

United States Senate

WASHINGTON, DC 20510

April 14, 2022

The Honorable Miguel Cardona
Secretary
United States Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

We are concerned about recent reports detailing how income-driven repayment (“IDR”) plans are failing federal student loan borrowers, including claims that these failures have been most harmful for the borrowers with the lowest incomes – the same borrowers that IDR plans were designed to help. We urge the Department of Education (“ED”) to implement an IDR waiver, similar to the ongoing waiver for the Public Service Loan Forgiveness (“PSLF”) program, to allow borrowers to access the loan forgiveness they were promised through IDR.

In 1992, Congress created IDR with the intention of ensuring low-income borrowers would not be burdened by federal student loan debt payments or trapped in perpetual repayment.¹ In order to make monthly payments affordable, IDR plans limit borrowers’ monthly bills to a percentage of their discretionary income for a period of 20 or 25 years. As opposed to the PSLF program, which requires borrowers to apply for debt forgiveness once they meet the requirements for program cancellation, IDR relies on student loan servicers to proactively notify borrowers when they qualify for loan cancellation. In turn, IDR requires that servicers actively count borrowers’ payments and properly track their progress towards cancellation. At the end of the IDR repayment period, ED is required to automatically discharge the remaining student loan amount. However, in practice, extremely few borrowers have been able to obtain the promised student loan forgiveness through the IDR program.²

A recent NPR investigative report found the IDR program is riddled with problems and mismanagement even worse than the public previously understood, resulting in borrowers becoming unable to obtain cancellation on decades-old debts.³ According to the report, breakdowns in the management of low-income borrowers’ loans were common. For example, loan servicers, for decades, severely mismanaged IDR plans, including by failing to properly count qualifying IDR payments and not accurately tracking borrowers’ progress towards cancellation.

¹ <https://protectborrowers.org/wp-content/uploads/2021/09/Driving-Down-Distress.pdf>

² <https://www.nclc.org/uncategorized/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program.html>

³ <https://www.npr.org/2022/04/01/1089750113/student-loan-debt-investigation>

These findings follow multiple federal investigations through multiple administrations that uncovered longstanding and wide-spread cases of mismanagement and misrepresentations by loan servicers and default management consultants. For example, the Government Accountability Office (GAO) found that default management consultants hired by institutions of higher education actively steered borrowers into forbearance, often to those borrowers' detriment, including by providing inaccurate and incomplete information, pressuring borrowers to ask servicers for a forbearance, and, in one case, even going so far as to offer borrowers gift cards as an incentive to enter forbearance.⁴ The Consumer Financial Protection Bureau (CFPB), meanwhile, sued Navient in part over allegations that the company steered borrowers into forbearance, stating that "from January 2010 to March 2015, the company added up to \$4 billion in interest charges to the principal balances of borrowers who were enrolled in multiple, consecutive forbearances. The Bureau believes that a large portion of these charges could have been avoided had Navient followed the law."⁵

Under current rules, borrowers in forbearance do not receive credit toward IDR discharge, have interest capitalize over the forbearance period, and see their time to forgiveness grow for months or even years, often without knowing the consequences until it is too late. For example, the Department of Education Office of Inspector General (OIG) uncovered "recurring instances at all servicers of servicer representatives not sufficiently informing borrowers about available repayment options."⁶ The troubling OIG report, released under a previous administration, also found that the Office of Federal Student Aid (FSA) failed to track all instances of noncompliance or analyze relevant records to identify trends and recurring noncompliance. Additionally, according to research from economists at the CFPB who studied the credit reports of IDR users, more than 1 in 9 borrowers use a forbearance in the months surrounding the submission of timely annual renewal paperwork resulting in as many as a million borrowers having lost time towards forgiveness through no fault of their own.⁷

The longstanding failure of loan servicers to responsibly manage IDR plans, and of FSA to oversee the management of IDR plans, is evidenced by the low rate of cancellation under the IDR. Recent reports indicate that out of 4.4 million eligible borrowers, only 32 borrowers – or .00007% – have ever had their student loans canceled through IDR.⁸ Going forward, the consequences of IDR's failures will grow exponentially as more borrowers reach the point at which they could theoretically be eligible for forgiveness. As the OIG found in 2019, "the noncompliance that FSA has repeatedly identified could affect a much larger population of borrowers than those specifically identified by FSA's reviews of samples of borrower accounts. Those risks include increased interest or repayment costs incurred by borrowers, the missed opportunity for more borrowers to take advantage of certain repayment programs, negative

⁴ <https://www.gao.gov/assets/gao-18-163.pdf>

⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>

⁶ <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>

⁷ https://files.consumerfinance.gov/f/documents/cfpb_data-point_borrower-experiences-on-IDR.pdf

⁸ [Supra to NCLC above]

effects on borrowers' credit ratings, and an increased likelihood of delinquency or even default.”⁹

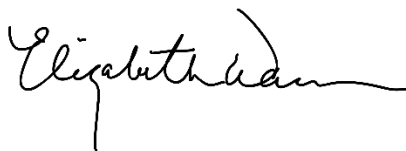
It is obvious that IDR plans, as they currently stand, are not fulfilling their original promise that federal student debt should be affordable and not a lifetime debt sentence, particularly for low-income students. ED has a responsibility to ensure borrowers do not bear the consequences of the failures of IDR implementation and oversight and that IDR delivers on its promise of giving borrowers a light at the end of the tunnel. To that end, we urge ED to adopt an IDR waiver that retroactively counts all months since borrowers entered repayment—including periods of deferment, forbearance, and default— as qualified months toward debt cancellation. Additionally, an IDR waiver should, to the greatest extent practicable, automatically provide relief so that borrowers do not need to apply for cancellation they have already earned and ensure all FFEL borrowers are able to access relief.

It is within ED's power and authority to provide relief to borrowers who have been in repayment for more than 20 years. As issues with IDR and other forgiveness programs continue to surface, ED has a duty to take appropriate steps to fulfill the student debt forgiveness promise of these programs. We appreciate your timely attention to this matter.

Sincerely,



Sherrod Brown
United States Senator



Elizabeth Warren
United States Senator



Richard J. Durbin
United States Senator

⁹ <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>