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February 7, 2023

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510-2105

Dear Senator Warren,

We write today in response to your January 17, 2023 letter requesting information on the impact of the attempts to block President Biden's transformational plan to cancel up to \$20,000 in student loan debt for millions of Americans. Over 26 million people had already applied for or were automatically eligible for relief before cancellation was halted due to meritless legal challenges.¹ Now, borrowers must wait for the Supreme Court to determine whether the government will deliver on the relief needed to help them recover from the COVID-19 pandemic and avoid default when repayment resumes. The uncertainty surrounding the future of cancellation has frustrated the ability of millions of Americans to predict their expenses and plan for their financial futures.

The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC has nationally recognized expertise in student loan law and publishes a widely-used treatise, *Student Loan Law* (6th ed. 2019), updated at www.nclc.org/library. NCLC's Student Loan Borrower Assistance Project provides information about student borrowers' rights and seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education and lessen student debt burdens.² NCLC also provides direct representation to low-income student loan borrowers and consults with civil legal services organizations across the country that represent borrowers in their local communities. Because of the nature and mission of NCLC and its clients, we will limit our responses to address questions 2 and 4.

Question 2: Does your organization believe that President Biden has the legal authority to cancel student loan debt?

¹The White House, *FACT SHEET: Biden-Harris Administration Releases New Data Showing 26 Million People in All 50 States Applied or Were Automatically Eligible for One-Time Student Debt Relief* (January 27, 2023), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-releases-new-data-showing-26-million-people-in-all-50-states-applied-or-were-automatically-eligible-for-one-time-student-debt-relief/>

² The Project's website includes more information, see www.studentloanborrowerassistance.org.

President Biden’s plan to cancel student loan debt under the HEROES Act is lawful and vital to protect millions of Americans from suffering financial distress due to the COVID-19 pandemic.

The Secretary of Education has expansive authority to provide relief on federal student loans generally,³ and has specific authority to provide relief in response to national emergencies such as the COVID-19 pandemic. The HEROES Act, by its plain language, authorizes the Administration “to waive or modify” any federal student loan obligations “as the Secretary deems necessary in connection with” a national emergency to ensure that student loan borrowers “are not placed in a worse position financially.”⁴ That is exactly what President Biden’s student debt relief plan would do. By canceling student debt for low- and middle- income people, it would give them breathing room as they continue to recover from the strains of the pandemic and ease their return to repayment or, for those who graduated or left school during the tumult of the pandemic, ease the beginning of repayment. and prevent projected defaults.

The HEROES Act has been used by every U.S. President since its passage to provide relief to student loan borrowers during national emergencies.

Since the HEROES Act was passed in 2003, every presidential administration has relied on its authority to provide student loan relief during national emergencies – from President Bush to Presidents Obama, Trump, and finally President Biden.⁵ Further, the HEROES Act has been used by both the Trump and Biden Administrations repeatedly during this national emergency to cancel student loan interest and pause payment obligations for all student loan borrowers with federally-held loans. In doing so, both the Trump and Biden Administrations effectively affirmed that the COVID-19 national emergency created substantial economic disruption for borrowers broadly and that relief from payments and interest was necessary to prevent borrowers from being placed in a worse position as a result of the pandemic.

Without debt relief, millions of Americans are projected to default on their student loans once the payment pause ends.

As the Biden Administration has laid out in detail,⁶ its debt relief plan is designed to avoid a projected wave of student loan delinquencies and defaults among at-risk low- and middle-income Americans with student loan debt when the payment pause ends and student loan bills are due for the first time in over three years. This projection is based on actual records of delinquency and default spikes from previous emergency-based payment pauses following hurricanes and wildfires. It is also based on available economic data and surveys demonstrating that if borrowers are forced into repayment now, without a substantial reduction in their loan burdens, many low- and middle-income borrowers would fall behind on their loans.

³20 U.S.C. § 1082(a)(6).

⁴20 U.S.C. §1098bb(a)(1).

⁵Office of Legal Counsel, U.S. Dep’t of Justice, Use of the HEROES Act of 2003 to Cancel the Principal Amounts of Student Loans, 2022 WL 3975075 (Aug. 23, 2022), available at <https://www.justice.gov/d9/2022-11/2022-08-23-heroes-act.pdf>.

⁶See Petitioner’s Brief, *Biden v. Nebraska*, Nos. 22-506 and 22-535, available at https://www.supremecourt.gov/DocketPDF/22/22-535/251437/20230104223200307_22-506tsUnitedStates.pdf.

A recent survey of borrowers by the Student Debt Crisis Center found that two-thirds of respondents had not yet recovered financially from the pandemic.⁷ Further polls indicate that, without debt relief, more than half of borrowers will struggle to make student loan payments when the payment pause ends.⁸ Unless the government takes bold action, throwing these borrowers back into repayment on their student loans will jeopardize the financial security of their families and will have a rippling effect on the country's economic recovery.

Working and middle-class Americans are still recovering from lasting economic impacts of the pandemic.⁹ Further, contrary to false narrative that people with student loan debt are more financially secure than the average American, those with student debt are in fact quite vulnerable to financial setbacks such as those caused by the pandemic. For example, the Federal Reserve reported that in October 2019, 28% of all adults stated that they could not cover their current bills or would be unable to if they faced an unexpected \$400 expense, but that portion jumped to 42% among those with student debt—similar to the 43% of people with only high school degrees who would be unable to weather a \$400 financial setback.¹⁰

President Biden's cancellation plan would fulfill the basic tenets of the HEROES Act by ensuring that the hardest-hit borrowers will not be placed in a worse position financially because of the COVID-19 pandemic. This is especially true for low-income borrowers, people of color, and women.¹¹ Women, who hold approximately two-thirds of all student debt,¹² and women of color in particular, have suffered the biggest employment and economic disruptions during the pandemic. This is because they are more likely to work in service industries that suffered the biggest economic punches and also because they were more likely to take on increased caregiving responsibilities for their kids, elderly parents, and sick relatives, which interfered with work.¹³ President Biden's plan is also targeted to provide relief to Pell Grant recipients, who are most at risk of default, and are from families with the least financial resources.

⁷ Student Debt Crisis Center, *Nationwide Survey Shows Student Loan Borrowers Have Not Recovered from the COVID-19 Pandemic, Additional Relief is Critical* (November 16, 2022), available at <https://studentdebtcrisis.org/student-debt-covid-survey-nov2022/>.

⁸Forbes, *59% With Student Loans Will Struggle To Pay Them Off, Poll Finds, As Loan Forgiveness Hangs In Balance*, Alison Durkee (November 30, 2022), <https://www.forbes.com/sites/alisondurkee/2022/11/30/59-with-student-loans-will-struggle-to-pay-them-off-poll-finds-as-loan-forgiveness-hangs-in-balance/?sh=53a1039d5caf>.

⁹Nicole Bateman and Martha Ross, *The Pandemic Hurt Low-wage Workers the Most—and So Far, the Recovery Has Helped Them the Least*, The Brookings Institution (July 28, 2021), available at <https://www.brookings.edu/research/the-pandemic-hurt-low-wage-workers-the-most-and-so-far-the-recovery-has-helped-them-the-least/>.

¹⁰ Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020 at pp.21-22 (May 2020), available at: <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf#page=30>.

¹¹ J Geiman and Alpha S. Taylor, *Disproportionately Impacted: Closing the Racial Wealth Gap through Student Loan Cancellation, Payment Reforms, and Investment in College Affordability*, The Center for Law and Policy, National Consumer Law Center (June 2022), available at https://www.clasp.org/wp-content/uploads/2022/06/2022_Disproportionately-Impacted.pdf.

¹² Kevin Miller, *Deeper in Debt: Women & Student Loans*, American Association of University Women (May 2017), available at <https://www.aauw.org/resources/research/deeper-in-debt/>.

¹³ Nicole Bateman and Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, The Brookings Institution (October 2020), available at <https://www.brookings.edu/essay/why-has-covid-19-been-especially-harmful-for-working-women/>.

The cancellation plan helps undo some of the financial harms already caused by the pandemic by ensuring that borrowers are not left farther behind on their student loans than they would have been but for the national emergency.

In addition to preventing the predicted wave of defaults when the payment pause ends that would greatly damage borrowers' financial situations, the debt relief plan would ensure that borrowers are not put in a worse position with regards to getting out from under their student loans than they would be in if the pandemic had not happened. But for the pandemic and the financial disruption it caused, most borrowers would be three years farther along in paying off their loans. Their balances would be lower. They would be three years closer to getting out of debt than they are now. The one-time debt relief plan addresses this significant consequence of the pandemic. The plan will put millions of borrowers back on track to complete repayment and ensure they can be debt-free by the same time they would have been but for the pandemic.

Reducing debt burdens to avoid a pandemic-fueled wave of delinquencies and defaults, and to ensure that people are not left worse off on their student loan repayment progress as a result of the COVID emergency, is fully within the scope of the Biden Administration's authority under the HEROES Act.

Question 4. How can the federal government help protect and expand relief to your members who are experiencing financial hardship due to student loan debt?

There are several actions the federal government can take to provide relief to the millions of student loan borrowers who are experiencing financial hardship as a result of their pursuit of higher education.

Provide additional debt relief for student loan borrowers failed by their schools or unable to repay their loans

The one-time debt relief of up to \$20,000 will bring tremendous, much-needed relief to low-income borrowers by reducing balances and subsequent payment amounts, and, for some, zeroing out their remaining debt balance altogether. But many borrowers will continue to have debt that they realistically will never be able to repay or that they should not be obligated to pay in the first place because the debt was incurred to attend a predatory or failed school. The Department of Education should use its authority under the Higher Education Act to provide relief to such borrowers.

Critically, the Department should use its authority to write off bad debt to discharge the remaining loan balances of financially distressed borrowers who have been in default for years. These borrowers have already suffered devastating consequences of default, and are simply unable to afford to pay off their loans.¹⁴

¹⁴ See 34 CFR § 30.70; 31 CFR § 902.2(a).

For example, one tool that the government uses to collect defaulted loans is seizure of 15% of a borrower's Social Security benefits each month that exceed \$750. The GAO has found that for the majority of defaulted borrowers over age 50, money seized from their benefits went entirely to interest and fees and never touched principal—meaning that years or decades of the government seizing their Social Security payments would never be enough to pay off, or even reduce, their student debt.¹⁵ This is all the more troubling because many of these older borrowers rely entirely on their Social Security payments for income, and, for the majority, the seizure from their Social Security payments either pushed them below the poverty level or further reduced payments that were already below the poverty level.¹⁶ Keeping borrowers like these in debt serves no one, and does tremendous harm to our most vulnerable citizens.

Similarly, the Department should use this authority to discharge the remaining balances of the roughly 4 million borrowers who have been in and out of repayment and default for two decades already and have been unable to afford to pay off their loans in full in that time. Two decades is enough.

The federal government should also continue to use its statutory authority to provide full debt relief for student loan borrowers who have been defrauded by their schools or whose schools closed on them before they could complete their education.

Finally, the federal government should continue to look for a path to provide relief for those federal student loan borrowers left out of the one-time cancellation plan because the Department does not hold their loans.

Dramatically reform the approach to student loan default and collection

In addition to discharging the remaining balances of borrowers who have long been stuck in default, the federal government should act to strengthen temporary default relief opportunities and make permanent changes to default and collection policies that too often devastate the most financially vulnerable borrowers instead of connecting them with help.

In the short term, we applaud the Department of Education for adopting the Fresh Start program, which will give borrowers an opportunity to get out of default as repayment resumes. However, the government must engage in substantial outreach, and the program must be strengthened to have its intended impact.

The Fresh Start program allows borrowers to call the Default Management Group or their guarantee agency and request that their loans be removed from default. Borrowers can also provide income information for enrollment into affordable income-driven repayment plans to keep their loans in current status. While we are hopeful that the Fresh Start program will provide relief for many of the nearly 8 million student borrowers in default, we know that many will never learn this opportunity exists and thus will never opt in. The Department lacks email

¹⁵ U.S. Gov't Accountability Off., GAO-17-45, Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief (December 2016), at p.19, available at <https://www.gao.gov/assets/gao-17-45.pdf>.

¹⁶ *Id* at Table 18, p. 19.

addresses for many of these borrowers, and after a three-year payment pause, many borrowers will have changed contact information and will not be in touch about their loans. It is therefore critical that the government engage in an effective outreach and public education campaign to ensure that eligible borrowers find out about the program and can access this critical benefit. Additionally, the Department should be prepared to extend the deadline or to continue to allow borrowers to request a Fresh Start if collections resume and a substantial number of eligible borrowers have not yet accessed Fresh Start.

Beyond this short-term relief program, further steps need to be taken to permanently reform punitive and counterproductive default and collection practices. Borrowers default because they are financially distressed and haven't received the help they need to navigate the complex student loan program.¹⁷ People from low-income families, people of color, people who attended for-profit schools, and first-generation college students default at the highest rates. Rather than helping these financially vulnerable borrowers, current default practices force them to pay more and prevent them from accessing loan management programs like economic hardship deferments and income-driven payment plans.

Wholesale reform, by both Congress and the Department of Education, is badly needed. These reforms should include:

- Protecting vital safety net benefits like Social Security, the Earned Income Tax Credit, and the Child Tax Credit from being seized to collect on student loans;
- Limiting the amount that a borrower in default can be forced to pay or have seized from them to the amount that they would pay under an income-driven repayment plan;
- Determining whether a debt is eligible for discharge before sending it to collection;
- Restoring limits on how long people can be pursued for collections (a protection that exists for other types of debt and previously existed for student loan borrowers) and discharging debt unlikely to be repaid in a reasonable amount of time; and
- Making it easier for borrowers to get out of default and back into good standing.

Default reform has been ignored for decades and the most financially vulnerable student loan borrowers have paid the price. The Department of Education should at long last prioritize its planned rulemaking on student loan debt collection.

Make income-driven repayment (IDR) finally work for low-income borrowers

Whatever the outcome of the Supreme Court case, one thing is abundantly clear: the student loan system is broken and does not work for low-income borrowers. Instead, it often traps borrowers in a cycle of debt. The IDR system was envisioned as a way for low-income borrowers to pay an affordable portion of their income toward their student loans and receive cancellation of any remaining balance after making payments for a number of years. Unfortunately, due to a

¹⁷ Sarah Sattelmeyer, *Trapped by Default*, New America (July 27, 2022), available at <https://www.newamerica.org/educationpolicy/briefs/trapped-by-default>.

combination of program complexity and failures by the servicing industry, very few borrowers have ever received IDR cancellation.¹⁸

The Department of Education’s current proposal to change IDR would help make payments in the program more affordable and address some of the pitfalls that created the student loan debt crisis in the first place, but they do not go far enough. Under the Department of Education’s proposed new REPAYE plan, over 80% of borrowers will still be expected to pay on their loans for 20 to 25 years.¹⁹ While monthly interest accruals will be written off and loan balances will no longer grow under the plan, many low-income borrowers’ balances will simply flatline because their income-adjusted payments will not touch their principal. That means that even under the new plan, many borrowers will continue to have large, or even unchanged, balances hanging over their heads for two decades or more while they hope that the promise of future cancellation will be fulfilled.²⁰ To ensure that more borrowers can get out of debt before their own children are in college, the timeline to balance forgiveness should be set at no more than 15 years.

Additionally, instead of only writing off any unpaid interest every month and writing off the remaining principal after 20+ years — as under the Department’s proposed plan — the government should write off any difference between the borrower’s income-adjusted payment and what their payment would be on a standard repayment plan for the same term every month.²¹ This approach would ensure that loan balances for all borrowers would decrease steadily over the repayment period, with nothing remaining to cancel at the end of the term. Low-income people with student loan debt could finally see their balances steadily drop with each payment, just as those who are better off do. And borrowers could pay off their loans much sooner — allowing them to move out from under the weight of student loan debt and move on with their lives.

Finally, to ensure that borrowers who need the more affordable payments available through IDR can enroll in and stay in IDR year after year, the Department must prioritize quick and effective implementation of the FUTURE Act. By providing for a system whereby the Department of Education can access consenting borrowers’ income and household size information directly from the IRS, the FUTURE Act holds the potential to overcome both the knowledge gap and the annual paperwork and income documentation burdens that prevent millions of low-income borrowers from benefiting from IDR or staying on track toward being debt free.

Provide relief for Parent Plus borrowers

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- ¹⁸ National Consumer Law Center and Student Borrower Protection Center, Education Department’s Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt (March 2021), available at: <https://www.nclc.org/resources/education-departments-decades-old-debt-trap-how-the-mismanagement-of-income-driven-repayment-locked-millions-in-debt/>.

¹⁹U.S. Dep’t of Educ. *Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program*, Notice of Proposed Rulemaking (“NPRM”), 88 FR 1894 (January 11, 2023), at Table 8, available at <https://www.federalregister.gov/documents/2023/01/11/2022-28605/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program>.

²⁰The Pew Charitable Trusts, *Borrowers Discuss the Challenges of Student Loan Repayment* (May 20, 2020), available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment>.

²¹The Hill, *Ending the Black Hole That’s Devouring Student Loan Payments*, Abby Shafroth (January 18, 2023), <https://thehill.com/opinion/finance/3817930-interest-is-a-black-hole-thats-devouring-student-loan-payments/>.

Parent Plus borrowers, who have long been excluded from affordable payment plans, are excluded once again in the Department of Education’s proposal to make student loan payment more affordable through changes to IDR. But parent borrowers desperately need a way to manage their debt. The Parent Plus program is heavily utilized by low-income, low-wealth families, and in particular by low-wealth Black families, who often lack financial resources to pay for college, have maxed out student borrowing, and rely on Parent PLUS loans to cover the remaining cost of college. For example, in 2018, 42% of Black Parent PLUS borrowers and 25% of Latino Parent PLUS borrowers had sufficiently limited financial resources that the government determined their expected family contribution to the cost of college was \$0.²²

Currently, the only IDR plan that can be used to repay Parent PLUS loans is Income-Contingent Repayment (ICR), which requires much higher monthly payments than the other plans and requires even borrowers living on income *just* above the poverty line to make payments. And even then, due to statutory restrictions, borrowers can only access the plan if they know to first consolidate into a Direct Consolidation Loan. As a result, parents struggling with unaffordable student loans that they took out to help their children go to school have few options and too often default.

In light of these problems, many question whether the Parent PLUS program should continue in its present form, or whether it should be replaced with more robust financial aid for students from families with limited resources. Congress should address this issue. But so long as there are Parent PLUS loans, borrowers must be given an affordable path to repay them and protection against being left in debt indefinitely. The Department of Education should therefore provide a safety net to Parent Plus borrowers by allowing them to enroll in the proposed REPAYE program if they consolidate their loans.

Exclude predatory schools from receiving federal aid and provide relief to borrowers who attended predatory schools

For decades, predatory schools have targeted low-income students, particularly in communities of color. These programs cost more but deliver far less than promised, and as a result their students languish under the weight of their student loan debt for years. We celebrate the recent group discharges the Department has announced for borrowers that attended Corinthian Colleges, ITT Tech, Westwood College, and Marinello School of Beauty, and we are encouraged by the promulgation of new borrower defense and closed school discharge rules that have the potential to streamline relief for harmed borrowers. However, more work remains to be done to ensure that borrowers who were harmed by their schools are able to obtain relief. The Department must continue making automatic group discharges for borrowers where there is a record of school misconduct instead of waiting for borrowers to apply and must implement the automatic discharge provision of its closed school discharge regulations quickly.

²² Kristin McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, *Examining the Black-white Wealth Gap*, The Brookings Institution (February 27, 2020), available at <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

In addition, the Department must take bolder steps to stop predatory schools from receiving federal student aid in the first place. These institutions use deceptive and high-pressure tactics to enroll borrowers and often continue receiving federal aid even after misconduct is made public. The Department should aggressively audit schools to ensure they are not making misrepresentations or material omissions to prospective students and should encourage whistleblowers to raise instances of school fraud to the Department's attention. When it discovers school misconduct, it should act quickly to restrict or cut off these schools' access to federal aid.

Find ways to reduce the administrative burden on borrowers when it comes to repayment and relief

The Department of Education should do everything in its power to reduce the administrative burdens of accessing student loan relief and navigating the complex student loan system. Currently, millions of borrowers must individually learn about, navigate, and submit often lengthy applications and documentation to access most relief programs, including IDR, Total and Permanent Disability (TPD), PSLF, Fresh Start, Borrower Defense, Rehabilitation, False Certification discharges, and more. As a result, one of the biggest impediments borrowers face under the current system is simply the fact that relief is neither automatic nor simple, and requires not only lots of time but also sophisticated knowledge of complex enrollment procedures that most borrowers understandably lack.

To address this, the Department of Education has already begun to identify borrowers who may be eligible for relief automatically through the one-time IDR Account Adjustment, the recent TPD dataset review and match, and (for some) the one-time cancellation plan. Congress has taken up this issue as well, passing the FUTURE Act to allow for simplified enrollment and continued enrollment in IDR. But as noted above, key provisions of the FUTURE Act have yet to be implemented, and many borrowers who are eligible for other administrative relief, such as incarcerated and defaulted borrowers, continue to be effectively denied the relief they are eligible for because they do not know about it, do not have access to the internet to apply for it, or cannot overcome the administrative hurdles standing between them and relief.

In addition to implementing the FUTURE Act, the government should prioritize making relief automatic whenever possible under new and existing programs. Where automation is not possible, it should streamline and simplify application processes and ensure that servicers provide borrowers the information and support they need.

Ensure that adequate resources are allocated to the Department of Education for the effective implementation of changes in student loan programs and policies

Recent reports indicate that the Office of Federal Student Aid (FSA) is facing a significant budget shortfall, which will likely impact the implementation of many necessary borrower-relief programs and system reforms.²³ With student loan repayments scheduled to resume later this

²³NPR, *Exclusive: New Biden student loan plan unveiled amid agency funding crisis*, Cory Turner (January 10, 2023), <https://www.npr.org/2023/01/10/1147758692/exclusive-new-biden-student-loan-plan-unveiled-amid-agency-funding-crisis>.

year, the Department of Education will need to be prepared to handle a huge influx of borrowers reengaging with their loans for the first time in three years or for the first time at all. Congress must allocate sufficient resources and funding to the Department of Education to ensure the successful implementation of relief programs and to provide for quality customer service for borrowers reengaging with their loans.

Now is the time to protect borrowers from further crisis while we wait for the Supreme Court decision on cancellation

This is a pivotal moment for student loan borrowers. If the Supreme Court fails to uphold President Biden's plan to cancel student loan debt under the HEROES Act, tens of millions of borrowers will be left with an insurmountable level of distrust in the student loan system that will likely result in many borrowers disengaging from their loans entirely. The federal government should act now to uphold its promises to fix the broken student loan system and prevent borrowers from experiencing further distress.

Thank you for your attention to these important issues. If you have any questions or need additional information, please contact Abby Shafroth, Director of the Student Loan Borrower Assistance Project at the National Consumer Law Center, at ashafroth@nclc.org.

Sincerely,

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