transparency, and Accountability Before Loan Payments Restart," press release, October 15, 2021, https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart.