



Testimony of Persis SiChing Yu, National Consumer Law Center
Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on
Economic Policy
regarding
“Protecting Student Loan Borrowers and the Economy in Upcoming Transitions”
July 27, 2021

Introduction

Chairwoman Warren, Ranking Member Kennedy, and Members of the Committee, thank you for inviting me to testify today regarding how to protect student borrowers in the upcoming transitions in the student loan system. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center (NCLC).¹

As the director of NCLC’s Student Loan Borrower Assistance Project at NCLC, I lead NCLC’s policy and advocacy efforts to make the student loan system work for the students it is intended to help. Our efforts are grounded in our direct legal assistance work with low-income clients in Massachusetts who are struggling with student loan debt. In addition to our work in

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC’s Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project’s web site at www.studentloanborrowerassistance.org.

Massachusetts, we consult with advocates across the country representing borrowers, many with complaints against student loan servicers.

Our clients, and millions of others like them, take out student loans believing they are the key to a better future. But for many, that dream will never come to fruition because the student loan system is broken and has been broken for a very long time. Currently in the United States, nearly 45 million people owe more than \$1.7 trillion on their student loans. Prior to the pandemic, roughly a quarter of federal borrowers were delinquent or in default on their loans.² As I and my colleagues witness every day from low-income borrowers here in Massachusetts, borrowers often default because they do not understand how to navigate the federal student loan system and their loan servicers fail to provide them with accurate information.

Defaulting carries severe consequences for borrowers and their families. The federal government has collection powers against defaulted student loans that far exceed the collection powers of most unsecured creditors. Wielding these coercive collection tools, the government often siphons thousands of dollars from borrowers already experiencing financial distress. The government can garnish a borrower's wages without a judgment, seize tax refunds (including the Earned Income Tax Credit ("EITC") and Child Tax Credit ("CTC")), and seize portions of federal benefits such as Social Security. The amount the government seizes using these tools often is far greater than the amounts borrowers would have been required to pay under an income-driven repayment ("IDR") plan. These punitive collection activities can push low-income households to or over the financial brink. Facing involuntary collections often means that our clients cannot afford their rent, pay for medication, cover transportation to and from work, or

² See U.S. Dep't of Educ., *Federal Student Aid, Data Center, Federal Student Loan Portfolio*; see also, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform, *Consumer Fin. Prot. Bureau* (Sept. 2015).

even buy food. Simply put, the student debt crisis was already hampering both families' and the nation's economic stability even before the current pandemic.

Racial disparities in the student loan portfolio and with default rates in particular disproportionately expose borrowers of color to these government offsets and other damaging debt collection practices.³ At every income level, Black households are more likely to hold student debt than their white counterparts.⁴ Moreover, as the Education Trust's research shows, at every income level, Black borrowers are more likely to default than white borrowers.⁵ In fact, Black borrowers at the highest income levels are *twice as likely* to default than the lowest earning white borrowers. Thus, the government's collection practices have the disastrous effect of systematically removing wealth from communities of color through seizures of wages, tax refunds, and benefits to service student debts and huge collection fees. In effect, such practices systematically strip wealth from families and communities which are already economically disadvantaged and disproportionately of color. Cruelly, the communities hit hardest by student loan crisis are also the same communities hit the hardest by the COVID-19 global health crisis.

Protecting Low-Income Borrowers During Loan Transfers and Restarting Repayment

As the U.S. Department of Education restarts federal student loan repayment for over thirty million student loan borrowers, high quality servicing is going to be paramount. Despite

³ Judith Scott-Clayton, *The looming student loan default crisis is worse than we thought*, Economic Studies at Brookings (Jan. 2018), available at <https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/>; Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, Center for American Progress (Dec. 2 2019), available at <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers>.

⁴ Raphaël Charron-Chénier and Louise Seamster, *Some Notes on the Impact of Student Debt Forgiveness Across Income Groups*, Scatterplot (Dec. 17, 2020) available at <https://scatter.wordpress.com/2020/12/17/some-notes-on-the-impact-of-student-debt-forgiveness-across-income-groups/>.

⁵ Victoria Jackson and Tiffany Jones, *The 'Black Tax' Is Key to Understanding and Solving the Black Student Debt Crisis in the Time of COVID-19 and Beyond*, The Education Trust, (Apr. 16, 2020) available at <https://edtrust.org/resource/the-black-tax-is-key-to-understanding-and-solving-the-black-student-debt-crisis-in-the-time-of-covid-19-and-beyond/>.

the critical nature of servicing at this time, both the Pennsylvania Higher Education Assistance Agency⁶ (AKA “FedLoan Servicing”) and the New Hampshire Higher Education Loan Corporation⁷ (AKA “Granite State Management & Resources”) announced that they will not be extending their federal contracts this December. This has potentially devastating consequences for, not just for the roughly ten million borrowers whose loans will need to be transferred, but for all borrowers in the federal student loan portfolio. The remaining servicers will need to rapidly increase staffing and train a whole cadre of customer service representatives in a very short amount of time in order to absorb the accounts of nearly a third of all Direct loan borrowers.

Even prior to the two servicers’ announcements that they were not renewing their contracts, research by The Pew Charitable Trusts concluded that “simultaneously navigating uncertainty, financial challenges, and a confusing repayment system could lead borrowers to reach out to loan servicers in unprecedented numbers when payments resume, overwhelming the system.”⁸ At a time when two major changes are occurring for student loan borrowers, borrowers need the best servicing possible. Instead, they will likely encounter inexperienced customer service representatives and servicers who are stretched too thin.

It is imperative that the Department of Education protect the interests of the most vulnerable student loan borrowers as it decides how and when to restart repayment while also transferring roughly ten million borrowers’ loans.⁹ Borrowers—low-income and otherwise

⁶ Pennsylvania Higher Education Assistance Agency, *News Advisory: PHEAA Federal Student Loan Contract Statement* (July 8, 2021) <https://www.pheaa.org/documents/press-releases/ph/070721.pdf>.

⁷ New Hampshire Higher Education Association Foundation, *Press Release: NHHEAF Network Will Not Seek Renewal of Federal Student Loan Servicing Contract* (July 19, 2021) https://www.nhheaf.org/pdfs/investor/NHHEAF_Network_IR_Announcement_07-19-21.pdf.

⁸ Sarah Sattelmeyer & Lexi West, *Outreach From Borrowers Could Overwhelm Student Loan System When Pandemic Pauses End*, Pew Charitable Trusts (Nov. 3, 2020) available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/11/03/outreach-from-borrowers-could-overwhelm-student-loan-system-when-pandemic-pauses-end>.

⁹ Michael Stratford, *Another Federal Student Loan Servicer to Call it Quits*, Politico (July 20, 2021), <https://subscriber.politicopro.com/article/2021/07/another-federal-student-loan-servicer-calls-it-quits-2070755>.

vulnerable student loan borrowers in particular—are at significant risk during the upcoming transitions. As will be described in greater detail, the combination of restarting repayment, along with the risks associated with large scale loan transfers by servicers with a long history of failing to adequately serve federal student loan borrowers, will have cataclysmic consequences unless meaningful consumer protections are put in place.

1. Risk of Restarting Repayment for Borrowers

Since the passage of the CARES Act in March 2020, Congress put critical protections in place to help federal student loan borrowers weather the COVID-19 pandemic. Among other protections, the CARES Act suspended payments and interest accrual and ceased collection on all Department-held federal student loans. That payment suspension is currently set to expire on September 30. The end of the COVID-19 payment suspension is fraught with risk as the Department of Education attempts the unprecedented task of bringing tens of millions of student loan accounts into repayment after over a year and half of being suspended. Historical data from the Department demonstrates that default rates typically spike following disaster-related forbearances.¹⁰ Specifically, following Hurricanes Harvey, Irma, and Maria and the California wildfires, the loans of borrowers living in those impacted areas were placed in mandatory administrative forbearance.¹¹ This means that borrowers' loans were counted as being current without the borrower having to make any payments, something intended to help people deal with the fallout of a natural disaster. Unfortunately, after these disaster forbearances ended, many borrowers never reentered repayment which resulted in their loans defaulting. The resumption of

¹⁰ Ben Kaufman, *New Data Show Student Loan Defaults Spiked in 2019 – A Warning to Industry and DeVos Amid Economic Fallout*, Student Borrower Protection Center (Mar. 13, 2020), available at <https://protectborrowers.org/every-26-seconds/> (citing Fed. Student Aid, Federal Student Aid Posts New Reports to FSA Data Center (Aug. 07, 2019)).

¹¹ *Id.*

payments following the COVID-19 payment suspension has the potential to be much worse than what we saw following these previous disasters because those were much shorter in duration and impacted a significantly smaller number of borrowers. Allowing borrowers to fall into default following the end of the payment suspension, which would make them vulnerable to loss of wages, social security benefits, and the critical family supports such as the EITC and CTC, will have devastating consequences for these borrowers and will eviscerate any economic recovery following the pandemic.

The risks created by the transition to repayment are not limited to eventual student loan default, which only occurs 270 days after missing a payment. Even before a payment is missed, borrowers can suffer dire consequences such as overdrawn bank accounts if auto-debits resume without borrowers having sufficient funds in their bank accounts. If payments are unaffordable, borrowers may be forced to either forgo paying for basic necessities or miss their student loan payments and experience negative credit reporting which can hold them back for years to come.

In addition, approximately 9 million student loan borrowers are currently in default.¹² Unless the Department takes immediate action to remove these borrowers from default, they will be subject to the government's draconian collection powers immediately upon the end of the payment suspension.¹³ Many of the borrowers in default are older Americans who will face seizure of a portion of their Social Security benefits for old student loans of their own or loans they took out for family members.

¹² U.S. Dep't of Educ., Federal Student Aid Default Management, Official Cohort Default Rates for Schools, <https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html>.

¹³ Letter from Senator Elizabeth Warren et al. to Secretary of Education Miguel Cardona dated April 19, 2021 available at <https://www.warren.senate.gov/imo/media/doc/2021.04.19%20Letter%20to%20ED%20about%20Auto%20Rehab%20Student%20Loans.pdf>. See also Sarah Sattlemeyer, *3 Ways Biden Can Help Families and Student Loan Borrowers*, Brookings (April 22, 2021) available at <https://www.brookings.edu/research/three-ways-the-biden-administration-can-help-families-and-student-loan-borrowers-affected-by-the-pandemic/>.

2. *Risk of Transfer of Loan Servicing*

Prior large-scale transfers of Direct loans have resulted in serious long-term harm to vast numbers of federal student loan borrowers and should serve as a warning for the upcoming loan transfers. From the beginning of the government’s Direct Loan Program in 1994 until 2008, the Department of Education contracted with a single Direct Loan servicer—ACS (Xerox). In 2009, as it was moving to a system under which nearly all student loans were originated directly by the federal government through the Direct Loan Program, the Department entered into new servicing contracts with four companies, Great Lakes Educational Loan Services, Nelnet, FedLoan Servicing (PHEAA), and Sallie Mae (now Navient). Loans were transferred from ACS to the new servicers between the years 2009 and 2013.¹⁴ The Department also contracts with a number of non-profit student loan servicers, including Cornerstone, Granite State, HESC/EdFinancial, MOHELA, and OSLA.¹⁵

As described by a report by the American Federation of Teachers and the Student Borrower Protection Center:

Public reports contemporaneous to the transition indicate not only that ACS executed the handover process poorly, but the transferred loans were also plagued with missing or inaccurate information, among a host of other servicing errors. In 2012, one journalist described Direct Loan borrowers as ‘Dazed and Confused by [the] Servicer Shuffle,’ while a large, unnamed student loan servicer reported to the CFPB that at least half a million transferred accounts had problems.¹⁶

Borrowers whose loans were transferred during this time complained that “they were hit with higher payments and fees after their loan balances were transferred to another servicer...

¹⁴ National Consumer Law Center, *Student Loan Law* § 5.2.1.1 (6th ed. 2019), updated at www.nclc.org/library.

¹⁵ *Id.*

¹⁶ *Broken Promises: The Untold Failures of ACS Servicing*, American Federation of Teachers and Student Borrower Protection Center (Oct. 2020) available at https://protectborrowers.org/wp-content/uploads/2020/12/Broken-Promises_ACS-12_9.pdf.

without warning.”¹⁷ Data shows that over a hundred thousand loans were transferred with “incorrect information or with borrower information missing, including data related to past bankruptcy settlements.”¹⁸

The impact of this incorrect information has had lingering effects on the federal student loan portfolio today. Thousands of borrowers seeking to cancel their loans through the Public Service Loan Forgiveness (PSLF) program are struggling to demonstrate that they have made the required number of qualifying payments. These PSLF problems are a foreboding sign of what is to come. Many low-income borrowers will soon qualify for forgiveness of the remainder of their student loans because of having made twenty or twenty-five years worth of qualifying payments in IDR. If the transfer of servicing results in the same level of erroneous and lost payment records, we will see the same chaos but with our most vulnerable borrowers.

Finally, loan transfers inevitably result in massive confusion for borrowers. As Will Shaffner, MOHELA’s director of business development and government relations said in 2012, “Anytime you change a servicing relationship, it can cause concern.”¹⁹ Additionally, the ability to contact borrowers will be hampered by the lack of good contact information on file for tens, if not hundreds of thousands of borrowers.²⁰ Given that most borrowers have not had contact with their servicers since March 2020, the number of borrowers without accurate contact information

¹⁷ Lisa Parker, *Student Loan Borrowers Say They’re Being Gouged*, NBC 5 Chi. (July 23, 2013) <https://www.nbcchicago.com/news/local/target-5-student-loans-mohela/1955834/>.

¹⁸ *Broken Promises*, *supra* note 16.

¹⁹ Marian Wang, *Student Loan Borrowers Dazed and Confused by Servicer Shuffle*, ProPublica (Apr. 23, 2012) available at <https://www.propublica.org/article/student-loan-borrowers-dazed-and-confused-by-servicer-shuffle>.

²⁰ During the COVID-suspension, the Department of Education was unable to return illegally seized wages to over twenty-thousand borrowers due to not having current contact information for these borrowers. *See Lawsuit Against DeVos Ends; Fight for Defrauded Borrowers Continues*, Nat’l Consumer Law Center, (Mar. 22, 2021) available at <https://www.studentloanborrowerassistance.org/lawsuit-against-devos-ends-fight-for-defaulted-borrowers-continues/>. Similarly, in attempting to notifying borrowers who were determined to qualify for a total and permanent disability discharge through a data match with the Social Security Administration, nearly 47,000 notices were returned for to sender. See Response to National Student Legal Defense Network request to U.S. Dep’t of Education, 21-01335-F (May 24, 2021).

has likely increased. This will disproportionately harm low-income borrowers who are more likely to have moved during the payment suspension.

The Department of Education must take steps to ameliorate the negative consequences of loan transfers and to make sure that repayment is not restarted until loans have been successfully transferred.

3. The History of Servicing Abuses Preventing Borrowers from Accessing High Quality Servicing

Servicers are often borrowers' first point of contact when attempting to resolve their student loans. With the assistance of a competent and efficient servicer, financially distressed borrowers may avoid default by accessing the flexible repayment plan, loan cancellation program, or deferment or forbearance option appropriate for their circumstances. Unfortunately, as has been extensively documented, the student loan servicing industry has long been rife with misconduct.

The four largest federal student loan servicers have a documented history of “widespread servicing failures” that “create obstacles to repayment, raise costs, cause distress” and “driv[e] borrowers to default.”²¹ According to an October 2017 report by the Consumer Financial Protection Bureau (“CFPB”), problems in the student loan servicing industry included a range of payment processing, billing, customer service, borrower communications, and income-driven repayment plan enrollment problems.²²

Income-driven repayment (“IDR”) is at the heart of affordable loan repayment options offered by the Higher Education Act (“HEA”), which governs the federal student loan program.

²¹ *CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers*, Consumer Fin. Prot. Bureau (Sept. 29, 2015).

²² *Annual report of the CFPB Student Loan Ombudsman Strategies for Consumer-Driven Reform*, Consumer Fin. Prot. Bureau (Oct. 2017).

IDR plans require borrowers to pay only a set percentage of their income toward their student loan bills. Depending on the borrower's income, this can be a small or even zero monthly payment.²³ An IDR plan gives the borrower a sustainable loan repayment amount and a path to forgiveness of any remaining balance after twenty or twenty-five years of IDR payments.²⁴

More than twenty-five years have passed since the implementation of the first IDR plan, the Income-Contingent Repayment Plan ("ICR"). This means that student loan borrowers who entered ICR before 1996 should be receiving loan forgiveness for completing 25 years of qualifying payments. Because of changes in IDR repayment options, borrowers originally enrolled in ICR who have not yet completed 25 years of payments can achieve forgiveness sooner or immediately by switching to the Revised Pay As You Earn plan, which counts the prior payments and, for borrowers without graduate debt, has a shorter repayment period (20 years). Yet, of the 4.4 million borrowers²⁵ who have been in repayment on their federal loan for more than 20 years, only 32 borrowers have received cancellation under IDR.²⁶

Moreover, despite the abundant benefits of IDR plans to the financial health of borrowers and their families, the Department and its servicers have consistently failed to make these plans accessible for many borrowers, and the U.S. Government Accountability Office ("GAO") has documented low levels of participation by eligible borrowers.²⁷ Problems with enrolling and renewing borrowers in IDR are prevalent. Entering a borrower into an IDR plan is time-intensive

²³ 20 U.S.C. §§ 1087e(d)(1)(E) (applicable to Direct Loans), 1098e (FFEL). See 34 C.F.R. §§ 682.215 (FFEL), 685.221 (Direct Loan).

²⁴ *Id.*

²⁵ Education Department Responses to Data Request by Senator Warren, (April 2, 2021) available at <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%20204-8-21.pdf>.

²⁶ *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt*, Nat'l Consumer Law Center & Student Borrower Protection Center (March 2021), available at https://www.nclc.org/images/pdf/student_loans/IB_IDR.pdf.

²⁷ U.S. Gov't Accountability Office, *Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options*, Report No. GAO-15-66 (Aug. 2015).

and expensive for servicers, so too often servicers fail to invest resources in ensuring that borrowers understand and successfully access the most affordable and sustainable repayment plan. Instead, servicers steer many borrowers into forbearances and deferments, which are profitable for the servicer but costly to the borrower, and in many cases, servicers have misrepresented that those borrowers have no other repayment options.

An NCLC client had this experience as she struggled to afford her student loan payments after completing a medical assistant program at a local for-profit school. Every year, she dutifully contacted her servicer and submitted documentation of her financial hardship. Nevertheless, despite clear eligibility for a zero-dollar payment, she had never been enrolled in an IDR plan. When this borrower came to NCLC, she had never even heard of IDR options. Instead, each year when she called her servicer to discuss her financial situation and options, she was directed into a number of forbearances. She had been out of school since for over seven years before coming to our office and was still in good standing on her loan, due to her extreme diligence. However, the servicer's actions steering her towards forbearance have wasted years she could have spent in an affordable repayment plan, working toward the eventual resolution of her loan. This client's experience is far from unique, and private and state enforcement actions targeted at this type of misbehavior tell similar stories.²⁸

Failing to ensure that borrowers are able to access IDR has harmful and expensive

²⁸ Consumer Financial Protection Bureau, Office for Older Americans & Office for Students and Young Consumers, *Snapshot of Older Consumers and Student Loan Debt* (Jan. 2017). See, e.g., *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); *Lawson-Ross v. Great Lakes Higher Education Corp.*, No. 18-14490 (11th Cir. 2020); *Grewal v. Navient Corp.*, No. ESX-C-172-2020 (N.J. Super. Ct. Ch. Div. Oct. 20, 2020); *People v. Pa. Higher Educ. Assistance Agency*, No. 1:2019cv09155 (S.D.N.Y. Oct. 3, 2019); *Vullo v. Conduent Educ. Services* (Jan. 4, 2019) (consent order), available at www.dfs.ny.gov; *Nelson v. Great Lakes Higher Education Corp.*, No. 18-1531 (7th Cir. 2019); *People v. Navient Corp.*, No. CGC-18-567732 (Cal. Super. Ct. Nov. 1, 2018) (first amended complaint); *Mississippi v. Navient Corp.*, No. 25CH1:18-CV-00982 (Miss. Ch. Ct. Hinds Cty. July 17, 2018); *Commonwealth v. Navient Corp.*, No. 19-2116 (M.D. Pa. Oct. 5, 2017); *Marek v. Navient Corp.*, 2017 WL 2881606 (N.D. Ohio July 6, 2017); *People v. Navient Corp.*, No. 17CH761 (Ill. Cir. Ct. Cook Cty. Jan. 18, 2017) (complaint).

consequences. In 2016, the GAO estimated that a borrower owing \$30,000 in federal loans who spent three years in a forbearance would pay \$6,742 more than a borrower on a 10-year standard repayment plan who did not spend any time in forbearance.²⁹ The GAO further stated that encouraging “forbearance over other options that may be more beneficial, such as [IDR] plans,” will continue to place some borrowers “at risk of incurring additional costs without any long-term benefits.”³⁰

Getting borrowers into an affordable IDR plan will be particularly important for ensuring borrower success following the upcoming restart to repayment. Without improvements by servicers, borrowers will lose out on the many important benefits of IDR, such as making qualifying payments towards cancellation after twenty or twenty-five years, or ten years for public service workers. In the worst case, borrowers will lose out on the opportunity to stay in good standing on their loans and may fall into default with its devastating consequences.

4. The Need for Greater Servicer Accountability and Remedies for Borrowers

Unlike the protections in other areas of consumer credit such as credit cards and mortgages, there are few laws specifically governing student loan servicer conduct for either federal or private loans. In its October 2013 report, the CFPB pointed to protections in the Real Estate Settlement Procedures Act (“RESPA”) for mortgages and the Credit Card Accountability Responsibility and Disclosure (“CARD”) Act for credit cards and the need to examine whether these types of reforms could apply to the student loan servicing market.³¹

The CFPB pointed out that some of the provisions in mortgage servicing rules that could apply to student loan servicers include notice of transfer of loan servicing, timely transfer of

²⁹ U.S. Gov’t Accountability Office, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights*, Report No. GAO-16-523, 19 (May 16, 2016).

³⁰ *Id.* at 20.

³¹ *Annual Report of the CFPB Student Loan Ombudsman*, Consumer Fin. Prot. Bureau (October 16, 2013).

documents to new servicers, payoff statements, error resolution and dispute review procedures, continuity of contact, records retention, and early intervention for borrowers nearing default.³²

In April 2019, the New York Times highlighted one of the problems keeping borrowers from accessing loan forgiveness: errors in the count of their qualifying payments.³³ In order to verify the number of qualifying payments and to ensure that servicers are counting payments properly, borrowers need to have access to a full and complete payment history. Unfortunately, borrowers do not currently have easy access to this information, as servicers are often the only ones who have this data. Borrowers are able to get basic loan level information from the Federal Student Aid website, but it does not provide payment level data.

The student loan servicer that is servicing a particular loan should have payment records, but the extent to which they make this information available varies by servicer.³⁴ In contrast to mortgages, where servicers are required to provide the borrower with information within 30 days of a qualifying written request, there are no federal standards requiring a student loan servicer to give the borrower a payment history.

According to the New York Times, some borrowers are told that it could take up to a year to get the information.³⁵ It took over a year and a half for one NCLC client to receive a complete payment history from FedLoan Servicing.

There are some protections in the contracts that the Department signs with the servicers. However, borrowers rarely know about those rights. In general, the Department states in the contracts that it does not intend to provide additional service level requirements, but it does

³² *Id.*

³³ Ron Lieber, “Your Student Loan Servicer Will Call You Back in a Year. Sorry.,” N.Y. Times, April 12, 2019.

³⁴ See Persis Yu, *Student Loan Forgiveness Cannot Work Without a Right to a Payment History* (May 22, 2019), available at <https://protectborrowers.org/qualifying-payments/>.

³⁵ Lieber, *supra* note 34.

expect “best of business practices” to be deployed. Servicers are also required to meet “all statutory and legislative requirements.” The contractually provided incentives fail to set standard and transparent borrower protections and for too long, the Department has failed to adequately enforce these requirements. Further, the lack of Department enforcement combined with limited borrower rights to enforce protections means that servicers are largely unaccountable when they fail to provide quality service or violate applicable law.

Even if the Department acted more aggressively to police the contractors through termination or sanctions, harmed borrowers would not be made whole. Often, the harm caused by servicer errors and abuses cannot be remedied by simply applying an administrative forbearance or returning the borrower’s money. For example, when money is erroneously debited from a borrower’s bank account, it can lead to overdraft fees and insufficient funds to cover basic necessities like groceries or rent. When servicer abuses prevent borrowers from accessing critical programs or missing out on qualifying payments for IDR and PSLF, it causes borrowers to pay for a longer time and to pay more over the life of the loan. Fairness and justice require that borrowers have the ability to enforce their rights when breached by servicers and to obtain adequate remedies.

Yet few student loan borrowers have the ability to seek redress when servicers violate their rights. The few who are able to find a lawyer to assist them still face an uphill battle because the HEA provides no explicit private right of action to student loan borrowers who seek to enforce disclosure requirements or challenge a servicer’s failure to comply with other obligations set out in federal law. Borrowers can raise state law claims, including those based on fraud and misrepresentation, but servicers assert both that these claims are preempted by the HEA and that they are shielded from liability through derivative sovereign immunity. The

Department can address this need for remedies both by broadening the cancellation provisions of IDR to ensure that borrowers get credit for time that should have qualified for a cancellation, more consistently and robustly compromising or modifying borrowers' loans, and supporting borrowers' efforts to recoup damages through private litigation by withdrawing its notice of interpretation on preemption³⁶ and prohibiting its servicers and debt collectors from asserting preemption and governmental contractor immunity defenses.

Conclusion

With the impending transition of student loan servicing for tens of millions of student loan borrowers, it is critical that Congress and the Department of Education take proactive steps to ensure that borrowers are protected. As with most things, the most vulnerable borrowers are the ones who will be harmed the most. Low-income borrowers are vulnerable to unaffordable loan repayments, improperly debited payments, negative and sometimes erroneous credit reporting, and in many cases, the seizure of wages, federal benefits, or vital tax credits. These consequences threaten the financial stability of borrowers, their families, and wider communities.

In structuring both the plans to transfer millions of loans and to end the COVID-19 payment pause, the Department must give borrowers as many chances to get back on track as possible. But policy makers must also recognize that, for many borrowers, the harm from a bungled transition will come on top of years if not decades of abusive servicing and collection practices.

Widespread administrative debt cancellation is needed to remedy the failures of our student loan system. The student loan system has failed borrowers for too long. While they have

³⁶ Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers, 83 Fed. Reg. 10619 (March 12, 2018).

waited, their debt has ballooned, and their financial futures have grown more bleak. Over four million borrowers have been in repayment for over 20 years,³⁷ yet only 32 borrowers have had their loans cancelled through income-driven repayment.³⁸ In addition to widespread administrative debt cancellation, the Department should clear the books of borrowers who have been in repayment for more than 15 years, and automatically provide relief to all of the borrowers who are already entitled to cancellation under existing law. In addition to providing much needed relief to these borrowers, if done prior to restarting repayments, these steps will eliminate the debts of many of the hardest to reach borrowers and will allow servicers to dedicate their resources to ensuring the success of the remaining borrowers.

Thank you for the close attention you are paying to how to protect student loan borrowers in the upcoming transitions in the student loan system, and for the opportunity to provide this testimony. I look forward to your questions.

³⁷ Laura Camera, *Progressives Up the Pressure on Biden over Student Debt Cancellation*, U.S. NEWS (April 14, 2021), available at <https://www.usnews.com/news/education-news/articles/2021-04-14/progressives-up-the-pressure-on-biden-over-student-debt-cancellation>, citing Education Department Responses to Data Request by Senator Warren, (April 2, 2021) available at <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%204-8-21.pdf>.

³⁸ *Education Department's Decades-Old Debt Trap*, *supra* note 27.