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Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
*Submitted via regulations.gov*

**RE: Comments in Response to Notice of Intent to Establish A Rulemaking Committee to Prepare Proposed Regulations on Federal Student Debt Relief under the Higher Education Act (Docket ID ED–2023–OPE–0123)**

Dear Secretary Cardona,

On behalf of our low-income clients, the National Consumer Law Center submits these comments in response to the U.S. Department of Education's notice of intent to establish a negotiated rulemaking committee to prepare proposed regulations on federal student loan debt relief authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

We commend the Department for its commitment to addressing the student debt crisis and to providing much-needed relief to the millions of Americans from working and middle-class backgrounds who are held back by unprecedented levels of debt simply because they pursued an education. In these comments, we address the need for student debt relief, the rulemaking topics that the Department should consider, and the composition of the rulemaking committee. Our comments are informed by our work as experts in the federal student loan system and student loan law, and as legal aid practitioners that work with low-income student loan borrowers. As detailed below, we urge the Department to consider the following:

- Millions of federal student loan borrowers, and in particular low-income borrowers and borrowers of color, are desperately in need of debt relief.
- To address the urgent need for debt relief as the payment pause ends, as well as to make good on the promise of debt relief made to tens of millions of borrowers, many of whom relied upon that promise in making major life decisions that adversely impact their ability to repay their loans now, the Department should use all tools at its disposal to provide prompt, broad-based debt relief.

- Because one-time debt relief, while necessary now, will not help future borrowers or provide a long-term solution to the student debt crisis, the Department should also use this opportunity to strengthen the student loan safety net more permanently by promulgating rules that will make it easier going forward to relieve debts that borrowers are unlikely to be able to repay, that the Department is unlikely to be able to collect, or that subject borrowers and their families to unnecessary financial hardship.
- In considering the composition of the rulemaking committee, the Department should recognize that student loan borrowers are the primary stakeholders impacted by the student debt crisis and by regulations for relief and should thus be at the core of this negotiated rulemaking, and that representatives reflecting a diversity of borrower backgrounds, experiences, and interests should be included.

## I. The Continuing Need for Debt Relief

The student loan crisis has grown exponentially in the last two decades, and the student loan system is about to face a stress test of unprecedented scale: returning tens of millions of borrowers to repayment for the first time in over three years. The only way to fix the mess that now exists is to reduce the number of existing borrowers in the student loan portfolio. The Supreme Court's decision striking down President Biden's student debt relief plan delivered a devastating blow to tens of millions of borrowers who would have had their debt reduced or canceled.[1] During remarks following the decision, President Biden promised to keep fighting to deliver necessary relief to borrowers, particularly those at the bottom of the economic scale.[2]

This rulemaking offers the Department a critical opportunity: both to honor President Biden's promise and create regulations that will provide immediate and widespread relief to borrowers disproportionately impacted by the student debt crisis, and to implement permanent changes to strengthen the broken student loan safety net and ensure that borrowers who cannot repay their student debt burden have a real path to relief going forward.

### A. Without debt relief, many borrowers will not be able to handle the additional financial burden of student loan payments when repayment restarts.

Without bold action to reduce the volume of borrowers in the student loan portfolio and amount of debt held by remaining borrowers, student loan debt will compromise many borrowers' ability to afford essentials like housing, food, medical care, and childcare.

Student loan borrowers were struggling financially before the pandemic and are anticipated to struggle at even greater rates when repayment restarts. Research indicates that many borrowers live on thin financial margins that expose them to significant financial stress and

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[1] Jacob Goss et al., Assessing the Relative Progressivity of the Biden's Administration's Federal Student Loan Forgiveness Proposal (2023), *available at* https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1046.pdf?sc_lang=en.

[2] The White House, Remarks by President Biden on the Supreme Court's Decision on the Administration's Student Debt Relief Program (June 30, 2023), *available at* https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/30/remarks-by-president-biden-on-the-supreme-courts-decision-on-the-administrations-student-debt-relief-program/.

instability. For example, even before the pandemic, Federal Reserve research indicated that student loan borrowers were comparable to individuals with only a high school diploma with regard to their financial stability. When asked if their monthly budget could handle a $400 unexpected expense, 42% of all households with student debt reported they did not expect they could do so and pay their current month's bills, much like 43% of those with a high school degree or less, as compared to only 13% of households without student loan debt.[3]

While the payment pause provided borrowers with much needed relief, borrowers will not fare better when payments resume this fall. Recent research from the CFPB has revealed that student loan borrowers' monthly payments on other credit products have increased and delinquencies on other forms of debt have increased.[4] This is concerning, if unsurprising given rising interest rates and inflation, which have made other aspects of borrowers' lives more expensive than they were three years ago. This research is also consistent with the Department's analysis last summer concluding that if repayment started without first substantially reducing student debt burdens, rates of financial distress, delinquency, and default would spike. Prompt action is needed to address these serious threats.

### B. Debt relief is particularly critical for low-income borrowers.

For low-income borrowers, student loan debt can quickly transform from a pathway for economic mobility into a debt trap that follows them indefinitely. Currently, there are millions of borrowers within the student loan portfolio who will never pay off their debts. Too often, low-income borrowers wind up in default, where they face seizure of critical anti-poverty benefits, including the Earned Income Tax Credit, the Child Tax Credit, and Social Security benefits, to pay for their student loan debt. For these borrowers, student loans that were taken on to achieve economic mobility, instead become a poverty trap.

While there are limited pathways for relief within the current student loan system, they do not capture enough borrowers. As a result, millions of borrowers are stuck with debts they will never be able to repay. The existing discharge programs only provide relief to narrow groups of borrowers who satisfy their complicated eligibility criteria. Even borrowers that are eligible may not be able to obtain relief. Complicated application-based relief programs often create access barriers for the most vulnerable eligible borrowers. Until recently, many borrowers eligible for loan discharge under programs such as the Total & Permanent Disability and Closed School Discharge(TPD) discharge programs could not get the debt relief they were statutorily entitled to due to overly burdensome application requirements.[5] Similarly, while some low-income borrowers are eligible for $0 monthly payments under an IDR plan, the existence of the debt does not mitigate the impact the outstanding debt has on their lives. While the debt is

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[3] Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020 (May 2020), *available at* https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf#page=30.

[4] Thomas Conkling &Christa Gibbs, *Office of Research blog: Update on student loan borrowers during payment suspension* (Nov. 2, 2022), *available at* https://www.consumerfinance.gov/about-us/blog/office-of-research-blog-update-on-student-loan-borrowers-during-payment-suspension/.

[5] Clare Lombardo & Cory Turner, Student Loan Borrowers With Disabilities Aren't Getting Help They Were Promised (Dec. 4, 2019), *available at* https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve; https://www.gao.gov/products/gao-22-104403.

outstanding for twenty years or more,[6] it impacts the borrower's debt-to-income ratio, complicating their ability to obtain a lease, auto-loan, or mortgage. Further, the student loan system has thus far been unsuccessful in delivering the benefits of IDR to the low-income borrowers who need it most, and many borrowers eligible for even $0 payments in IDR have instead fallen into default.[7]

Low-income borrowers have the most to lose when problems persist within the student aid system. To ensure that the relief developed during this rulemaking reaches the most at-risk borrowers, the Department must ensure that any debt relief program developed under this current rulemaking is done automatically. Where automation is not feasible, the Department should create an accessible, simple, and quick application process for borrowers. This will ensure that no eligible borrowers will miss out on the debt relief they would be entitled to.

### C. Parent PLUS borrowers, excluded from affordable repayment options, will face acute distress when repayment restarts.

Over 3.7 million parents owe on average $30,000 in Parent PLUS loans.[8] Parent PLUS loans are often made when a student has maxed out their own federal student aid and there is still a tuition gap to cover to be able to access school that their family cannot afford to pay out of pocket. Additionally, these loans are made without any assessment of the parent's ability to repay the loan. As a result, low-income families—and particularly low-income Black families—increasingly are saddled with Parent PLUS loans that it is clear they cannot afford to repay.[9] Indeed, 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–and yet the government lent them thousands of dollars anyway.[10]

Low-income Parent PLUS borrowers will face particularly acute difficulty when repayment restarts because they alone within the Direct Loan program are excluded from the new SAVE plan, and indeed from all but the most expensive and difficult to access IDR plan. The Income-Contingent Repayment plan remains the only IDR plan available to Parent PLUS borrowers, and is only available after they consolidate their loans. Without intervention, large numbers of low-income Parent PLUS borrowers will be unable to afford their student loan payments when repayment restarts.

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[6] While the SAVE plan will reduce the repayment period prior to cancellation for some low-income borrowers to ten years or more, that timeline is still unacceptably long for low-income borrowers.

[7] David Wessel & Persis Yu Income- Driven Repayment of student Loans: Problems and options for addressing them (Mar. 11, 2022), *available at* https://www.brookings.edu/articles/income-driven-repayment-of-student-loans-problems-and-options-for-addressing-them/.

[8] Federal Student Aid, Federal Student Loan Portfolio, *available at* https://studentaid.gov/data-center/student/portfolio

[9] Peter Granville Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crises (May 31, 2022), *available at* https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/

[10] Kristin McIntosh et al., *Examining the Black-white Wealth Gap*, The Brookings Institution (Feb. 27, 2020), *available at* https://www.brookings.edu/blog/upfront/2020/02/27/examining-the-black-white-wealth-gap/.

## D. Debt relief is needed to address the disproportionate burden of student debt on Black borrowers, reduce the racial wealth gap, and accelerate economic mobility.

The student loan debt crisis has the most profound impact on borrowers of color, and specifically Black borrowers. Without bold action, racial inequities will continue to grow within the student loan portfolio. Black borrowers are more likely to borrow and owe more in student debt than any other racial group.[11] As has been well documented, "lower family income and wealth forces [Black] students to borrow more for college and those who do graduate find themselves four years out with about $50,000 in student debt—nearly twice as much as their White compatriots."[12] Research has also shown that Black women in particular take on larger amounts of debt in pursuit of degrees needed to compete in the labor market, even though pay discrimination means that the debt incurred is not proportional to the salaries they earn.[13] This disproportionate level of student debt impacts Black borrowers' creditworthiness and prevents them from creating wealth through homeownership.[14]

In addition, student loan debt has a profound impact on Black families. The majority of Black households with student loan debt have no or negative net worth.[15] In addition, as a result of the racial wealth gap, many low-income Black families disproportionately rely on Parent PLUS loans to pay for their children's education. Black parents hold more student loan debt for their children than any other racial group. Many Black families are saddled with these loans even when they are living on very low incomes–approximately one-third of Black families that take on Parent PLUS loans have incomes below $30,000. For these families, repaying the debt is a never-ending struggle that will follow them to the grave.

The one-time debt relief plan attempted to help reduce this disproportionate burden on Black borrowers by providing an additional $10,000 in cancellation to borrowers who received Pell Grants during their undergraduate years.[16] But for the Court's disappointing decision, Black borrowers, many of whom are recipients of Pell Grants, would have received the largest average forgiveness amount and were most likely to have their entire balance forgiven under

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[11] Andre M. Perry et al., Student loans, the racial wealth divide, and why we need full student debt cancellation (June 23, 2021), *available at* https://www.brookings.edu/articles/student-loans-the-racial-wealth-divide-and-why-we-need-full-student-debt-cancellation/

[12] Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023) (Jackson, K., dissenting).

[13] Victoria Jackson & Brittani Williams How Black Women Experience Student Debt (Apr. 2022), *available at* https://edtrust.org/wp-content/uploads/2014/09/How-Black-Women-Experience-Student-Debt-April-2022.pdf

[14] Andre M. Perry et al., Student loans, the racial wealth divide, and why we need full student debt cancellation (June 23, 2021), *available at* https://www.brookings.edu/articles/student-loans-the-racial-wealth-divide-and-why-we-need-full-student-debt-cancellation/..

[15] Andre M. Perry & Carl Romer, Student debt cancellation should consider wealth not income (Feb. 25, 2021), *available at* https://www.brookings.edu/articles/student-debt-cancellation-should-consider-wealth-not-income/

[16] The White House, FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most (Aug. 24, 2022), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relieFACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most | The White Housef-for-borrowers-who-need-it-most/

the debt relief plan.[17] Notwithstanding the Court's decision, the Department should not leave these borrowers crushed by student debt that will continue to limit their economic mobility.

## II. Topics and Scope of Rulemaking

The Department has proposed a rulemaking on "the authorities granted to the Secretary in HEA Section 432(a), which relate to the modification, waiver, or compromise of Federal student loans." We support conducting a rulemaking on the topic, and within that topic we further urge the Department to consider actions using such authority to provide both immediate relief and enduring regulatory changes to strengthen the student loan safety net over the long-term. In this way, the Department can both deliver on the promise of immediate relief to borrowers struggling with historic levels of student debt now and develop rules that will provide a clear path to debt relief for financially distressed borrowers in the future.

### A. Statutory provisions noticed

The Department has proposed a rulemaking on "the authorities granted to the Secretary in HEA Section 432(a), which relate to the modification, waiver, or compromise of Federal student loans." We support rulemaking on this topic, and further urge the Department to expand the topic to further include the authorities granted to the Secretary in HEA Section 432(a) [20 U.S.C. §§ 1082(a)] to "release" rights, titles, claims, liens, or demands related to federal student loans. The Department should ensure that the topics included within the scope of potential rulemaking are inclusive of all avenues through which it may wish to provide federal student loan debt relief to borrowers with Direct and FFEL loans.

### B. Immediate relief: Recommendations

To address the urgent need for debt relief as the payment pause ends, as well as to make good on the promise of debt relief made to tens of millions of borrowers, many of whom relied upon that promise in making major life decisions that adversely impact their ability to repay their loans now, the Department should include immediate, broad-based debt relief in its current rulemaking. As detailed below, immediate relief should begin from and further improve upon the August 2022 debt relief plan, including by redressing the impact of past practices that caused financially distressed borrowers' balances to balloon, scrapping income restrictions that burdened access to relief and are no longer relevant, and expanding relief to borrowers with older federal loan types and recently consolidated loans. Further, immediate debt relief should be implemented quickly by expediting processes for new rules and exercising already existing authorities to discharge debt where available.

#### *1. Building from the August 2022 Plan*

[17] Jacob Goss et al., Revisiting Federal Student Loan Forgiveness (Sept. 27, 2022), *available at* https://libertystreeteconomics.newyorkfed.org/2022/09/revisiting-federal-student-loan-forgiveness-an-update-based-on-the-white-house-plan/

The debt relief program announced in August 2022 would have provided critical and transformative relief to nearly all people who are in debt simply because they sought an education, and admirably provided additional relief to borrowers from the lowest-income backgrounds who are most overburdened by student debt. The program has been extensively considered and studied, and provides a good starting place for the development of a new immediate debt relief plan. However, more can and should be done to address the undue burden of student debt on America's working and middle-class families, and we urge the Secretary to consider the August 2022 program as a floor, not a ceiling, when designing a new debt relief program.

**Redressing Past Practices that Cause Balances to Balloon.** In particular, the Administration should consider increasing the amount of relief available in a new program and options to redress the adverse impact of past unchecked interest accrual in income-driven repayment and interest capitalization that have led many borrowers, and disproportionately borrowers from low-income families, Black borrowers, and borrowers with less than a 4-year degree, to owe more on their student loans even after years in repayment.[18] The Administration recognized and rightly tackled the problems of unnecessary interest capitalization and unchecked interest accrual for *new borrowers* through recent rulemakings ending these practices going forward. This rulemaking presents an opportunity to redress the harmful impact on existing borrowers of the Department's past use of these ill-advised and now terminated interest practices. Providing such interest relief to existing borrowers now would provide significant relief to borrowers at potentially very low cost to the government. As the Department recognized in its recent SAVE regulations, because many borrowers who experience negative amortization in the student loan program will ultimately have the interest charged forgiven through the income-driven repayment program, reducing the burden of interest accrual sooner in the process will often not change the amount that the government ultimately collects in student loan payments. Shifting when such interest is forgiven to an earlier time costs the government little, but would offer meaningful relief to borrowers, who would benefit financially and psychologically from having lower balances now, and would help restore borrowers' broken faith in the student loan system.

**Abandon Income Caps.** Further, the Department should strongly consider abandoning the income restrictions that it imposed on eligibility for relief under the August 2022 program. Because very few people with federal student loan debt are high income, those restrictions served only to exclude a tiny percentage of borrowers from relief. Excluding this small subset of borrowers came at a painfully high cost: the income restriction meant that borrowers had to apply for relief to prove their eligibility before the Department could deliver relief, creating both administrative barriers to accessing relief that fell hardest on the most vulnerable borrowers and significant additional processing and public education work for the Department and servicers that increased the costs and timeline for implementation.

Importantly, the legal rationale for including the income restrictions under the HEROES Act does not apply to relief under the HEA, and thus there is no longer any legal need to limit eligibility for

[18] *See, e.g.*, 87 Fed. Reg. 41878, 41952–53 (2022); 88 Fed. Reg. 1894 nn. 26, 45, 46 (Jan. 11, 2023).

relief by income. The income restrictions for debt relief in the August 2022 plan were based on a specific analysis of which borrowers were at heightened risk of delinquency and default as a result of the COVID national emergency, and thus needed debt relief "to ensure" that they "are not placed in a worse position financially in relation to [their student loans] because of [the national emergency]". §§1098bb(a)(2)(A), 1098ee(2)(C)–(D). The HEA, in contrast, does not restrict debt relief authority to borrowers adversely impacted by the national emergency, and thus this income analysis does not limit the Secretary's much broader authority to provide relief under the HEA.

**Extend Relief to Borrowers with Older Loans.** Finally, the Department should carefully consider ways to expand access to debt relief to borrowers with older loan types, including commercially-held FFEL and Perkins Loans, as well as to the many borrowers who have or will consolidate such older loan types into the Direct Loan program since September 30, 2022. Under the August 2022 program, these borrowers were excluded from debt relief because they had not been subject to the payment pause and did not have the same risk of delinquency or default at the end of the pause as borrowers who had already defaulted during the pause and thus been shifted into the ED-held portfolio or whose payments had been paused. This rationale for exclusion was thus premised on the particular facts of the national emergency impact and the legal limits of eligibility for relief under the HEROES Act. Fortunately, this rationale and legal limitation do not apply to development of a new debt relief program under the HEA, and so the Department should use this opportunity to consider ways to extend relief to borrowers with all federal student loan types, including these older loans.

### *2. Avenues to Deliver Relief Promptly*

The Department should consider all procedural avenues to deliver relief promptly, including expediting this rulemaking process and utilizing existing regulatory authorities to provide prompt relief for as many eligible borrowers as possible.

**Interim Final Rule.** The Department should consider expediting the often protracted rulemaking process by issuing an interim final rule, given the compelling public interest in providing relief before payments resume and interest is charged–an interest that the Department persuasively assessed and documented in developing its August 2022 plan.[19]

**Existing Compromise Regulations.** The Department should also consider promptly exercising its existing regulatory authorities to compromise or terminate collection of federal student loan debts under 30 C.F.R. § 30.70 and under the Federal Claims Collection Standards, which among other things, allow the Secretary to compromise federal student loan debt that borrowers are unable to pay in full in a reasonable amount of time, that the Administration is unable to collect in full in a reasonable amount of time or where the cost of collecting the debt does not

[19] The Administrative Procedures Act exempts agencies from full notice and comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B).

justify continued collection, or where there is significant legal doubt about the enforceability of the debt. There are potentially millions of borrowers who satisfy these existing criteria for compromise of debt, including over 2 million borrowers with very old loans in default or severe delinquency, and borrowers for whom the Department does not have complete repayment records, among others, and the Secretary should exercise his authority to clear the books of this bad debt.

**Enforcing New Discharge Regulations.** The Department should also show its commitment to delivering on debt relief by making prompt and effective use of its authority under new rules that went into effect July 1 to cancel debts automatically and by application for borrowers eligible for closed school discharges, borrower defense, disability discharges, false certification discharges, and Public Service Loan Forgiveness. While these targeted discharge programs are well-intentioned, for too long, borrowers and legal aid providers who serve low-income borrowers have struggled to actually access relief for the intended beneficiaries of these programs. This failure to deliver relief to even those borrowers Congress has specifically identified for loan cancellation is the result of overly restrictive eligibility criteria, impractical evidentiary requirements, lackluster processing and wrongful application denials, and lack of outreach, education, and assistance to borrowers eligible for these programs. The new rules for these programs are an important step in the right direction, and should allow the Administration to discharge many more eligible loans without application and to grant more applications for relief. But the Administration must act to operationalize these new rules, improve their application processes, identify borrowers eligible for automatic cancellation, and quickly and accurately approve and execute discharges for eligible borrowers.

**Implement SAVE Provisions to Cancel Smaller Loans Sooner.** Finally, the Administration should consider early implementation of the shorter repayment periods in the new SAVE plan to allow it to cancel additional debt before repayment resumes for people who borrowed smaller amounts. Borrowers eligible for earlier loan cancellation through the SAVE program borrowed smaller amounts often for shorter periods of time in school, and include many people who are burdened by student debt but did not obtain a four-year degree.

### C. The rulemaking should include consideration of enduring fixes to the student loan safety net to release loans that are unlikely to be paid and cause unnecessary hardship.

While borrowers urgently need student debt relief now, everyone familiar with the student loan system can agree that one-time relief will not help future borrowers or provide a long-term solution to the student debt crisis. Plainly, Congress and states must act to rethink the current model of debt-fueled financing of postsecondary education so that future working and middle-students can access education without having to go into unaffordable debt in the first place. But so long as federal student loans remain the primary vehicle available to kids from poor and low-wealth families to access education, the Department has an obligation to manage its loan program in a way that minimizes the harms of this approach and reduces the risk that students efforts to better their lives will instead leave them worse off and burdened by debt they cannot pay for two decades or more. Deciding to pursue education in America should not be such a high stakes gamble.

Therefore, in addition to providing immediate debt relief to existing borrowers, the Department should use this rulemaking as an opportunity to strengthen the safety net for student loan borrowers going forward. Currently, financially distressed borrowers with little to no hope of paying off their student loans have very limited and difficult to access avenues for having their loans discharged, and without a statute of limitations, they risk carrying their debt to the grave.

Existing debt relief programs for distressed borrowers, and their limitations, include:

- They can file for bankruptcy discharge, but even as the Department has recently worked to increase access to bankruptcy relief by establishing a new attestation process and clearer standards for when the government will not dispute a discharge claim, the process is still far too difficult for most financially distressed borrowers to successfully navigate, particularly for the majority who lack access to free legal assistance, and the unique requirements of bankruptcy law make assessing borrower eligibility for relief administratively burdensome for both borrowers and the federal government.

- If their loans are in default, they can request a compromise in the form of a lump-sum payment to pay off the debt, but very few borrowers know about this option and the terms the Department's debt collectors have offered for compromises in the past are often impossible for borrowers without financial means to satisfy.

- They can apply for one of the existing targeted discharge programs (such as borrower defense, closed school, total and permanent disability, and false certification), but many financially distressed borrowers are not eligible for these programs, which require proof of additional factual circumstances distinct from financial distress, and even borrowers who should be eligible have struggled to actually access relief due to lack of program awareness, burdensome application processes, impractical evidentiary requirements, lackluster or delayed processing and wrongful application denials.

- They can enroll in an IDR plan, but not everyone is eligible for these plans, and even for those who are, the payment may not be affordable in light of their medical, caregiving, or other necessary expenses. The $0 payments offered to the lowest income borrowers in IDR plans offer critical payment relief and the prospect of future loan forgiveness. But for borrowers whose investment in education did not result in increased earnings, or who have a consistently low income over time and have spent years in $0 payments already, or whose income is unlikely to ever increase to allow them to pay off their debt (including older, retired borrowers), it makes little sense to keep them in the student loan system and in debt, and for the government to leave such bad debt on the books and to pay contractors to service and collect the loans, for 20+ years.

Fortunately, the Department of Education's authority to modify, compromise, waive, and release student debt obligations can be exercised to relieve debts that borrowers are unlikely to be able to repay, that the Department is unlikely to be able to collect, and that subject borrowers and their families to unnecessary financial hardship.[20] The Department should use this rulemaking to establish rules under the HEA to ensure that it can effectively provide such relief to eligible borrowers on an ongoing basis. The Secretary should also consider drafting regulations to strengthen his ability to provide debt relief, as an exercise of his discretion, to individuals or groups of borrowers outside of the scope of these narrower circumstances when he deems it appropriate in managing the federal student loan program or to further the purposes of the Higher Education Act.

In particular, the Department should consider establishing clear and readily operationalized rules providing for ongoing full or partial loan relief under the HEA in scenarios including, but not limited to, the following:

1) **When the loans did not result in improved earnings prospects for the borrower, including when:**
    a. The borrower took out the loans to attend a program subsequently found to have failed requirements to prepare students for gainful employment during the years the borrower attended;

    b. The borrower took out the loans to attend a program subsequently found to have left graduates with earnings lower than average earnings for people with only a high school degree;

    c. The borrower took out the loans to attend a program or school that subsequently closed, and the borrower's income is below a certain threshold;

    d. The borrower took out the loans to attend (or for their child to attend) an educational or job training program that they did not complete.[21]

2) **When the Department is unable to collect in full in a reasonable amount of time, including when:**

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[20] Although providing relief on loans borrowers are unable to pay or the Department is unable to collect in a reasonable amount of time is consistent with the Secretary's authority under the Federal Claims Collection Act and applicable standards, the Secretary's authority to provide such relief is not limited by the FCCA or FCCS because the Higher Education Act offers an independent and pre-existing source of authority. *See* Federal Claims Collection Act, Pub. L. No. 89-508, § 4 (1996) ("Nothing in this Act shall increase or diminish the existing authority of the head of an agency to litigate claims, or diminish his existing authority to settle, compromise, or close claims").

[21] The Department could consider adding income restrictions to this and other bases for eligibility, but should take care to ensure the restrictions are easily operationalized and do not create unwarranted administrative burden on the Department or borrowers. For example, the Department could limit discharges to non-completers who were Pell Grant recipients, as a way of managing the particularly high risks of noncompletion, financial distress, and loan default that students from low-income backgrounds face when pursuing postsecondary education and supporting such students' access to education. Or the Department could limit discharges to non-completers whose income is below a certain level, such as the 225% FPL adopted in SAVE, for a certain number of years after entering repayment, and utilize the new income-data sharing program with the IRS to automatically identify these borrowers, avoiding the need for borrowers to prove their financial circumstances.

a. The loans have already been in default for a specified number of years and the Department has been unable to collect it in full.[22]

b. The loans are in default and collections via either Social Security offset or administrative wage garnishment result in forced collections that only go toward the interest that accrues each month without reducing the loan principal, or the borrower's Social Security income is so low that it is fully protected from offset.

3) **When the borrower is unlikely to be able to pay the debt in full in a reasonable amount of time, as evidenced by easily ascertainable information such as:**

   a. The borrower has already been in repayment for a specified number of years and the debt has not been paid in full;

   b. The borrower has had a sufficiently low income as to qualify for federal means-tested benefits or $0 payments for a specified number of years after entering repayment;[23]

   c. The borrower is a recipient of disability benefits because of military service or under the Social Security Act;

   d. The borrower has been sentenced to a term of incarceration of 5 or more years;[24]

   e. The borrower currently has income below a certain threshold that is unlikely to increase because the borrower is either over a specified age (such as 65), has income derived primarily from retirement benefits, or because the borrower provides other sufficient explanation that their income is unlikely to increase substantially;

   f. The borrower's current income-driven payments go entirely to the interest accruing each month, without reducing principal, and the borrower's payments are unlikely to increase sufficiently to touch principal before their loans are ultimately forgiven in IDR, either because the borrower is over a specified age (such as 65), has income derived primarily from retirement benefits, or because

[22] In specifying the number of years, the Department could consider data from the student loan program indicating what portion of loans.

[23] Various experts have proposed that a reasonable number of years for such discharge could range from 3 to 10 years. *See, e.g.*, National Consumer Law Center & Center for Responsible Lending, Road to Relief (2020) (proposing writing off debt for borrowers who received means-tested benefits for 3 or more years); A No-Contest Discharge for Uncollectible Student Loans (proposing establishing safe harbors for student loan bankruptcy discharges for borrowers whose household income is below 150% of the FPL and who have been at or below the federal poverty level for the last 4 years); Comments from the Institute for College Access and Success (TICA) to the U.S. Department of Education (Feb. 10, 2023) at 12, *availabe at* https://ticas.org/wp-content/uploads/2023/02/TICAS-Recommendations-to-Strengthen-IDR.pdf (proposing discharging borrowers outstanding balances after a specified number of years of qualification for $0 payments in IDR, which they suggest should be 10 years or shorter if supported by the Department's internal data on loan repayment by persistently low-income borrowers).

[24] *See* Student Borrower Protection Center & National Consumer Law Center, Collection at All Costs (July 2022), *available at* https://www.nclc.org/wp-content/uploads/2022/09/Collection-at-All-Costs_Final-1.pdf.

the borrower provides other sufficient explanation that their income is unlikely to increase substantially;

g. The borrower has been in repayment for a specified number of years (such as 10), and they still owe the amount that they originally borrowed or more;[25]

h. The loans are Parent PLUS loans, and the student borrowed the maximum allowable federal student loans and was calculated to have a $0 Expected Family Contribution, indicating that the Parent PLUS loans were never expected to be affordable or payable in full.

4) **When the borrower is unable to afford their IDR payments or to pay in full in a reasonable amount of time due to their income and qualifying medical or caregiving expenses, such as because:**
   a. The borrower is a family caregiver of an eligible veteran, or is a caregiver of an adult or child as defined in the Lifetime Respite Act;[26]

   b. The borrower or their spouse or dependent has a chronic or long-term health condition that necessitates medical expenses that make student loan payments unaffordable.

5) **When the borrower can otherwise demonstrate, based on their individual financial situation, that they are unlikely to be able to pay back the debt in full in a reasonable amount of time or that their loans subject them to financial hardship, and the Secretary determines that full or partial loan discharge is appropriate.**

6) **When the Secretary deems debt relief for one or more borrowers to be appropriate in managing the federal student loan program, to further the purposes of the Higher Education Act, or to otherwise be in the public interest.**

These potential criteria for determining criteria for ongoing debt relief after an immediate debt relief program is executed are not intended to be final or exhaustive, but represent ideas for a potential starting point for consideration by the Department and negotiated rulemaking committee.

Finally, while we urge the Department to consider both immediate relief and new regulations to improve forward-looking debt relief for financial distressed borrowers under the HEA within the same rulemaking, the Department should consider separating issuance of any rules regarding immediate and/or broad-based versus more targeted debt relief in publishing proposed and final

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[25] *See* National Consumer Law Center & Center for Responsible Lending, Road to Relief (2020) (discussing CFPB research using credit reporting data for a large sample of student loan borrowers, which showed that the proportion of student loan borrowers fully paying off their loans begins to flatten out after 8 years in repayment; the portion fully paying of their loans is likely to be even lower for borrowers who have not been able to reduce their original balance at all even after 10 years in repayment).
[26] *See* Brook E. Gotberg et al., *A No-Contest Discharge for Uncollectible Student Loans 91 U. Colo. L. Rev. 183 (2020)* (proposing and explaining the basis for no-contest discharges for low-income borrowers who meet these caregiving criteria).

rules. Separating publication of the rules may make it easier for the public to understand and comment on each set of proposals, while also reducing the risk that a legal or congressional challenge to one set of rules may interfere with implementation of the other set.

## III. Composition of the Rulemaking Committee

Student loan borrowers are the stakeholder group most heavily impacted by the student loan crisis and should be at the core of this negotiated rulemaking. Borrowers are not a homogeneous population, and their repayment experiences vary widely based on the type of degree they pursued, their academic experience, their personal circumstances, and the amount and type of debt borrowed. To ensure the Department considers a cancellation plan that will provide relief to the broadest population of student loan borrowers, it is critical that the variety of borrowers' backgrounds, experiences, and perspectives are represented at the table. Ensuring that an array of borrowers are at the table will increase both the quality of the substance of the cancellation plan as well as the logistics of how relief is delivered to borrowers.

Like prior negotiated rulemaking sessions, we ask that the Department appoint legal aid, veteran, disability, and civil rights negotiators. In addition, we urge the Department to ensure that the composition of the negotiation table reflects that borrowers are central to these negotiations by seating a variety of negotiators that will represent the interests and experiences of the below categories of borrowers. Should the Department choose to seat different types of institutional negotiators at the table, we ask that the Department appoint a borrower-negotiator from each type of institution represented as well.

***Parent PLUS borrowers.*** More than 3.7 American families have parents that owe Parent PLUS loans.[27] Parent PLUS borrowers are in a markedly different position from the rest of the student loan portfolio: they are taking on debt for a benefit their children will receive. They tend to borrow larger amounts of debt than borrowers who took on debt for their own undergraduate education and struggle to repay their debt.[28] Black parents are more likely to take on Parent PLUS debt, but are even less likely than White parents to pay off the principal. As research done by the Century Foundation demonstrates, Parent PLUS loans can be particularly disastrous for low-wealth families.[29] That is in part because Parent PLUS loans are treated differently than other loan types in the federal loan system in that they are ineligible for the Income-Driven Repayment programs unless they are consolidated into Direct Consolidation loans, at which point they are only eligible for Income Contingent Repayment, the most expensive IDR plan.

***Borrowers older than 62 that owe debt from their own education.*** Older borrowers are one of the fastest growing demographic groups within the student loan portfolio.[30] But as borrowers

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[27] Peter Granville Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crises (May 31, 2022), *available at* https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/
[28] *Id.*
[29] *Id.*
[30] Consumer Financial Protection Bureau, Snapshot of older consumers and student loan debt (Jan. 2017), *available at*

owe student loan debt into their later years, it hinders their ability to save for retirement and makes retirement feel unattainable.[31] For borrowers who have retired, student loan payments can stretch their already limited income and compromise their ability to pay for life's essentials like medication or housing. In addition, student loan debt threatens the social safety net that exists for older Americans, Social Security, in that portions of a borrower's social security payments can be seized if their loans fall into default. Older Americans also have a different orientation towards student loan repayment because they are more likely to struggle to gain access to online services,[32] meaning that they are less likely to have access to tools like studentaid.gov or their servicers' online portal and are instead left to rely on postal mail and Department or servicer call centers for student loan assistance. Because there is no statute of limitation on student loan collection and none of the statutory discharges provide for a discharge due to old age, student loan debt can follow borrowers to the grave.

***Borrowers with loans in default.*** Prior to the pandemic, 1 in 5 student loan borrowers were in default on their federal loans.[33] Borrowers who have experienced federal loan defaults are different from the rest of the student loan portfolio in that they have borne the brunt of the cascade of consequences that follow from defaulting, including but not limited to wage garnishment, tax refund offset, the offset of some federal benefits, ineligibility for other federal loan programs, credit damage, and more. Often, borrowers default because they did not know their student loan options, including understanding their eligibility for a low- or $0 IDR plan or other forms of student loan cancellation,[34] meaning that these borrowers have an intimate familiarity with the barriers present within the existing repayment system. Borrowers with loans in default are also often trapped in a cycle which prevents them from exiting default.[35] The seizure of funds from a borrowers' tax refund, federal benefits, or wages that result from federal loan default often endangers other aspects of borrowers' lives, including their ability to pay for housing, medication, childcare, transportation, and food.[36] Default also has unique racial justice implications: 1 in 2 Black borrowers and 2 in 5 Latino borrowers experienced default over a 20 year period of repayment, as compared with a third of white borrowers.[37]

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https://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf; https://www.washingtonpost.com/education/2022/05/22/student-loan-borrowers/

[31] Eleni Schirmer, The Aging Student Debt of America (July 27, 2022), *available at* https://www.newyorker.com/news/us-journal/the-aging-student-debtors-of-america

[32] Laura B. Plunkett, It's Time to Address Broadband Connectivity Issues for Older Adults (July 9, 2021), *available at* https://ncoa.org/article/its-time-to-address-broadband-connectivity-issues-for-older-adults

[33] Sarah Sattelmeyer et al., Student Loan System Presents Repayment Challenges (Nov. 6, 2019), available at https://www.pewtrusts.org/en/research-and-analysis/reports/2019/11/student-loan-system-presents-repayment-challenges

[34] *Id.*

[35] Ben Miller, Who Are Student Loan Defaulters? (Dec. 14, 2017), *available at* https://www.americanprogress.org/article/student-loan-defaulters; Ama Takyi-Laryea et al., Government Hits Reset on Student Loan Defaults, But Many Could Experience Default Again (June 14, 2022), available at https://www.pewtrusts.org/en/research-and-analysis/articles/2022/06/14/government-hits-reset-on-student-loan-defaults-but-many-could-experience-default-again

[36] Persis Yu, Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic (July 2020), *available at* https://www.nclc.org/resources/voices-of-despair-eitc/

[37] Lexi West et al., Student Loan Borrowers with Certain Demographic Characteristics More Likely to Experience Default (Jan. 24, 2023), *available at* https://www.pewtrusts.org/en/research-and-analysis/articles/2023/01/24/student-loan-borrowers-with-certain-demographic-characteristics-more-likely-to-experience-default

***Borrowers who owe debt without a degree.*** Researchers estimate that as many as 40% of borrowers who took on loans for their undergraduate education owe student loan debt, but have no degree.[38] Students are unable to complete their degree for a range of reasons: familial obligations, medical conditions, mental health challenges, financial struggles, and more.[39] These same circumstances may reduce their ability to repay their student loan debt, but there is an additional complicating factor; these borrowers, unlike other populations in the student loan portfolio, took on debt but received no benefit in exchange for it. As a result, they struggle to repay their debt; in fact, half of defaulted borrowers did not complete their program.[40]

***First generation college students**.* First generation undergraduate students face an array of challenges that other students do not face because they do not have a family member to translate the federal student loan system to them or to help them navigate the unique culture of higher education in America. They also often report that because none of their family members attended college, they have knowledge gaps throughout their higher education experience, from the college application process to the loan repayment.[41] First-generation college students disproportionately come from lower-wealth and lower-income families, are less likely to graduate, and they disproportionately enroll in less selective colleges.[42] In addition, they are more likely to borrow and struggle to repay their student loan debt.[43]

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[38] Abigail J. Hess, Millions of Student Loan Borrowers Don't Have a Diploma to Show for Their Debt (July 23, 2021), *available at* https://www.cnbc.com/2021/07/23/millions-of-student-loan-borrowers-dont-have-a-diploma-to-show-for-it.html

[39] Jacqui Germain, Student Debt but No Degree: Millions of Americans Struggle in Limbo (June 1, 2022), *available at* https://www.teenvogue.com/story/student-debt-no-degree#:~:text=An%20estimated%2038.6%25%20of%20the,the%20Hope%20Center%27s%20Mark%20Huelsman; Tara S. Bernard, They Got the Debt, but Not the Degree (July 1, 2022), available at https://www.nytimes.com/2022/06/01/your-money/student-loan-debt-degree.html; Darcy Gruttadaro & Dana Crudo, College Students Speak: A Survey Report on Mental Health (2012), *available at* https://www.nami.org/getattachment/About-NAMI/Publications-Reports/Survey-Reports/College-Students-Speak_A-Survey-Report-on-Mental-Health-NAMI-2012.pdf; Elissa Nadworny & Clare Lombardo, 'I'm Drowning': Those Hit Hardest By Student Loan Debt Never Finished College (July 18, 2019), *available at* https://www.npr.org/2019/07/18/739451168/i-m-drowning-those-hit-hardest-by-student-loan-debt-never-finished-college

[40] Lindsay Ahlman, Casualties of College Debt: What Data Show and Experts Say About Who Defaults and Why (June 2019), *available at* https://ticas.org/wp-content/uploads/legacy-files/pub_files/casualties_of_college_debt_0.pdf

[41] Khadijah B. Watkins & Gene Beresin, The Challenges of First-Generation College Students, *available at* https://www.mghclaycenter.org/parenting-concerns/young-adults/first-generation-college-studnets/

[42] Richard Fry, First-Generation College Graduates Lag Behind Their Peers on Key Economic Outcomes (May 18, 2021), *available at* https://www.pewresearch.org/social-trends/2021/05/18/first-generation-college-graduates-lag-behind-their-peers-on-key-economic-outcomes/; Dick Startz, First-generation College Student Face Unique Challenges (Apr. 25, 2022), *available at* https://www.brookings.edu/articles/first-generation-college-students-face-unique-challenges/

[43] J. Oliver Schak et al., Student Debt and the Class of 2019 (Oct. 2020), *available at* https://ticas.org/wp-content/uploads/2020/10/classof2019.pdf; Richard Fry, First-Generation College Graduates Lag Behind Their Peers on Key Economic Outcomes (May 18, 2021), *available at* https://www.pewresearch.org/social-trends/2021/05/18/first-generation-college-graduates-lag-behind-their-peers-on-key-economic-outcomes/

***Pell Grant recipients***. Pell Grant recipients are a significant portion of borrowers within the federal loan portfolio; from academic year 2011 until 2020, between 40% and 32% of students receiving aid for an undergraduate education received a Pell Grant.[44] In the 2019-2020 award year, 78% of Pell Grant recipients came from families earning less than $40,000 a year.[45] Students of color are more likely to receive a Pell Grant; nearly 60% of Black students and half of American Indian and Hispanic students receive a Pell Grant each year, compared to under a third of White students.[46] Pell Grant borrowers are less likely to attend selective schools, and instead are more likely to attend for-profit colleges, community colleges, and two-year public programs.[47] Pell Grant recipients are also more likely to struggle with student loan repayment; in one study, within 12 years of starting school, almost a third of Pell Grant borrowers defaulted on their loans.[48] An analysis of undergraduate bachelor's degree recipients in 1999-2000 showed that Pell Grant recipients were more likely to have "risk characteristics", like delaying enrollment, being financially independent, having dependents, and being a single parent, than other undergraduate students.[49] In addition, they were more likely to have parents with a high school education or less and come from non-English speaking households.[50] Coming from a low-income family, as well as all of these secondary factors would impact how these borrowers interact with the student loan system and what impact student loan debt has in their lives.

***Borrowers with debt from certificate programs.*** Borrowers who have debt from certificate programs are distinct from borrowers that have higher levels of educational attainment in multiple ways. First, their earnings are often far lower than borrowers with higher levels of educational attainment. The Department has recognized that "some postsecondary certificates have very low or even negative labor market returns for their graduates. [T]he most recent College Scorecard data [shows] that roughly 19 percent of undergraduate certificate programs among working graduates [] are less than 150 percent of the poverty line."[51] Certificate degree students' earnings outcomes vary by program; however, on average, certificate holders earn on par with borrowers who began schooling but did not complete it.[52] Second, certificate holders have different characteristics from borrowers with higher levels of educational attainment. Two thirds of certificate holders have completed no other degree and they tend to be concentrated amongst students with lower academic preparation or skill and are from families with lower parental education and income.[53] Certificate holders' literacy scores are commensurate with

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[44] National Center for Education Statistics (NCES), Financial Aid: What is the percent of undergraduate students awarded Pell grants? available at https://nces.ed.gov/ipeds/TrendGenerator/app/answer/8/35
[45] https://www.nasfaa.org/uploads/documents/Issue_Brief_Double_Pell.pdf
[46] *Id.*
[47] Elissa Nadworny, We Now Know A Lot More About Students Who Receive Federal College Grants (June 3, 2018), *available at* https://www.npr.org/sections/ed/2018/06/03/610399546/we-now-know-a-lot-more-about-students-who-receive-federal-college-grants
[48] The Institute for College Access & Success (TICAS), Students at Greatest Risk of Loan Default (Apr. 2018), *available at* https://ticas.org/files/pub_files/students_at_the_greatest_risk_of_default.pdf
[49] Christina Chang Wei & Laura Horn, A Profile of Successful Pell Grant Recipients: Time to Bachelor's Degree and Early Graduate School Enrollment (July 2009), *available at* https://nces.ed.gov/pubs2009/2009156.pdf
[50] Id.
[51] U.S. Dep't of Educ. Issue Paper 3: Gainful Employment (July 2022), *available at* https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/3gainfulemployment.pdf
[52] Anthony P. Carnevale et al., Certificates: Gateway to Gainful Employment and College Degrees (June 2012), *available at* https://cew.georgetown.edu/wp-content/uploads/2014/11/Certificates.FullReport.061812.pdf
[53] *Id.*

high school graduates.[54] Together, these characteristics may mean that these borrowers do not have family members to guide them through the federal student aid process and that they may struggle to navigate through the complicated eligibility criteria and instructions associated with the Department's statutory discharge programs.

***At least one negotiator should represent and reflect the interest of each of the following groups of borrowers: borrowers with debt from associate degree programs, bachelors programs, and graduate programs.*** The average debt burden and employment benefits students experience vary significantly by what level of degree they have attained. As a result, the interests of borrowers from each level of the higher education system should be represented at the negotiation table.

***Borrowers who are caregivers for family members.*** 1 in 5 Americans is a caregiver to a family member.[55] Research demonstrates that family caregivers spend a quarter of their annual income on caregiving expenses.[56] In addition, 70% of caregivers report that taking care of a family member has led to work-related difficulties.[57] The strain of caregiving in combination with the financial and psychological strain of student loan debt can have a devastating impact on caregiver families, as it siphons funds away from life's necessities and further financially destabilizes them. As a result, student debt may uniquely burden these borrowers and their families in a way that is different from other portions of the student loan portfolio.

***Military Spouses.*** Military spouses experience distinct challenges from the rest of the American population, including but not limited to higher rates of unemployment, longer periods of unemployment, and higher relocation rates.[58] In a 2022 survey done by Blue Star Families, a third of active duty families reported that they held student loan debt and 79% of those families owed $10,000 or more. 24% of the families surveyed reported that student loans were a major cause of financial stress a.[59] Student loan counseling is not offered on military bases, and military spouses often do not have sufficient information about their student loan rights and options. While some outreach has been done to inform servicemembers of their eligibility for Public Service Loan Forgiveness-- a program challenging for military spouses to satisfy due to frequent relocation[60]--little has been done to inform them of the other statutory discharge programs. None of the current statutory discharge programs consider a borrower's status as a military spouse as a basis for loan cancellation.

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[54] *Id.*

[55] Elizabeth Harrington & Bill McInturff, Working While Caring: A National Survey of Caregiver Stress in the U.S. Workforce Key Findings (Sept. 28, 2021), *available at* https://rosalynncarter.org/wp-content/uploads/2021/09/210140-RCI-National-Surveys-Executive-Summary-Update-9.22.21.pdf

[56] Nancy Kerr, Family Caregivers Spend More Than $7,200 a Year on Out-of-Pocket Costs (June 29, 2021), *available at* https://www.aarp.org/caregiving/financial-legal/info-2021/high-out-of-pocket-costs.html#:~:text=According%20to%20a%20new%20AARP,and%20engagement%20officer%20for%20AARP

[57] Family Caregiver Alliance (FCA), Caregiver Statistics: Work and Caregiving, *available at* https://www.caregiver.org/resource/caregiver-statistics-work-and-caregiving/

[58] Jessica D. Strong et al., Military Family Lifestyle Survey: 2022 Comprehensive Report (2022), *available at* https://bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf

[59] *Id.*

[60] *See e.g.,* Jennifer Young, My Game of Frogger with the Public Service Loan Forgiveness ("PSLF") Program: Why the PSLF is not an Equitable Program for Military Spouses to Utilize (Nov. 22, 2021), *available at* https://msjdn.org/2021/11/my-game-of-frogger-with-the-public-service-loan-forgiveness-pslf-program-why-the-pslf-is-not-an-equitable-program-for-military-spouses-to-utilize/

***Borrowers in repayment for more than 10 years.*** We frequently hear from borrowers that are shocked at how much their student loan debt has increased due to capitalizing interest over time. As noted above, CFPB research has revealed that, on average, borrowers make little progress towards paying off their debt after they have spent 14 years in repayment.[61] Further, as borrowers age, it becomes more clear that student loan debt is an inhibitor that prevents them from life's major investments like having children,[62] buying a house,[63] launching a business,[64] or deciding where to live or what type of work to do.[65] As a result, it is important to have negotiators at the table who can speak to how student loans impact borrowers the longer the debt is outstanding.

***Borrowers whose debt exceeds 100% of their annual income.*** Given that tuition costs for many programs now exceed what the borrower can reasonably expect to earn in the profession their program is training them for, it is important that the Department understand how having debt in excess of the borrower's annual income impacts their life. Having a high debt to income ratio can impact borrowers' credit worthiness, implicating their ability to find housing or afford an auto loan necessary for transportation to work. In addition, having a high debt to income ratio reduces the likelihood that the borrower will ever be able to pay off their debt. The perspectives and interests of these borrowers are necessary for the Department to consider permanent fixes to how it provides compromise, waiver, or release to student loan borrowers.

***Borrowers whose debt is less than 100% of their annual income.*** Similar to borrowers whose debt exceeds 100% of their annual income, the Department should also provide space to borrowers' whose debt is less than 100% of their annual income to hear the struggles associated with setting aside enough income to pay off the borrower's debt each year.

**Conclusion**

Thank you for your consideration of these comments. We welcome any opportunities to work with the Department in confronting the student debt crisis and strengthening protections for low-income borrowers. If you have any questions about these comments, please contact Abby Shafroth, ashafroth@nclc.org, Kyra Taylor, ktaylor@nclc.org, and Alpha Taylor, ataylor@nclc.org.

Respectfully submitted,

National Consumer Law Center
(on behalf of its low-income clients)

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[61] Christa Gibbs, CFPB Data Point: Student Loan Repayment (Aug. 2017), *available at* https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_student-loan-repayment.pdf

[62] Marco Di Maggio et al., Second Chance: Life without Student Debt (May 2019), *available at* https://www.nber.org/papers/w25810

[63] Alvaro A. Mezza et al., On the Effect of Student Loans on Access to Homeownership (Nov. 2015), *available at* https://www.federalreserve.gov/econresdata/feds/2016/files/2016010pap.pdf

[64] Brent W. Ambrose et al., The Impact of Student Loan Debt on Small Business Formation (July 22, 2015), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2633951

[65] Marco Di Maggio et al., Second Chance: Life without Student Debt (May 2019), *available at* https://www.nber.org/papers/w25810; Martin Gervais & Nicolas L. Ziebarth, Life After Debt: Postgraduation Consequences of Federal Student Loans (Feb. 19, 2019), *available at* https://onlinelibrary.wiley.com/doi/abs/10.1111/ecin.12763