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February 10, 2023

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

RE: ED-2023-OPE-0004-0001

Dear Secretary Cardona,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 12 undersigned organizations, we write to submit comments on the U.S. Department of Education's proposed regulations governing Income-Driven Repayment of federal student loans posted in the Federal Register on January 11, 2023.

The voice of the civil rights community is uniquely critical in crafting reforms to the federal student loan program. As explained in the *Civil Rights Principles for Student Loan Debt Cancellation*,<sup>1</sup>

The \$1.7 trillion student loan crisis is crushing individuals, families, and our economy, and the weight of this burden is disproportionately borne by women and Black and Latino borrowers. This did not happen by accident. Policymakers intentionally shifted away from publicly funding our higher education system to a primarily debt-financed system just as students of color and women gained access, disregarding the rising cost of college for students and families, persistent racial wealth and income disparities, ongoing discrimination in the labor and credit markets, and many other societal and policy failures. These decisions have left a generation of borrowers on the brink of financial devastation simply because they sought economic security through higher education.

To address this crisis, President Biden announced<sup>2</sup> that the administration would both cancel up to \$20,000 in federally held student debt for eligible borrowers and make student loan

<sup>1</sup> The Leadership Conference on Civil and Human Rights. *Civil Rights Principles for Student Loan Debt Cancellation*. <https://civilrights.org/wp-content/uploads/2021/04/Civil-Rights-Principles-for-Student-Loan-Debt-Cancellation.pdf>

<sup>2</sup> Federal Student Aid. "The Biden-Harris Administration's Student Debt Relief Plan Explained." <https://studentaid.gov/debt-relief-announcement> Accessed February 4, 2023.

repayment more affordable and manageable for remaining and future borrowers through improvements to Income-Driven Repayment (IDR).

We applaud the department for taking student loan burdens seriously and for proposing changes that would make repayment more affordable for millions of people who must borrow to access higher education. In these comments, we address how the department's proposal to improve IDR supports the promise of making student loan repayment more affordable and manageable, and we identify key aspects of the proposal that should be strengthened in the final rule to advance equity and better address the disproportionate burden of student debt on women and people of color.

**1. We commend the department's efforts to make student loan payments more affordable, and we urge the department to go further to ensure that all people with student loan debt can meet their families' basic needs.**

The Department of Education has proposed to make student loan payments in income-driven repayment more affordable in two ways:

- First, by increasing the amount of income protected to meet basic needs from 150 percent to 225 percent of the federal poverty guideline (FPL),<sup>3</sup> and
- Second, by decreasing the percentage of a borrower's "discretionary income," i.e., income above the protected amount, that the borrower must pay toward their student loans from 10 percent to 5 percent for those with undergraduate debt only, and to between 5 and 10 percent for those with both undergraduate and graduate debt (based on a weighted average of the amounts borrowed). Combined with other proposed amendments, the department estimates that these changes would, on average, mean that Black, Hispanic, and American Indian and Alaska Native borrowers would see their lifetime payments per dollar borrowed cut in half.<sup>4</sup> In light of the overwhelming evidence that student debt burdens are crushing Americans from low-income households generally, and people of color in particular,<sup>5</sup> these changes are critical steps in the right direction.

**But more is needed to make repayment truly affordable and equitable.** First, the amount of income protected from student loan payments must be increased to ensure that all borrowers can meet their families' basic needs. Unfortunately, income at 225 percent of FPL (the equivalent of \$30,600 for an individual, or \$62,400 for a family of four in 2022) is simply not enough to pay for basic needs for many

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<sup>3</sup> Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are used as an eligibility criterion by Medicaid and a number of other federal programs. The most recent poverty guidelines were posted in the Federal Register on January 19, 2023 and are available here:

<https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines>.

<sup>4</sup> Department of Education. "New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation." 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>

<sup>5</sup> The Leadership Conference on Civil and Human Rights. *Civil Rights Principles for Student Loan Debt Cancellation*.

people in many parts of the country. This is borne out by the department's own data: In explaining the need to raise the amount of protected income, the department cited data showing that among families earning 225-250 percent FPL, nearly 20 percent of families — 1 in 5 — is food insecure or unable to afford their utility bills. **We should not accept a student loan plan that expects more than 20 percent of the lowest income families making payments to either default on their loans, risk utility shut off, or go without food.** Additionally, the federal poverty guidelines, which are based exclusively on food costs, fail to account for often necessary costs — like childcare — that disproportionately burden women, medical expenses that disproportionately burden people with disabilities and long-term health conditions, private student loans, or major geographic differences in housing costs.<sup>6</sup> As a result, available research suggests that in much of the country, income of at least 300-350 percent of FPL is necessary to meet basic needs,<sup>7</sup> particularly for families with young children, and 400 percent may be needed for those with high medical expenses. We therefore urge the department to increase the amount of protected income in the final rule.

**Second, we urge the department to consider whether requiring borrowers with debt for graduate school to pay a higher percentage of their income than those without graduate debt exacerbates racial and gender inequities in the student loan program.** We are concerned that this proposal may effectively charge more to women and people of color at any given income level, because women and people of color often must attain more credentials to earn the same income as White men. For example, according to analysis of 2018 U.S. Census data by the National Women's Law Center, Black women with master's degrees earn on average \$61,642, which is significantly less than the \$76,868 average earned by White, non-Hispanic men with only bachelor's degrees.<sup>8</sup> Eliminating the difference in the percentage of income that borrowers must pay based on whether they borrowed for graduate school may further racial and gender equities, in addition to simplifying the complex student loan repayment system and making it easier for borrowers to understand their repayment options.

## **2. We support the department's proposal to end interest-fueled balance growth for borrowers in repayment.**

Current IDR program design allows interest to accrue when borrowers' monthly payments are less than the amount of interest they are charged each month, causing loan balances to go up rather than down each month for borrowers with low incomes or high debts relative to their income. Ballooning balances and

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<sup>6</sup> Student Borrower Protection Center. "Driving Unaffordability: How Income-Driven Repayment Currently Fails to Deliver Financial Security to Student Loan Borrowers." September 2021. <https://protectborrowers.org/wp-content/uploads/2021/09/Driving-Unaffordability.pdf>

<sup>7</sup> See, e.g., Kinsey Dinan, Nat'l Ctr. for Children in Poverty, Budgeting for Basic Needs: A Struggle for Working Families, (2009), [http://www.nccp.org/publications/pdf/text\\_858.pdf](http://www.nccp.org/publications/pdf/text_858.pdf) ("It takes an income of about 1.5 to 3.5 times the official poverty level . . . to cover the cost of a family's minimum day-to-day needs"); Insight Ctr. for Cmty. Econ. Dev., 2011 California Family Economic Self-Sufficiency Standard (2011), [www.insightccd.org](http://www.insightccd.org) (finding a family of four in California would need nearly triple the federal poverty guideline to cover basic needs); John Howat, National Consumer Law Center, [Testimony to Public Utilities Regulatory Authority of Connecticut](#) (2021) (using self-sufficiency data to find that in much of Connecticut, income above 300% of FPL is necessary to meet basic needs).

<sup>8</sup> National Women's Law Center. "The Wage Gap for Black Women: Working Longer and Making Less." August 2010. <https://nwlc.org/wp-content/uploads/2019/08/Wage-Gap-for-Black-Women.pdf>

difficulty making progress in repayment while in IDR increases the costs of borrowing, extends the amount of time borrowers spend in repayment, and is a pain point for borrowers. Borrowers who experience balance growth in IDR report feeling hopeless,<sup>9</sup> and Black borrowers have described the experience as being stuck in a debt trap that “ensures that they will never have full freedom.”<sup>10</sup>

Addressing balance growth should therefore be a priority for reforming the student loan system for all borrowers, and it is particularly important to making the student loan system work better for women and people of color. Women and people of color must borrow more to access education and are paid less, making balance growth in IDR more likely. Recent data bear this out: An analysis in 2022 found that 12 years after beginning college, 66 percent of Black borrowers owed more than they originally borrowed, compared to 30 percent of White borrowers.<sup>11</sup> Looking at averages, 12 years out Black men owed 111 percent of their original principal and Black women owed 113 percent; by contrast, White men had paid down 44 percent of their principal.<sup>12</sup>

### **3. Two decades is too long to keep people in debt simply because they had to borrow to access higher education.**

We strongly disagree with the department’s proposal to require most borrowers to make student loan payments in IDR for 20 to 25 years before their remaining balance is canceled. As the department highlighted, a member of the negotiated rulemaking committee described the burden of carrying student debt for 20-25 years as “trajectory-altering.” We agree. Student debt obligations are a tax on social mobility that holds back people from low-wealth families who have historically been denied access to education. Exacting that tax for two decades or more substantially delays — and ultimately reduces — the benefits of economic mobility and asset building for those already starting from behind.

This “trajectory-altering” headwind is experienced most often by women and people of color, who spend longer in repayment because they typically must borrow more yet are paid less.<sup>13</sup> For example, one study found that after 20 years, the median Black borrower still owed 95 percent of the amount that they borrowed, whereas the median White borrower owed just 6 percent.<sup>14</sup>

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<sup>9</sup> Pew. “Borrowers Discuss the Challenges of Student Loan Repayment.” May 20, 2020. <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment>

<sup>10</sup> The Education Trust. “Jim Crow Debt: How Black Borrowers Experience Student Loans.” October 20, 2021. [https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt\\_How-Black-Borrowers-Experience-Student-Loans\\_October-2021.pdf#page=10](https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt_How-Black-Borrowers-Experience-Student-Loans_October-2021.pdf#page=10)

<sup>11</sup> Eaton, Charlie et. al. Letter to Senator Warren. May 3, 2022. [https://www.warren.senate.gov/imo/media/doc/Eaton%20et%20a%20analysis\\_05.03.22.pdf](https://www.warren.senate.gov/imo/media/doc/Eaton%20et%20a%20analysis_05.03.22.pdf)

<sup>12</sup> Demos. “Debt to Society: The Case for Bold, Equitable Student Loan Cancellation and Reform.” <https://www.demos.org/sites/default/files/2019-06/Debt%20to%20Society.pdf>

<sup>13</sup> Kent, Ana Hernández and Fenaba R. Addo. “Gender and Racial Disparities in Student Loan Debt.” Federal Reserve Bank of St. Louis. November 10, 2022. <https://www.stlouisfed.org/publications/economic-equity-insights/gender-racial-disparities-student-loan-debt>

<sup>14</sup> Institute on Assets and Social Policy. “Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap”. September 2019. <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf>

We therefore urge the department to consider shortening the maximum time until forgiveness for all borrowers. We also recommend that the department consider setting a shorter timeline until forgiveness for low-income borrowers and people who borrowed for community college and other shorter term educational programs.

The department has proposed shortening the time until forgiveness to 10 years, but only for people who borrow under \$12,000 — the two-year borrowing limit for dependent students — with an extra year in repayment added for every additional \$1,000 borrowed. While we support the effort to ensure that these borrowers have a more reasonable timeline to relief, we raise two concerns with the proposal:

- First, to the extent the department sets a shorter forgiveness timeline based on the amount borrowed, we urge it to consider that doing so may exacerbate existing inequities in the student loan system because students from low-income families must borrow more to access the same level of education as their better-off peers.<sup>15</sup> Black students must borrow more at every level of education due to the racial wealth gap,<sup>16</sup> and women students borrow more, including in part because they are more likely to be supporting dependent children while in school.<sup>17</sup>
- Second, by using the two-year borrowing limit for dependent students as its limit for which students can benefit from a shorter time to forgiveness, the department ignores that many of the borrowers most burdened by student debt were considered “financially independent” from their parents and thus are subject to a higher two-year independent borrowing limit of \$20,000. To the extent the department sets a shorter timeline to forgiveness based on amount borrowed, beginning from \$20,000 rather than \$12,000 would ensure that so-called “nontraditional” students — who face particular difficulty in repayment and high default rates — are not left to struggle longer in debt than their financially “dependent” peers. Increasing the limit to \$20,000 would also better encompass the student loan burdens of women and people of color who borrow for shorter term educational programs. Women and people of color are much more likely to be considered “independent” students and thus often need to borrow more to access education and are subject to the higher independent loan limits. Indeed, a 2018 study found that 55 percent of women in college are considered financially independent (compared to 46 percent of men), and that more than half of all students of color are independent, including 65 percent of Black students and 63 percent of Native American students.<sup>18</sup>

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<sup>15</sup> Wong, Nancy. “New Data Show Recent Graduates Who Received Pell Grants Left School with \$6 Billion More in Debt than Their Peers.” The Institute for College Access & Success. <https://ticas-org.medium.com/new-data-show-recent-graduates-who-received-pell-grants-left-school-with-6-billion-more-in-debt-660022973b55>

<sup>16</sup> The Leadership Conference on Civil and Human Rights. *Civil Rights Principles for Student Loan Debt Cancellation*.

<sup>17</sup> National Women’s Law Center. “Higher Education, Recession, and COVID-19: What Students and Student Borrowers Need from a Federal Stimulus Package.” April 2020. <https://nwlc.org/wp-content/uploads/2020/04/COVID-Stimulus-and-Higher-Ed-Factsheet.pdf>

<sup>18</sup> Lindset Reichlin Cruse, Eleanor Eckerson, Barbara Gault, “Understanding the New College Majority: The Demographic and Financial Characteristics of Independent Students and their Postsecondary Outcomes,” Institute

**4. Access to an affordable repayment plan must be extended to all student loan borrowers, including Parent PLUS borrowers.**

The *Civil Rights Principles for Student Loan Debt Cancellation* call for all student loan borrowers, including those with Parent PLUS loans and those with loans in default, to be included in student loan relief, noting that the burden of student debt for people of color exists throughout all student loan types and statuses. That principle of inclusivity applies with equal force to eligibility for a more affordable repayment plan: All people with federal student loans should have access to an affordable plan to repay those loans and a path to being debt-free.

Toward that end, we recommend that the department expand access to the revised REPAYE plan to borrowers with Parent PLUS loans.<sup>19</sup>

Both current law and the department's proposal exclude parents who borrow to help pay for their children's college from the more affordable IDR plans, leaving many low-income parents with no realistic options to pay their loans or get out of indebtedness. This is particularly a problem for Black and Latino parents, who tend to have fewer resources to pay for college, and who are often left with few choices but to take out Parent PLUS loans that they cannot afford. In recent years, Black parents have had the highest rate of borrowing Parent PLUS loans, yet they have the least ability to pay. For example, in 2018, 42 percent of Black Parent PLUS borrowers and 25 percent of Latino Parent PLUS borrowers had sufficiently limited financial resources that their expected family contribution (EFC) to a college education was \$0. Yet they were loaded up with loans with no safety net if they became unable to afford future payments.<sup>20</sup> As a result, many low-income parents of color wind up in default, where they may be subject to seizure of their Social Security benefits for decades. Many will never pay off the debt or have it forgiven.

This must change. Low-income parents with student loans must have access to affordable payments and a pathway out of debt. We therefore urge the department to extend access to the REPAYE plan to Parent PLUS borrowers, which it may do by allowing such borrowers to consolidate their loans to become eligible for the REPAYE plan.

**5. Default disproportionately burdens people of color and is a sign of financial distress. The department should ensure that people are not forced to pay *more* while their loans are in default.**

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for Women's Policy Research, 2018, [https://iwpr.org/wp-content/uploads/2020/10/C462\\_Understanding-the-New-College-Majority\\_final.pdf](https://iwpr.org/wp-content/uploads/2020/10/C462_Understanding-the-New-College-Majority_final.pdf).

<sup>19</sup> Although Parent PLUS loans may not be repaid directly via income-contingent repayment plans such as REPAYE due to statutory barriers, the Department can give Parent PLUS borrowers access to REPAYE through consolidating into a Direct Consolidation Loan, just as it allows for ICR.

<sup>20</sup> McIntosh, Kriston, Emily Moss Ryan Nunn, and Jay Shambaugh. "Examining the Black-white wealth gap." Brookings Institution. February 27, 2020. <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>



We commend the department for recognizing that borrowers in default need access to IDR. Borrowers default because they are financially distressed and haven't received the help they need to navigate the complex student loan program.<sup>21</sup> They need to be connected with an affordable student loan payment plan or student loan relief, not be forced to pay more. This is an issue of racial and economic justice: People of color and students from low-income families struggle the most with student loan burdens and default at the highest rates.<sup>22</sup> Indeed, almost half of Black borrowers and more than one-third of Latino borrowers today have defaulted on their student loans.<sup>23</sup>

While making borrowers with loans in default eligible for Income-Based Repayment (IBR) is an important first step, the department must do more to ensure that the most financially distressed borrowers in the student loan system are not forced to pay more.

- First, the department should improve the terms of the repayment plan available to borrowers in default to parallel REPAYE so that borrowers in default are not required to pay more. Most importantly, the amount of protected income for borrowers in default should be raised to match the amount protected in REPAYE, so that making payments does not prevent families from meeting their basic needs.
- Second, the department should ensure that Parent PLUS borrowers who default have access to an IDR plan. Under the current proposal, they do not.
- Third, the department should ensure that borrowers enrolled in IDR are either not subject to involuntary collections (such as wage garnishment or seizure of Social Security benefits or tax refunds) at all, or at least not for any amounts that exceed their IDR payment obligation. Additionally, borrowers should receive credit toward loan forgiveness for any time that amounts collected from them via involuntary collections equal or exceed the amount that they owe under IDR — including time that they are eligible for a \$0 payment.

We appreciate your consideration of these recommendations. If you have any questions, please contact Liz King, The Leadership Conference on Civil and Human Rights, at [king@civilrights.org](mailto:king@civilrights.org) or Abby Shafroth, National Consumer Law Center, at [ashafroth@nclc.org](mailto:ashafroth@nclc.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund  
National Consumer Law Center (on behalf of its low-income clients)  
American Association of University Women  
American Humanist Association  
Asian Americans Advancing Justice | AAJC

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<sup>21</sup> New America. "Trapped by Default." <https://www.newamerica.org/education-policy/briefs/trapped-by-default/>

<sup>22</sup> Miller, Ben. "Who Are Student Loan Defaulters?" Center for American Progress. December 14, 2017.

<sup>23</sup> New America. "Trapped by Default."



Center for Responsible Lending  
Hispanic Federation  
League of United Latin American Citizens (LULAC)  
NAACP  
National Black Justice Coalition  
National Disability Rights Network (NDRN)