

August 26, 2022

U.S. Department of Education
Office of the Secretary
400 Maryland Avenue SW
Washington, D.C. 20202

VIA ELECTRONIC SUBMISSION

Re: Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program (Docket ID ED-2022-OPE-0062)

Dear Secretary Cardona,

The Student Borrower Protection Center (SBPC), a national policy non-profit organization committed to ending the student debt crisis, National Consumer Law Center (NCLC), a nonprofit organization specializing in consumer issues, including student loan issues, on behalf of low-income people, and Prison Policy Initiative, a non-profit, non-partisan organization that uses data analysis to expose the broader harm of mass criminalization, submit this comment in response to the U.S. Department of Education's (ED) Notice of Proposed Rulemaking (NPRM), published to the Federal Register on July 28, 2022.¹ This comment responds specifically to ED's proposed regulations to implement new statutory requirements to establish Federal Pell Grant (Pell Grant) eligibility for confined or incarcerated individuals enrolled in Prison Education Programs (PEPs).

We applaud many of ED's proposals to ensure that incarcerated individuals' renewed Pell Grant eligibility yields the most benefit to them and is not abused by predatory for-profit institutions. However, we urge ED to, at a minimum, automatically enroll all defaulted incarcerated borrowers in Fresh Start. We also urge ED to create a long-term automatic income-driven repayment (IDR) enrollment system for incarcerated borrowers. Otherwise, ED's Fresh Start proposal, as well as its expanded Pell proposal for those recipients who already have student loans, are bound to fail because neither proposal fully addresses the unique hardships of managing a student loan while incarcerated.

As the SBPC and the NCLC outline in the report attached to this comment, the conditions of incarceration—including the exorbitant expense of communicating with those outside of the prison while earning little to no income and the lack of regular internet or computer access—

¹ U.S. Dep't of Educ., *Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program*, 87 Fed. Reg. 45432 (July 28, 2022) ("NPRM").

impose barriers to accessing debt relief programs like IDR plans and loan rehabilitation, which leads to heightened default rates for incarcerated borrowers.²

Fresh Start risks leaving these borrowers behind, just like IDR and other debt relief programs before it. If ED does not automatically enroll incarcerated borrowers in the program, the expensive and heavily-restricted communication systems within the prison environment will severely limit their access to the benefits of Fresh Start. Moreover, incarcerated borrowers who are able to overcome these communication barriers to access Fresh Start are nevertheless positioned to fall back into default when the initiative ends for the same reasons. The substantial communication restrictions inherent in the prison system mean that, while any incarcerated borrower may be able to take the steps necessary to access Fresh Start or an IDR plan at some point, every year they will struggle to re-enroll in IDR and prevent default. Unless ED facilitates automatic enrollments for Fresh Start and IDR, this population will continue to lose critical educational opportunities and re-enter their communities burdened by damaged credit scores and limited employment and housing opportunities.³

ED's proposed regulations are a step in the right direction for incarcerated individuals who will automatically benefit from Fresh Start when they seek Pell Grants to enroll in prison education programs in the next year. However, failure to implement an automatic enrollment program for both Fresh Start and IDR for all incarcerated borrowers will impede ED's goals to improve employment outcomes and reduce recidivism rates. Additionally, to the extent that expanded Pell recipients also have student loans, if they remain in prison after completing their education they will be at high risk of going into default.

As ED begins implementation of these regulations and also the Fresh Start initiative, we encourage ED to consider the following recommendations, more fully described in the attached report, for automatic debt relief and systemic reform of student loan servicing for incarcerated borrowers.

- Cancel federal student loans if the borrower is incarcerated for a minimum sentence of five years;
- Cross-reference borrowers with either governmental or private databases that compile incarceration information to automatically deliver student loan relief to borrowers who are incarcerated;
- Reform student loan debt relief programs to account for the unique characteristics of the prison environment; and

² *Collection at all Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis*, Student Borrower Prot. Ctr. 8-14 (2022), https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-All-Costs_Final.pdf.

³ See *Collection At All Costs*, *supra* note 2, at 14.

- Clearly and publicly set forth information about current servicing practices and policies affecting incarcerated borrowers.

We would be happy to discuss these recommendations and ED's legal authority to implement them on behalf of incarcerated borrowers.

Please contact Amber Saddler, Counsel, at amber@protectborrowers.org or Robyn Smith, Of Counsel, at rsmith@nclc.org for additional information.

Sincerely,

Student Borrower Protection Center
National Consumer Law Center (on behalf of its low-income clients)
Prison Policy Initiative



STUDENT BORROWER
PROTECTION CENTER



National
Consumer Law
Center

COLLECTION AT ALL COSTS

Examining the Intersection of Mass Incarceration
and the Student Debt Crisis

July 2022

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Protect Borrowers

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Executive Summary

The collateral consequences of ending up on the wrong side of America's criminal legal system are increasingly recognized as wide-ranging and harmful. Incarceration or even simply a criminal record can limit nearly every aspect of a person's life even after their sentence ends, interfering with the ability to keep or get a job and support family, secure a place to live, or vote in elections. A little considered, but still ruinous collateral consequence of detention or imprisonment is an incarcerated borrower's spiral into delinquency and default on their federal student loans.

Incarceration-related default not only hurts the borrower's credit, making it even more difficult to secure housing, jobs, and transportation after release, but it also increases their debt and puts them at risk of wage garnishment and benefit offset upon release—right at the moment when they may be most financially insecure.

The U.S. Department of Education (Department) and its private contractors wield an arsenal of draconian debt collection tools against borrowers who are unable to timely repay their student loans. The Department's sole servicer for student loans in default, the Default Resolution Group operated by Maximus Federal Services, Inc., administers the government's extreme collection powers such as wage garnishment and seizure of public benefits critical for individuals with the lowest incomes like Social Security Retirement and Disability and the Earned Income Tax Credit.

While advocates have long decried the outsized harms that mass incarceration and the student loan debt trap inflict on communities of color and other marginalized people, the ways each of these two social justice crises amplify and worsen the abuses of the other is rarely in the national spotlight. This report elevates the suffering of the particularly vulnerable group of borrowers caught at that intersection.

Although the Department does not record which federal student loan borrowers are incarcerated, experts estimate hundreds of thousands of individuals have entered prison already saddled with student loan debt. Like other borrowers, incarcerated borrowers attempting to repay their loans or simply keep them out of default must navigate a labyrinth of servicer mis- or non-communications and confusing policies and regulations surrounding the various debt relief options meant to keep low-income borrowers' loans out of default. These common servicing issues are especially devastating for incarcerated borrowers due to the unique student loan servicing challenges inherent in the prison environment, including:

- **Borrowers often earn low, or no income at all, during periods of incarceration, making monthly loan repayment nearly impossible.**
- **Communicating with student loan servicing companies while incarcerated is exorbitantly expensive for borrowers earning little to no money, and prison restrictions on various means of communication make contacting servicers impossible even for borrowers otherwise able to pay.**
- **Much of student loan servicing today requires regular internet and computer access—resources in short supply for most incarcerated people.**

The report concludes with several recommendations to the Department that would improve student loan outcomes for these borrowers, including:

- **Cancel federal student loans if the borrower is incarcerated for a minimum sentence of five years.**
- **Regularly cross-reference borrowers with either governmental or private databases that compile incarceration information for the sole purpose of improving student loan servicing for borrowers who are incarcerated.**
- **Reform student loan debt relief programs to account for the unique characteristics of the prison environment.**
- **Clearly and publicly set forth information about current servicing practices and policies affecting incarcerated borrowers. This information should be accessible to incarcerated borrowers, their families, and advocates on the Department's website.**

Introduction

The student debt crisis and the need for criminal justice reform are both hot topics in the current national debate.¹ And yet, the intersection of these two issues is rarely discussed in the dominant discourse.

While the full scope of the carceral student loan crisis is unclear because the U.S. Department of Education (Department) does not record the number of borrowers who are incarcerated, estimates suggest that as many as a quarter million borrowers are confined within federal, state, county, and local facilities.² Whatever the precise number of incarcerated borrowers, we know that the need for solutions for the debt crisis facing this population is dire, as communications and income-earning options in prison are uniquely ill-suited to the time-consuming and costly task of seeking and acting on information from student loan servicers. These circumstances leave many incarcerated borrowers with no option but to default on their student loans.

Both student debt and the criminal legal system have devastating impacts on communities of color across the United States. The criminal legal system has a long-documented history of perpetuating racial disparities.³ As a result of discriminatory laws and policies, as well as biased decision making by justice system actors, low-income communities of color experience higher rates of arrest and incarceration.⁴

Similarly, while the \$1.6 trillion student loan market was intended to unlock access to higher education and upward mobility,⁵ data show that Black borrowers are three times more likely to default on their loans than their white peers, and that 20 years after taking on the loans, Black borrowers continue to owe 95 percent of the amount that they originally borrowed, whereas white borrowers typically have paid off 95 percent of their loans in that same time period.⁶ Simply put, student loans are trapping borrowers of color in an unaffordable debt trap and subjecting them to the government's harsh collection tools, such as seizing wages, tax refund (including the Child Tax Credit and Earned Income Tax Credit—payments intended to help support children and lift low-income families out of poverty), and federal benefits like Social Security Disability.⁷

The failings of the federal student loan servicing system are myriad.⁸ Borrowers routinely struggle to get accurate or any information at all out of student loan servicing companies, especially when it comes to exercising their options under the various debt relief programs. Unfortunately, the problems that plague traditional student loan servicing are amplified for borrowers who are incarcerated. Among other challenges, borrowers often face

insurmountable communication barriers while in prison that prevent them from managing their student loans or accessing relief for which they are eligible.

The Department should take the opportunity presented by this time of transition to develop and provide targeted student loan servicing and support to incarcerated borrowers

After years of poor servicing and borrower outcomes, the student loan servicing system is at an inflection point. As the government continues to navigate the COVID-19 pandemic, the Department is juggling preparations for millions of borrowers to return to repayment for the first time in more than two years, the transfer of millions of student loan accounts to new servicers in the wake of several companies' exits from the field, and giving millions more borrowers a "Fresh Start" out of delinquency and default and into good standing.⁹ Overlaying all these changes is the President's imminent announcement on whether he will

move forward with broad cancellation of student loan debt for tens of millions of borrowers,¹⁰ relief that could be a lifeline for families struggling with student loan debt, but which may depend on borrowers successfully navigating a new application to access this relief—which would be difficult for many borrowers, and especially those who are incarcerated.¹¹

The Department should take the opportunity presented by this time of transition to develop and provide targeted student loan servicing and support to incarcerated borrowers for the first time. Given the Biden Administration's expressed commitment to supporting formerly incarcerated people as they re-enter their communities, and the Department's forthcoming Prison Education Program regulations to guide correctional facilities and institutions of higher education in re-establishing Pell Grant eligibility for incarcerated students for the first time since 1994, these reforms would be especially timely.¹² Providing targeted support to incarcerated borrowers will ensure that these important initiatives have a real chance at success and advancing racial justice goals. Failing to do so could otherwise undermine these initiatives.

Student Loan Servicing Barriers Facing Incarcerated Borrowers

The Higher Education Act offers borrowers several options for managing their federal student loans, but borrowers almost always need to navigate bureaucratic processes to access them.¹³ For example, income-driven repayment (IDR) plans promise to ensure that borrowers have an affordable payment option by calculating a borrower's payment based upon their income and family size. IDR promises cancellation after 20 or 25 years in the program.¹⁴ Borrowers must apply for IDR, and to maintain an affordable payment, must reapply and submit onerous paperwork and income documentation annually, referred to as recertification. Data show that for the portfolio at large, few low-income borrowers are able access IDR and nearly half of all borrowers do not recertify their loans.¹⁵

There are also a number of deferment and forbearance options meant to keep borrowers experiencing unemployment or economic hardship out of default.¹⁶ And for those borrowers with loans already in default, programs like loan rehabilitation and consolidation are meant to support them out of it.¹⁷

In theory, these programs are designed to help borrowers manage their loans and get and stay out of default. But in practice, these programs have been stymied by ineffective, and sometimes abusive, servicing, as well as by burdensome processes that borrowers must navigate to benefit. As this section describes, the complicated nature of student loans and servicing shortfalls, along with the challenges of the carceral state, sets incarcerated borrowers up to fail.

Communication Barriers in the Broader Prison Context

The immense communication barriers faced by all people while incarcerated reveal the extreme obstacles borrowers face in obtaining adequate student loan servicing while incarcerated.¹⁸

The systemic barriers facing incarcerated people seeking to communicate with the world outside of prison walls are extensive and well-documented.¹⁹ People in prison and jail must pay high rates for phone calls that are often subject to short time limits, and they are generally unable to receive incoming calls. They also lack access to the internet and email, and traditional paper mail is closely monitored, subject to delays, and, again, often cost

prohibitive.²⁰ Student loan borrowers who are incarcerated are no less burdened by these limitations, and the student loan servicer failures that plague all borrowers are only exacerbated by the prison context.

Telephonic Communication

Although the particular costs for phone calls vary from facility to facility, the heavy burden that these costs place on incarcerated people, some of whom earn nothing at all for their labor and others who earn an average of between 14 and 63 cents per hour, is common across state lines and between federal and state jurisdictions.²¹ A single 15-minute in-state phone call can cost more than five dollars in some correctional facilities. Calls from local and county jails, where people presumed innocent are detained pretrial, are even more exorbitant, sometimes running up to 50 cents per minute.²²

Costs are not the only barrier: jails and prisons also impose a range of access restrictions, including designated telephone hours, inability to receive incoming calls, and administrators' pre-approval of only certain contacts and numbers to which outgoing calls can be made—which prevents people who are incarcerated from making calls to many 1-800 numbers altogether.²³ Limits on the amount of time residents are allowed for individual calls, as well as weekly or monthly minute caps, are another significant barrier. Many facilities automatically disconnect residents' calls after only 15 minutes.²⁴ And facilities run by the Federal Bureau of Prisons ("BOP") typically limit residents to 300 telephone minutes each month, working out to roughly 10 minutes per day.²⁵

Communicating by Postal and Electronic Mail

Sending and receiving mail by the United States Postal Service ("USPS") is similarly challenging for incarcerated people limited by cost and stringent prison regulations. While some facilities provide indigent residents with small postage stamp allowances or loans, the threshold to qualify as indigent is extremely limiting, with some facilities disqualifying residents from these benefits for having as little as \$1 in an inmate "trust fund" or commissary deposit accounts.²⁶ For individuals who happen to trip over this extraordinarily low bar, the full cost of a 60 cents stamp to send a single letter by first-class mail could take more than four hours to earn on meager prison wages.²⁷

Assuming incarcerated individuals can overcome these financial hurdles, they must still navigate an array of prison regulations limiting the utility of communication by mail. Some jurisdictions confiscate residents' paper mail, leaving them with only photocopies of their incoming mail and privacy concerns.²⁸ Other facilities deny residents' access to letter correspondence entirely, instead limiting all incoming and outgoing postal mail to

postcards.²⁹ Additionally, incoming mail that fails to include the recipient's BOP register number may not be delivered.³⁰

Unfortunately, technological advancements have done little to alleviate the barriers to communication from inside prison walls. Jails and prisons heavily restrict internet access and bar access to conventional email. The limited electronic messaging available in prison is distinguishable from conventional email in several ways, including that it is not interoperable with the email services used by non-incarcerated individuals.³¹ Instead, non-incarcerated users must establish an account with the prison-based service and use that account to correspond with incarcerated users.³²

Communication Barriers and Incarcerated Student Loan Borrowers

Poor servicer communication with borrowers has long been a hallmark of the student debt crisis.³³ The Consumer Financial Protection Bureau has documented an extensive history of widespread student loan servicing failures, which can lead to financial disaster for many borrowers.³⁴ Despite the crucial role loan servicing companies play in keeping borrowers' loans in good standing, reports routinely surface of borrowers encountering communication failures, processing errors, lost paperwork, and other roadblocks that can prevent them from accessing relief on their loans.³⁵

The way communication breakdowns inherent to student loan servicing and the barriers inherent to the prison environment converge to intensify the student debt crisis for incarcerated borrowers is especially clear in the context of servicer call wait times. A public records request revealed that, in some months, the average speed of answer for student loan servicers receiving borrower calls has been as high as seven hours.³⁶ For an incarcerated borrower seeking information about accessing their account under a new servicer or enrollment in an income-driven repayment plan, a seven-hour wait is simply impossible. And, due to the bar on incoming calls, electing a "call back" instead of waiting is also impossible. Even a 15-minute wait before speaking with a representative or getting through to a specialist or

A public records request revealed that, in some months, the average speed of answer for student loan servicers receiving borrower calls has been as high as seven hours.

manager able to help may be cost-prohibitive and is a heavy drain on the monthly minute allowance granted by most facilities and often will exceed the amount of time permitted for a single call altogether.

In some facilities, incarcerated borrowers will not even get that far in attempting to contact their servicer: Many facilities prohibit residents from making calls to toll-free or “1-800” phone numbers altogether.³⁷ Because the 1-800 numbers are the usual method of contact provided to borrowers by student loan servicers and even the Department, borrowers in many facilities are likely unable to call their federal student loan servicer or the Department’s help lines at all.

Loan Servicer	Contact
FedLoan Servicing (PHEAA) ↗	1-800-699-2908
Great Lakes Educational Loan Services, Inc. ↗	1-800-236-4300
HESC/Edfinancial ↗	1-855-337-6884
MOHELA ↗	1-888-866-4352
Aidvantage ↗	1-800-722-1300
Nelnet ↗	1-888-486-4722
OSLA Servicing ↗	1-866-264-9762
ECSI ↗	1-866-313-3797
Default Resolution Group ↗	1-800-621-3115 (TTY: 1-877-825-9923 for the deaf or hard of hearing)

Similarly, managing student loans by postal mail or electronic messaging is uniquely challenging for incarcerated borrowers. For example, recertification of IDR plans and rehabilitation of student loans in default require borrowers to adhere to strict deadlines.³⁸ Failing to do so can result in higher monthly bills and damaged credit

“I was an incarcerated individual for a period exceeding 10 years...never was I told that I could have applied for [student debt relief programs]...It would take months just to buy a book of stamps...I watched the interest get capitalized and fees accrue while I remained helpless. [I]t is an incredible burden to be faced with as soon as you step out of a long-term incarceration. It [is] as if I am being punished forever...”⁴³

—A Formerly Incarcerated Borrower

scores for these borrowers.³⁹ Given the delays, costs, and administrative restrictions inherent to these methods of communication in the carceral context, it is clear that postal and electronic messaging services are inadequate to the task of keeping incarcerated borrowers’ loans in good standing. Further, prison-based electronic messaging systems would require student loan servicers to register and create an account to communicate with incarcerated borrowers who were able to overcome these hurdles.⁴⁰

Overlaying and compounding all these barriers to communicating with the Department and its servicers from within the prison environment is the general unavailability and inaccessibility of online information for incarcerated individuals. Incarcerated individuals are almost universally denied meaningful access to computers and the internet.⁴¹ Even

borrowers incarcerated in facilities with access to “inmate tablets” allowing limited access to a small number of

pre-approved websites may find that no student loan servicer sites are pre-authorized.⁴² This means that even when incarcerated borrowers may be able to overcome the litany of obstacles to communicating with servicers and the Department by phone, mail, or electronic messaging, many lack the fundamental access to online information hubs containing information about how and what must be communicated via those avenues.

Financial Barriers and Incarcerated Student Loan Borrowers

Another basic roadblock that student loan borrowers face while incarcerated is lack of access to and control over their finances. During the period in which borrowers are incarcerated, they often do not have access to their bank accounts. Instead, their money is placed in a "trust fund" or "commissary" account, which is ultimately held by the jail or prison and is subject to garnishment.⁴⁴ Almost universally, prisons and jails contract private companies to handle any money transfers from these accounts, and these companies attach fees to transfers made.⁴⁵

Worse, most incarcerated borrowers—both those unable to work and those earning pennies per hour or, as in several states,⁴⁶ nothing at all for their labor—clearly fall within the category of especially low-income borrowers that federal debt relief programs were designed to prevent from spiraling into a lifetime of delinquency and default.⁴⁷ And yet, carceral conditions compounded by poor servicer communication practices make accessing that debt relief nearly impossible.

To make matters even more difficult, even when incarcerated borrowers do have the money, some are unable to make payments from their prison accounts without first completing forms required by the prisons, which must be approved by the administration and forwarded to a central corrections office for processing.⁴⁸ This administrative burden can cause their payments to be delayed, and if even one of a borrower's nine rehabilitation payments is late, they are required to start the rehabilitation process over again.

Consequences of Servicing Barriers in the Carceral Context

These obstacles make managing student loans from prison especially burdensome and incarcerated borrowers often fall into default, resulting in the transfer of their loans to the Department's sole loan servicer for all borrowers in default: the Default Resolution Group (DRG) operated by Maximus Federal Services, Inc. (Maximus).⁴⁹ The borrower harms that arise during these servicer transfers are exacerbated by the extraordinary change in income that accompanies incarceration.

Figure 1: Maximus's Bad Start⁵⁰

Maximus is the largest student loan company in the world, contracting with the Department of Education to manage nearly 13 million federal student loans in both default and good standing. Doing business as the DRG, Maximus has acted as the sole servicer for defaulted borrowers since 2013. In that near decade, the company has racked up a long record of exposing vulnerable borrowers to abusive practices like unlawful wage garnishment and seizure of tax refunds and public benefits.

As the Department plans to launch its Fresh Start initiative to bring all defaulted borrowers into good standing, it must address the conflict of interest between Maximus' profits—which are dependent on maintaining as many borrowers in default as possible—and Fresh Start's restorative mandate.

The Department's lack of specific instructions for incarcerated student loan borrowers seeking to enroll in IDR and other debt relief programs, combined with the systemic barriers to effective communication between servicers and incarcerated borrowers, means that this particularly vulnerable group has been especially likely to fall into default and into Maximus' portfolio. Given the outsized impact that both the student debt crisis and mass incarceration have on communities of color, the Department must exercise careful oversight over Maximus's implementation of Fresh Start to ensure existing racial disparities are not worsened. A majority of the company's own shareholders also appear concerned about Maximus's impact on communities of color—they recently voted to require the company to conduct a racial equity audit.

Incarcerated borrowers' rates of default are unnecessarily accelerated by the Department's requirements that they meet the same criteria as other borrowers to access debt relief options. Incarcerated borrowers are not exempt from proving the elements required for most relief programs, such as earnings below 150 percent of the poverty level sufficient to qualify for \$0 payments in IDR, or deferments and forbearances for unemployment and economic hardship.⁵¹ Most incarcerated individuals necessarily fulfill these criteria by virtue of incarceration.⁵²

Similarly, for incarcerated borrowers who wish to cure a defaulted loan to become eligible for Pell Grants, state financial aid grant programs, or simply organize their finances prior to release, many will be directed to "loan rehabilitation." If borrowers are able to identify and make contact with DRG to begin this process, they will then be instructed that they must agree in writing to make nine "reasonable and affordable" monthly payments (as

calculated by DRG) on-time during a period of 10 consecutive months.⁵³ The Department calculates these “reasonable and affordable” payment amounts by requiring borrowers to pay 15 percent of their monthly discretionary income, or a minimum of five dollars.⁵⁴ For most incarcerated borrowers, a five-dollar monthly bill is neither “reasonable” or “affordable.”

After facing compounding months of delinquency and eventually falling into default, incarcerated borrowers face additional penalties and fees, along with all unpaid interest being capitalized into their principal for borrowers with commercially-held Federal Family Education Loan (FFEL) loans.⁵⁵ These consequences make reentering society even more difficult by damaging credit scores, creating barriers to securing both employment and housing.⁵⁶

Forgotten Behind Bars

The current landscape of available guidance for incarcerated borrowers is sparse and largely pieced together from a redacted response to a Freedom of Information Act (FOIA) request for the government's private collections agency (PCA) manual.⁵⁷ The lack of tailored and intentional instructions for this vulnerable group contributes to poor borrower outcomes but also speaks to the many places within the current student loan system where incarcerated borrowers are simply not considered at all.

Instead of acknowledging the unique concerns and problems faced by borrowers while incarcerated and creating targeted policies to address them, the government has simply transferred its "collection at all costs" practices and mentality into the prison.

[T] he government has simply transferred its "collection at all costs" practices and mentality into the prison.

Incarcerated Borrowers with Loans in Good Standing

The Department has not developed any policies or practices specific to servicing or providing relief to incarcerated borrowers with loans in good standing. According to the Department, "... incarcerated borrowers are subject to the same rights and responsibilities as other borrowers and are treated accordingly by Department servicers and collection agencies."⁵⁸ This is true for both federal student loans held by the Department and commercially held FFEL program loans. Under some circumstances, servicers may apply forbearances or other "relief" programs to borrowers who are incarcerated, but they may choose only among options developed for non-incarcerated borrowers.⁵⁹ In one resource, borrowers are informed that, in order to access this relief and defer payments during periods of incarceration, they must call a 1-800 phone number or visit a website online—both near impossibilities in the prison environment.⁶⁰

Although much of this guidance is from the final years of the Obama Administration, the Department has not publicly announced any updates or changes to its contracts with servicers and PCAs. The Student Borrower Protection Center has sought information about current policy through a FOIA request,⁶¹ but the Department has yet to respond to the November 29, 2021, request.⁶² Further, since March 2020, the government has paused most student loan servicing and collection, and it is not clear what, if anything, will change once payment resumes.

Incarcerated Borrowers with Loans in Default

Borrowers not yet in default when entering prison are likely to fall into it due to the numerous financial and communications barriers facing incarcerated individuals. And due to those same barriers, once in default, incarcerated borrowers are unlikely to find the tools or resources to access programs to get their loans back into good standing.

While the Biden Administration has taken welcome steps to include incarcerated borrowers in its plans to bring millions of borrowers out of default with its “Fresh Start” initiative, if the Department does not address the unique barriers standing between this group and student loan debt relief, incarcerated individuals will be forgotten again.⁶³

Currently, defaulted borrowers who seek higher education while incarcerated may have the best chance at restoring their loans to good standing as there may be prison education program administrators working to help them manage pre-existing student loan debt in order to access Second Chance Pell Grants.⁶⁴ However, many of these administrators assist only with addressing barriers in the context of enrollment. Borrowers completing or withdrawing from in-prison higher education programs may not have access to these assistance resources. In addition, borrowers who do not seek further education while incarcerated are often left on their own to navigate the maze of sparse debt relief options.

Write-Offs and Suspensions

The Department has provided one little-known incarceration-specific program that may be applied to incarcerated borrowers in default, though scarce details exist about it, and servicers do not mention it on their websites, including the Default Resolution Group. This program consists of (1) write-offs of federal student loans in default upon application by those individuals with remaining sentences of 10 years or more and (2) collection suspensions upon application for defaulted borrowers with shorter sentences.⁶⁵

The Department has described these two types of relief as:

- (1) **“INC:”** Borrowers incarcerated for more than nine months but less than 10 years from the time of submission are considered “Incarceration-Collectable,” or “INC”. According to the Department’s prior instructions to collection agencies, these accounts are systematically returned to active collections at the expiration of the borrower’s earliest possible release date, whether or not they are, in fact, released.⁶⁶

- (2) **“INW:”** Borrowers incarcerated for 10 years or more from the time of request are considered “Incarceration-Write Off,” or “INW.” These accounts should be systematically written off according to the Department’s collection agency handbook.

Additionally, for nine months of incarceration or less, the Department instructed collection agencies to suspend collection and perform follow-up after the borrower’s parole or earliest release date.⁶⁷

These policies provide the only glimpse we have into the scale of this problem. According to an April 2022 article, the Department has written off the loans of more than 25,000 incarcerated borrowers since 2011.⁶⁸ According to a 2016 Bloomberg article, the Department stopped collecting payments for 82,021 people in jail or prison from 2012 to 2014.⁶⁹

The practical difference for borrowers between collection suspension and write-off is not clear. In both cases, the borrowers remain in default and the debts are still considered due and payable. In both cases, the Department is supposed to cease collection. The only difference seems to be that the Department will return the suspended accounts to active collection, but not the written-off accounts. There is also presumably a difference in how the Department accounts for these loans. Practically, an individual expecting to be released or seeking access to Second Chance Pell Grant funds will likely want to get out of default. This process for getting out of default will be the same regardless of whether their loans were suspended or written off.

Further, write-offs are not equivalent to cancellation. Instead of discharging the loans, the Department deems them uncollectible and writes them off for their accounting purposes (such as delinquency and default rates).⁷⁰ In order to become eligible for aid after a write-off, borrowers must reinstate the debts and rehabilitate or consolidate to get out of default.⁷¹

Applying for Relief: Nothing is Automatic

To access these debt relief options, incarcerated borrowers must navigate a maze of bureaucratic requirements. They are generally dependent upon the voluntary assistance of prison officials. Debt collectors and student loan

"I am a military veteran...and spent thousands beyond my GI Bill. [University] falsely promised me job opportunities. I tried to have my family send me the Borrower Defense packet. I am lost in the mess of forms and attachments. I have no access to email, internet, and limited phone calls, so any research or help is non-existent."⁷²

—An Incarcerated Borrower

servicers do not have to determine whether customers they serve are incarcerated. Instead, borrowers must proactively apply for write-off and suspension "relief" and provide official verification of their incarcerated status.

To initiate either a collection suspension or write-off of defaulted student loans, borrowers must inform the Department of their incarceration and expected release date or date of eligibility for parole by mail, on the penal institution's letterhead, with a prison official's signature.⁷³ The letter must also include the borrower's name, social security number, date of birth, inmate number, and release date or date of eligibility for parole, whichever is sooner. The letter must also include the name, title, and phone number of the official verifying the provided information. Alternatively, the Department's office of Federal Student Aid ("FSA") notes that this information can be provided via an e-mail from a prison official,

though the office does not provide a recipient e-mail address. The e-mail must be without adulteration and must clearly identify the name of the penal facility and the name and title of the sender.⁷⁴

Recommendations

We recommend the following policy changes to alleviate the extraordinary burden of student loan debt on borrowers who are incarcerated and to increase their ability to remain in or restore good standing on their loans. These recommendations are first summarized and then discussed in more detail below.

- Cancel federal student loans if the borrower is incarcerated for a minimum sentence of five years, including if their sentence has already been served in its entirety when the Department identifies the borrower.
- Regularly cross-reference federal student loan borrowers with governmental or private databases that compile incarceration information for the sole purpose of providing targeted assistance to borrowers during periods of incarceration.
- Reform income-driven repayment and other debt relief options to account for the unique characteristics of the prison environment.
- Clearly and publicly set forth information about servicing practices and policies affecting incarcerated borrowers. This information should be accessible to incarcerated borrowers, their families, and advocates on the Department's website.

Cancel Loans for Borrowers Incarcerated at Least Five Years

Building on FSA's policy of "writing off" the student loan debt of defaulted borrowers incarcerated for 10 or more years, the Secretary should cancel student debt for any borrower who will be or has been incarcerated for five years or more. As detailed above, the Department has not provided these borrowers with adequate guidance to navigate the tangle of income-driven repayment, loan rehabilitation, and other student loan debt relief options on their own, especially given the communication and financial barriers endemic to the prison system. Borrowers who are incarcerated for at least five years are likely suffering under uncollectable debt—the Department derives no benefit from holding onto these loans and leaving these old financial burdens outstanding impairs borrowers' chances at successful reentry.

Additionally, formerly incarcerated borrowers who have completed sentences of five years or longer should also have their student loan debt cancelled. The current policy requires submission of the application for write-off prior to the borrower's release. This pins relief to a borrower's ability to navigate a byzantine system, an

Any broad-based student loan cancellation that President Biden chooses to enact must include incarcerated borrowers and must ensure this population

especially difficult proposition given that the Department has provided so little guidance and incarcerated borrowers have such a difficult time contacting their loan servicers or collection agencies. Given the systemic failures of student loan servicing companies that animated the Department's recent Public Service Loan Forgiveness Waiver and IDR Account Adjustment initiatives,⁷⁵ it is appropriate that formerly incarcerated borrowers who received inadequate loan servicing have a similar one-time review period to correct the failures of a long-inaccessible process.

The Secretary should use any relevant emergency authority or his authority to "compromise, waive, or release" claims against borrowers as needed to ensure all borrowers who should benefit from debt relief are able to do so.⁷⁶ Further, any broad-based student loan cancellation that President Biden chooses to enact must include incarcerated borrowers and must ensure this population receives such cancellation automatically.

The Department should identify borrowers eligible for these debt relief proposals through coordination and cross-referencing of borrowers with governmental and private databases that compile incarceration information, as set forth below.

Identifying Incarcerated Borrowers to Better Deliver Loan Servicing and Relief

FSA and its servicers should regularly cross-reference borrowers with either governmental or private databases that compile incarceration information. For example, the National Data Exchange (N-DEX) System contains incarceration information for local, state, territorial, and federal government agencies who agree to provide such information. N-DEX is a national information sharing system that enables criminal justice agencies to search, link, and share local, state, and federal records, including records of incarceration.⁷⁷ While the Department may not currently have access, it may obtain the right to access incarceration information by executive order or through legislation.⁷⁸

Other government data systems that the Department and its contractors may search include the federal BOP database, state prison data systems, and local systems for populous jurisdictions.⁷⁹ The Department could also use private data systems as a resource to provide targeted assistance to borrowers during periods of incarceration.⁸⁰

Tailored Debt Relief Options for Incarcerated Borrowers

Upon confinement in any correctional facility at the local, state, territorial, or federal level, borrowers should be automatically enrolled in the most beneficial IDR plan for which their loans are eligible with a zero-dollar monthly payment, regardless of whether their loans are in default or good standing. The Department is authorized to enroll borrowers into an IDR plan as an alternate pathway out of default.⁸¹ Automatically enrolling all incarcerated borrowers into an IDR plan now, as the Department prepares to implement its Fresh Start initiative to remove all borrowers from delinquency and default, is especially necessary and timely. Without enrollment in an IDR plan tailored to incarcerated borrowers' unique financial circumstances and communication limitations, this vulnerable group will likely fall right back into default and benefit little from Fresh Start.

Relatedly, moving beyond Fresh Start, the Department should amend its regulations related to student loan rehabilitation to allow incarcerated individuals in default to make zero-dollar monthly payments for the duration of the nine-month rehabilitation period.

All of a borrower's time spent in IDR while incarcerated should count towards IDR cancellation which, under the current regulations, cancels any remaining balance on a borrower's loan after 20 or 25 years.⁸² This should include time spent in pretrial detention, as many borrowers are detained for extended periods of time before conviction and confinement. Further, the Department should provide retroactive IDR credits to incarcerated borrowers who are not immediately identified by the Department when they are incarcerated. The Department should retroactively count all time periods for which all borrowers have been incarcerated, including for borrowers who have been released. This action would extend the Department's current IDR Account Adjustment policy⁸³ to formerly and currently incarcerated borrowers who, due to the conditions of incarceration, were unable to communicate with servicers to access either IDR or serial administrative forbearances.

Incarcerated borrowers should remain in the IDR plan, without an annual recertification requirement, through the date of their release, if any, plus a one-year grace period after release. The Department should relieve these borrowers of the duty to recertify IDR eligibility each year they are incarcerated and accept evidence of continued incarceration (obtained through institutional data sharing) instead of the current burdensome and unnecessary

documentation requirements since many incarcerated people are unable to work and, of those who do and are paid for it, most earn far below 150 percent of the poverty level sufficient to qualify for zero-dollar IDR payments. Determining a procedure for certifying a borrower's annual IDR eligibility is at the Secretary's discretion.⁸⁴ The Secretary should choose a method less burdensome on incarcerated borrowers struggling with the communication barriers discussed earlier in this report.

The Department also must not forget incarcerated borrowers with commercially-held FFEL loans who are not eligible for the same IDR options as borrowers with other types of federal loans. To ease the burden of consolidation to access full IDR options, the Department should require mandatory assignment back to the Department of all commercially-held FFEL loans in default held by incarcerated borrowers.

Clear and Transparent Guidance

The publicly available information about policies and practices related to servicing of student loans owed by incarcerated borrowers is woefully inadequate. Currently, the Department's guidance for borrowers in need of loan servicing while incarcerated appears limited to a series of five responses on a Frequently Asked Questions ("FAQs") publication buried within FSA's online Knowledge Center library.⁸⁵ Given the myriad of barriers between the prison environment and the outside world, it is unsurprising that incarcerated borrowers struggle to access such an obscure document; however, even borrower advocates struggle to locate this information.

Borrower advocates have also unearthed information about debt relief options available to incarcerated borrowers through FOIA requests made to the Department. The public records made available in response to these FOIAs include FSA's guidance for PCAs previously contracted to collect federal defaulted student loans.⁸⁶ Since the Department announced the termination of its PCA contracts in late 2021, it is not clear which of these policies, if any, still exist.⁸⁷

This current patchwork of information available to borrowers is untenable. Incarcerated borrowers who are most likely to struggle to even access the communication maze of student loan servicing are also least likely to find clear and accessible guidance about servicer responsibilities and borrower protections. The Department should rectify this inequity immediately by launching a publicly available and easily accessed FAQ webpage dedicated to resolving common student loan servicing concerns faced by incarcerated borrowers and detailing the full range of student loan relief options available to them. Further, the Department must include a non-toll-free phone number on its website so that incarcerated borrowers may call in with servicing questions and require its loan

servicing companies to do the same. The Department should also work with its contractors to ensure these numbers are included on facilities' lists of pre-approved phone numbers.

Finally, the Department must ensure that jail and prison administrators are kept abreast of student loan servicing policies and any reforms impacting borrowers that reside in their facilities. As was highlighted during the Department's October 2021 negotiated rulemaking subcommittee meeting on Pell Grants for Prison Education Programs, prison administrators are a key constituency to consider and educate if any of these policies are to be effectively implemented.⁸⁸

Conclusion

The time is ripe for the U.S. Department of Education to finally take action to ensure positive student loan outcomes for borrowers who are incarcerated. The convergence of Fresh Start, increasing Pell Grant eligibility for prison education programs, and the possible imminent announcement of student debt cancellation creates a unique opportunity for the Biden Administration to advance racial and social justice in the student loan and criminal legal systems.

Endnotes

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⁷⁸ 28 C.F.R. § 20.33(a)(2).

⁷⁹ FEDERAL BUREAU OF PRISONS, *Find an Inmate*, <https://www.bop.gov/inmateloc> (last visited July 26, 2022); USA GOV, *Corrections Departments by State*, <https://www.usa.gov/corrections> (last visited July 26, 2022); *e.g.*, L.A. Cnty. Sheriff's Dep't, *Inmate Information Cntr.*, https://app5.lasd.org/iic/ajis_search.cfm (the Los Angeles County incarceration records are publicly available) (last visited July 26, 2022).

⁸⁰ *E.g.*, LEXIS NEXIS, *Process of Debt Collection and Recovery*, <https://risk.lexisnexis.com/insights-resources/article/process-of-debt-collection-and-recovery> (Lexis Nexis reports whether debtors have been incarcerated as part of its collection recovery service) (last visited July 26, 2022); GLOBAL HR RESEARCH, *Criminal Background Checks*, <https://ghrr.com/solutions/general-screening-services/criminal-background-checks>, (Global HR Research similarly records criminal records and prison, parole, and release files from stage agencies) (last visited July 26, 2022).

⁸¹ 20 U.S.C. § 1087e(d)(5).

⁸² 34 C.F.R. § 682.221(f).

⁸³ Press Release, U.S. Dep't of Educ., Fed. Student Aid, *Income-Driven Repayment and Public Service Loan Forgiveness Program Account Adjustment* (Apr. 19, 2022), <https://studentaid.gov/announcements-events/idr-account-adjustment>.

⁸⁴ 20 U.S.C. § 1098e(c).

⁸⁵ *Loan Servicing and Collection Frequently Asked Questions*, *supra* note 58, at IB-Q1 - IB-Q5.

⁸⁶ Student Loan Borrower Assistance, *supra* note 57.

⁸⁷ *Id.*

⁸⁸ Transcript, U.S. Dep't of Educ., *Prison Education Programs Subcommittee* 46-49 (Oct. 20, 2021), <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/1020am.pdf>.

Appendix A

PCA Procedures Manual

for Private Collection Agencies contracted by Federal Student Aid

3/15/2019

Federal Student Aid, U.S. Department of Education

Description: This document describes the procedures and policies for private collection agencies (PCAs) to collect federal defaulted student loans and grants overpayments under the U.S. Department of Education's (ED) Federal Student Aid (FSA) collections contract. These procedures and policies are outlined in the Request for Quote and Statement of Work for PCAs and are further detailed here, in the Procedures Manual. Any questions regarding the procedures and policies described here should be directed to the FSA Contract Office Representative (COR) and Contract Officer (CO).

The Procedures Manual does NOT:

- 1. provide comprehensive guidance of all regulatory and contractual requirements for PCAs; or*
- 2. relieve PCAs and affiliated contractors of their obligation to comply with all of the statutory and regulatory provisions governing the statement of work; or*
- 3. relieve the above from compliance with all contract requirements and other statutes and guidelines (including specific processing/training manuals) that are applicable to the ED collections contract.*

1. The accounts can be submitted via eIMF individually using the eIMF type “Admin Resolution – Death” and attaching above required documentation obtained as proof using the instructions for submitting an eIMF as explained in chapter 19, section 19.1 Administrative Resolutions.
2. note the DMCS Historical Events window that a request for loan discharge has been submitted to FSA for approval;
3. note PCA system with a summary of what was submitted and when
4. send the documentation obtained as proof to DRG, as “archive”
U.S. Department of Education
ATTN: Archive
6201 Interstate 30 Highway
Greenville, TX 75402
***Should not contain payments
5. Monitor the eIMF to make sure it was reviewed and completed timely and that the account(s) has been recalled with the correct recall code. If the eIMF hasn’t been completed within 5 business days contact the person listed in contact list in chapter 22.

17.2.2 Incarceration

If the PCA determines that a borrower is incarcerated, the PCA must obtain verification from a prison official of the borrower’s incarceration and earliest possible release date.

Incarcerations that the PCA can recommend for account recall are divided into two categories based on the length of the borrower’s sentencing:

1. If the borrower is to be incarcerated for a period exceeding ten (10) years or more from the time of submission.
 - These would be recalled as Incarceration-Write Off(INW) and will be systematically written off in the DMCS
2. If the borrower is to be incarcerated for a period exceeding nine (9) months but less than 10 years from the time of submission.
 - These would be recalled as Incarceration-Collectable (INC) and will be systematically returned to active collections at the expiration of the borrower’s earliest possible release date.

If the borrower is to be confined for 9 months or less, the PCA will suspend collection efforts on the account and perform follow-up after the borrower’s anticipated parole or earliest release date.

The information verifying incarceration must contain:

- the borrower’s full name
- full date of birth
- earliest release date
- the prison or institution facility address
- the prison official’s name, title (or official website)
- prison telephone number

- the SSN or last 4 digits thereof is encouraged but not required, since most official websites will not provide the SSN.)

The documentation required as proof of the earliest release date must be in one of the below formats in order for the PCA to recommend the account for recall:

Earliest release date –The earliest release date may be classified under different terms such as a parole hearing date. As long as the date is the earliest possible indication of when the prisoner may be released and uses language that supports release date information, the date should be acceptable. In the event that the earliest release date has passed and the only other date is the maximum sentence date, the PCA must obtain more clarifying/concrete information that indicates if there is a new updated early release date or confirms that the earliest release date is now the maximum sentence date.

Acceptable formats - PCA must provide verification of the earliest release date in one of the following three forms:

1. Written verification from a prison on the institution's letterhead or the FSA incarceration verification letter completed by a prison official (see appendices).
 - The PCA does not have to obtain an FSA official signature on the FSA incarceration verification letter. If the prison requires official signature (rare), the PCA must submit an eIMF request with a copy of the letter. The PCA must not photocopy a letter with an FSA signature nor must not -type the name of an FSA employee in the signature block of a letter.
2. Copy of an email from the prison official verifying the borrower's incarceration status.
3. The email without adulteration must clearly identify the name of the penal facility and the name and title of the sender.
4. Computer print-outs from a state/prison database.
5. The PCA must use this method only if the other methods are unavailable.
6. At a minimum the computer print-out must contain:
 - the borrower's full name (at least first and last name)
 - If the borrower has a common names (i.e. John Smith, Mary Brown), the PCA must obtain documentation with additional personal identifiers, beyond name and DOB, such as SSN.
 - The borrower's full date of birth (month/day/year)
 - The anticipated release date
 - The following certification statement:
 - "The above information was obtained from the INSERT STATE AND/OR PRISON SYSTEM database provided to INSERT SUBCONTRACTOR or CONTRACTOR NAME for verification purposes. The information provided is, to the best of our knowledge, true and accurate to the individual's current incarceration status."
 - PCA signature below the certification statement. If the PCA uses a subcontractor, there must be two signature blocks, one for the subcontractor and one for the PCA.
 - Notarization by the PCA:
 - subcontractor is not required to notarize the statement
 - PCA may notarize the statement on a separate copy
 - if the PCA is unable to notarize the statement, two signatures are required

Computer print-outs may come from an on-line source. If the minimum personal identifiers, full name and full DOB, don't show on the print-out, the PCA must write on the print-out the personal identifying information used to obtain the record. However, if personal identifying information is not used to obtain the record and the online record is incomplete (i.e. no DOB only borrower age), then the PCA must obtain verification through another acceptable format.

Except for the PCA writing the personal identifying information use to obtain the record (see previous paragraph), the PCA must not alter the computer print-out and must not accept hand-written information as evidence to support the borrower's identity or incarcerated status.

If identifying factors are incomplete or inconclusive, FSA will reject the account or request additional supporting information from the PCAs.

Submitting for Review:

When the PCA has obtained the supporting documentation as proof of the length of time the borrower is incarcerated, they can submit the incarceration documentation to FSA via eIMF.

1. The accounts with an incarceration period greater than 10 years (INW) should be submitted via eIMF individually by using the eIMF type "Admin Resolution – INW". The supporting documentation should be supplied as an attachment to the eIMF. The instructions for submitting an eIMF is explained in chapter 19, Administrative Resolutions.
2. The accounts with an incarceration period greater than 9 months but less than 10 years (INC) can be submitted by eIMF using eIMF type "Admin Resolution – INC Batch". in a batch process once a week once the documentation has been imaged.

A batch process is when you include all the accounts eligible for the INC review that week together in one eIMF and FSA reviews a sample of those accounts to ensure they were submitted correctly. If they were submitted correctly all the accounts will be approved and processed.

If there were any errors all of the accounts are rejected as Status "Returned to PCA" and would need to be resubmitted again once the issue has been fixed or removed.

How to submit INC administrative resolutions through eIMF batch processing:

- A. For each account you want to submit for review, the required documents for proof of the incarceration type need to be imaged. Mail the incarceration verification documents to FSA for imaging by:

- Completing a Manifest for PCA Image Updates by following the instructions on the form found in, chapter 12.0 - Appendix A) and send the manifest with the documentation to the below address. This can be done daily/weekly/monthly.

U.S. Department of Education
ATTN: Archive
6201 Interstate 30 Highway
Greenville, TX 75402

***Should not contain payments; must contain a manifest.

- The documents should be imaged within 5 business days of receipt of package. If they haven't been imaged by the 6th business day, check the package tracking to see if it was

- delivered and signed for timely at the correct above address. If the package was received timely email the CO's and CORs with the tracking #, vendor used, the date the package was delivered and that it was documents sent for "archive" imaging.
- B. Once the documents are imaged, the PCA must review them to ensure the image is clear and is not of "poor" quality. If it is "poor" quality it must be resent for imaging and cannot be submitted for INC recall.
- C. After you have approved the image uploaded in DMCS you can included that account on the next weekly roster of accounts for the batch process. To complete the roster of accounts:
- Create and save an excel sheet to be formatted as shown in 17.0, Appendix C for the INCs that you wish to submit for incarceration review that week. This spreadsheet will need to be attached to the eIMF you are submitting.
 - provide the DMCS account numbers in, column A
 - the earliest release date in column B, and
 - the date the incarceration verification documents were imaged into DMCS(in column C)
- D. Submit the batch via eIMF and use the eIMF type "Admin Resolution - INC Batch" and following the instructions for submitting an eIMF and attachment as explained in chapter 19, Administrative Resolutions.
- There is one difference when completing the eIMF for a "batch" and that is that because you are submitting multiple accounts at one time, you can't enter all of the borrower's information in 1 eIMF. Therefore, you will need to provide the information of the 1st borrower on the spreadsheet you created in the following fields of the eIMF:
 - the "Borrower DMCS ID"
 - "Borrower First" Name
 - "Borrowers Last" name
3. Once the eIMF is submitted for either type of incarceration review the PCA must
- A. update DMCS for each borrower:
- DMCS Borrower Pane address – needs to be updated to the best address for the borrower to receive correspondence. If it is the prison than update the borrower address with the prison address in DMCS, which must include the Prison Name, Prison Street/PO BOX Address, Inmate# if any, City, State, and Zip Code. If a borrower has provided the PCA with a "care of" address for mail delivery, the PCA must use that address and notate that it is a "care of" address in the DMCS Historical notes.
 - Note DMCS Historical Events window that an eIMF has been submitted along with the prison official's name, title (or official website), name prison, prison telephone number, and the earliest release date provided by the penal facility. If a borrower is sentenced for life imprisonment, the PCA must indicate "Life" as the earliest release date.
- B. Note PCA system with a summary of what was submitted and when
- C. Monitor the eIMF to make sure it was reviewed and completed timely and that the account(s) has been recalled with the correct recall code. If the eIMF hasn't been completed within 5 business days email the contact provided in Chapter 22.
4. If there is an issue with the eIMF submission that is not pursuant to incorrect information provided by the PCA, the Loan Analyst it was assigned to will email the contact on the eIMF and updated the

“ED Response” field with what the issues is. The PCA should Status the eIMF as “Retracted” until the issue is fixed and you can resubmit it.

FSA Incarceration Letters – PCAs must use the generic incarceration letter which is on FSA letterhead, to send to incarceration facilities (see appendices D & E).

FSA has provided letters to aid the PCAs in obtaining acceptable incarceration documentation. The PCA must not use photocopied letters with the signature of an FSA staff member, and must not type the name of any FSA staff member on these letters.

17.2.3 Total and Permanent Disability

If a PCA has reason to believe that a borrower is disabled, PCAs should:

- Attempt to refer borrowers to the Total and Permanent Disability (TPD) Servicer (Nelnet) by initiating a three-way conference call between the PCA, borrower and Nelnet. The number is below.
- Upon connection with Nelnet request the agents name
- Document the historical events on DMCS with the following standardized comment using the Action: Comment

Result: Comment

***Warm Transferred Borrower to TPD at (Time); Nelnet agent (agent’s name) accepted the transfer

TPD Contact Information

- Phone: 1-888-303-7818 (If initiating a three-way call, PCAs should use Option 3, which is designated for loan holders)
- Web site: www.disabilitydischarge.com
- E-mail: disabilityinformation@nelnet.net
- Office Hours: 8:00 a.m. - 8:00 p.m. (ET), seven days a week
- Mail Inquiry: PO box 87130 Lincoln, Nebraska 68501-7130
- Fax: 303.696.5250
- Physical address: 121 South 13th Street, suite 201, Lincoln, Ne 68508

The TPD Servicer will counsel the borrower on eligibility requirements and, as warranted, instruct the borrower to submit a discharge application to the TPD Servicer.

Based on this initial consultation, the TPD Servicer will notify the borrower’s loan holders to suspend collections activity for 120 days and the PCAs must suspend its collection actions for the same period of time. AWG and TOP will continue during this time.

After the TPD servicer begins to work with the borrower, five different things may occur:

1. The borrower fails to submit a materially complete discharge application to TPD, in which case the PCA must resume collection activity at the end of the 120-day suspension period.

Appendix B



Student Borrower Protection Center
1025 Connecticut Avenue NW, Suite 717
Washington, DC 20036

November 29, 2021

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education (ED), 34 C.F.R. Part 5, the Student Borrower Protection Center (SBPC) makes the following requests for records.

Background

The federal government will generally write off the federal student loans of borrowers who are to be incarcerated for a period exceeding ten or more years based on the borrower's earliest possible release date.¹ However, eligible borrowers must submit a request to attain this discharge. Advocates have noted that "there is little public information about the government's servicing and collection practices for incarcerated borrowers,"² particularly as it relates to the frequency of borrowers' success in accessing discharge.

Request

SBPC requests any documents, communications, reports, audits, records, and data related to the number of borrowers who have secured discharge because of incarceration lasting ten years or more.

Responsive documents and/or data should include the number of applications and/or requests for this discharge that borrowers have ever submitted, the number of these applications and requests that have been accepted, the number of these applications and requests that have been rejected, the reasons for these rejections, and the number of loans attributable to each cause for rejection. SBPC requests any information on the number of instances in which borrowers who were to be incarcerated for ten years or more overall had applications for discharge due to their incarceration rejected because their application was submitted after such time as that fewer than ten years of incarceration remained. SBPC also requests any data and/or documentation related to the number of currently incarcerated or likely incarcerated people who owe on federal student loan debt and the amount they owe, the varieties of schools they attended (for-profit, non-profit, and/or public), broken out by the length of these borrowers' expected and/or ongoing length of incarceration. SBPC also requests any documentation of guidance or instructions that ED and/or the Office of Federal Student Aid has provided to contractors regarding the

¹ <https://www.studentloanborrowerassistance.org/loan-cancellation/federal-cancellation/incarceration/>

² Id.

discharge or other management of incarcerated borrowers' federal student loans. SBPC requests any documentation, reports, audits, records, communications or other materials documenting the cost to collect on and/or service federal student loan debt owed by incarcerated or likely incarcerated borrowers. Finally, SBPC requests any complaints that borrowers have submitted to ED or analysis of complaints that borrowers have submitted to ED regarding discharge for incarcerated borrowers.

Responsive documents should also include but be not limited to any communications with any official, representative, associate, employee, or other actor working or communicating on behalf or in the interest of Maximus/the Default Resolution Group (with all of the preceding terms defined as broadly as possible) and any official, representative, or employee of ED (as defined as broadly as possible) regarding or in a modality related to the discharge of incarcerated borrowers' federal student loans.

SBPC does not object to the redaction from such records of any names or personally identifiable information of any individual.

Beyond the records requested above, SBPC also requests records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, emails, or certifications completed by, or sent to, ED personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, the Department has a duty to construe a FOIA request liberally.

FOIA presumes disclosure. Indeed, "[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a 'strong presumption in favor of disclosure.'" *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at *10 (D.D.C. Sept. 30, 2017) (quoting *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, i.e., if disclosure would "harm an interest protected by an exemption" or is otherwise "prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i). If the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you "demonstrate the validity of [each] exemption that [the Department] asserts." *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC with a Vaughn Index "which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption's relevance." *Id.* (citing *Johnson v. Exec. Office for U.S. Att'ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)). See also *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification – specifically identifying the reasons why the exemption is relevant. See generally *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).



To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material either via email at ben@protectborrowers.org or by mail to Student Borrower Protection Center c/o Ben Kaufman; 1025 Connecticut Ave. NW, Suite 717 Washington, D.C. 20036. We welcome any materials that can be provided on a rolling basis.

Request for Waiver of Fees

Please note that the SBPC is a public interest group and that this request is not for commercial use. The maximum dollar amount I am willing to pay for this request is \$25.

Please notify me if the fees will exceed \$25.

I request a waiver of all fees for this request. Disclosure to me of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, because it and is not primarily in my commercial interest.

The Student Borrower Protection Center is a nonprofit advocacy and research organization founded in 2018. SBPC engages in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance economic opportunity for the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (protectborrowers.org).

Accordingly, SBPC qualifies for a fee waiver.

* * *

SBPC looks forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact [REDACTED] [REDACTED]. If the request for a fee waiver is not granted, or if any fees will be in excess of \$25, please contact me immediately.

Sincerely,

Ben Kaufman
Head of Investigations
Student Borrower Protection Center