

July 21, 2022

The Honorable Miguel Cardona
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

Dear Secretary Cardona,

The undersigned organizations representing students, student loan borrowers, educators and other public service workers, and consumers write to urge you to extend, expand, and coordinate more closely the announced Public Service Loan Forgiveness (“PSLF”) waiver (“Waiver”),¹ Income-Driven Repayment (“IDR”) Account Adjustment (“Adjustment”),² and payment pause to fulfill the promise of affordable and manageable loan repayment for borrowers.

Specifically, we urge you to (1) extend and align the PSLF Waiver and the IDR Adjustment deadlines to at least January 1, 2023;³ (2) expand and simplify both policies to ensure that all borrower types receive credit for the entirety of the time since they first entered repayment; (3) extend the payment pause to a date after which initial loan cancellations from the PSLF Waiver and IDR Adjustment (and all other administrative cancellation actions) will be processed, to reduce confusion and ensure that borrowers whose loans will be canceled are not forced to needlessly resume repayment; and (4) provide further details about the IDR Adjustment and PSLF Waiver so that borrowers and advocates have the information needed to make informed decisions about how to manage their own or clients’ loans.

We applaud the intent of these programs—to extend credit for past time that was improperly denied and to position borrowers to access their statutory rights to loan cancellation—and we believe that taking these steps will ensure this intent is faithfully executed. Now is the appropriate time for the U.S. Department of Education (“ED”) to align and refine the payment pause, IDR Adjustment, and PSLF Waiver, both to reduce the number of moving targets for borrowers and to ensure that these policies’ mutually supporting benefits are not undercut.

¹ *PSLF Waiver Offers Ways to Get Close to Loan Forgiveness*, Fed. Student Aid, U.S. Dep’t of Educ., <https://studentaid.gov/announcements-events/pslf-limited-waiver> (last viewed June 12, 2022).

² <https://studentaid.gov/announcements-events/idr-account-adjustment>.

³ The earliest date the ED set for FFEL borrowers to consolidate.

I. The PSLF Waiver, IDR Adjustment, and Payment Pause Must Run on the Same Timeline to be Effective

The PSLF Waiver and IDR Adjustment currently have different deadlines. This creates confusion for borrowers and risks undercutting ED's policy goals, as the PSLF Waiver and IDR Adjustment have mutually reinforcing components. By extending their deadlines to the same future date, ED can simplify the shifting student loan landscape for borrowers and ensure that borrowers receive the maximum benefit.

For example, a retired public service worker who experienced steering by their student loan servicer may need the IDR Adjustment in order to receive their full credit that is due toward PSLF. ED currently projects the IDR Adjustment will occur in early 2023. However, at that point the PSLF Waiver will have expired and PSLF's requirement that borrowers still be in qualifying employment to receive forgiveness will take effect again, so this borrower will remain barred from forgiveness. ED's policies will have failed for no reason other than ED's lack of time coordination, undercutting ED's goals and borrower trust.

Aligning these timelines would also allow for a significantly simpler message from ED to borrowers, particularly to commercial Federal Family Education Loan ("FFEL") borrowers: "Consolidate your loans by the deadline, and you will be credited with both your past loan and employment history." Currently, this must be communicated differently for the PSLF Waiver and IDR Adjustment.

Continuing the payment pause to a date after the new consolidated deadline would reduce both borrower confusion and the number of borrowers who will unnecessarily re-enter repayment, as significant numbers stand to have their loans completely cancelled under the PSLF and IDR programs once the Waiver and Adjustment are implemented.

II. The Department Must Ensure Vulnerable Groups of Borrowers are Not Unfairly Excluded from Relief

While the PSLF Waiver and IDR Adjustment will certainly provide a benefit to millions of borrowers, these programs overly complicate relief so as to exclude some of the most vulnerable borrowers without reasonable justification. For one, the two programs do not overlap in who they cover—one such glaring gap is Parent PLUS Loan borrowers. Second, both relief policies appear to entirely leave out certain classes of borrowers, and so fail to remedy servicer misconduct. These areas of misconduct include servicers unnecessarily driving borrowers in bankruptcy into

forbearance,⁴ forcing short-term forbearance use upon annual IDR income recertification,⁵ losing or otherwise not keeping borrowers' payment histories and records,⁶ failing to advise and assist borrowers in accessing and staying in IDR resulting in time in default for financially stressed borrowers,⁷ and driving borrowers into deferments after 2013,⁸ among other serious misconduct. The SBPC, along with partners, has submitted regular memoranda to ED indicating these pain points, and urges ED to remedy these unjustified and significant gaps in relief.⁹ A June 2022 report by JPMorgan Chase recently found that borrowers eligible for IDR but not enrolled had significantly lower incomes than those who were enrolled in IDR and that most would receive debt forgiveness under IDR.¹⁰ This finding demonstrates that ED and its servicers' failure to enroll borrowers in IDR has denied cancellation to the borrowers who need it most. **The cleanest and most effective solution is to align the PSLF and IDR timelines, as described above, and use the Adjustment to count all time elapsed since a borrower's grace period as IDR qualifying payment credits.**

In particular, we would like to draw your attention here to some specific groups of borrowers who have been excluded: Parent PLUS Loan borrowers, defaulted borrowers, and bankruptcy forbearance borrowers.

A. Parent PLUS Loan Borrowers

Parent PLUS Loan borrowers are currently excluded from the PSLF Waiver, which is both inconsistent with the PSLF statute and undermines ED's policy objective of giving PSLF credit to borrowers in public service who had been barred from accessing relief due to programmatic bureaucracy and miscommunication. ED has not provided an explanation for this exclusion, the effect of which is that Parent PLUS Loan borrowers continue to be denied the promise of PSLF. This is particularly true given that these borrowers already face the added hurdle of having to consolidate their loans to access the Income-Contingent Repayment plan in order to make PSLF-qualifying payments.

Although Parent PLUS Loans appear to be included in the IDR Adjustment, their exclusion from the PSLF Waiver undermines the ability of public service workers with these loans to benefit from this other program. For borrowers who need to consolidate their loans to continue accruing

⁴ <https://protectborrowers.org/wp-content/uploads/2022/06/SBPC-IDR-Complaint-Memo-Bankruptcy-Forbearance-6.2.22.pdf>.

⁵ <https://protectborrowers.org/wp-content/uploads/2022/04/SBPC-IDR-Complaint-Memo-Annual-Recertification.pdf>.

⁶ <https://protectborrowers.org/wp-content/uploads/2022/05/SBPC-IDR-Complaint-Memo-Incomplete-Payment-Histories-5.4.22.pdf>.

⁷ <https://protectborrowers.org/wp-content/uploads/2022/04/SBPC-IDR-Complaint-Memo-Default.pdf>.

⁸ <https://protectborrowers.org/wp-content/uploads/2022/05/SBPC-IDR-Complaint-Memo-Deferments-post-2013-5.19.22.pdf>.

⁹ See *supra* note 4-7.

¹⁰ <https://www.jpmorganchase.com/institute/research/household-debt/student-loan-income-driven-repayment>.

qualifying payments going forward, the adjustment will ensure they receive IDR credit for pre-consolidation time spent in repayment on their Parent PLUS Loan, but because they were left out of the Waiver, their new consolidation loan will have no qualifying employment credit, effectively resetting these borrowers' PSLF eligibility. Additionally, given that Parent PLUS Loan borrowers skew older, there is a greater likelihood that they will be retired from their public service employment and will, as discussed above, require the PSLF Waiver to attain cancellation through the IDR Adjustment.

Clearly, for the Waiver and Adjustment to extend their full benefit, they must work in coordination. This is acutely true for Parent PLUS Loan borrowers, many of whom stand to gain nothing unless ED includes them in the Waiver and extends its deadline to align with the account adjustment.

B. Defaulted Borrowers

Borrowers' time in default has been unfairly excluded from the Adjustment and Waiver. As we have previously written, default is tied to the failures of PSLF and IDR, particularly misconduct and poor customer service by servicers in driving borrowers into high-cost repayment plans and temporary forbearances rather than low-cost IDR plans, along with ED's failure to address this misconduct. Many, if not most, defaulted borrowers were not properly counseled on how to enroll in IDR plans to lower their monthly payments or were actively steered away from those options and into periods of deferment and forbearance instead. *If not for misinformation from their servicer or lack of guidance from ED, many defaulted borrowers would have been on affordable, manageable repayment plans, sometimes as low as \$0 dollars a month.*¹¹ In 2015, the Government Accountability Office reported that 70 percent of borrowers in default had income that would entitle them to a reduced monthly payment under one of these plans.¹²

Misadvice and misconduct by servicers, and a lack of clarity and information-sharing from ED leads borrowers to default for a number of reasons. When servicers repeatedly steer borrowers

¹¹ U.S. Government Accountability Office, GAO-15-663, *Federal Student Loans: Education could do more to help ensure borrowers are aware of repayment and forgiveness options* (Aug. 2015), <http://www.gao.gov/products/GAO-15-663> (finding that millions of borrowers who had fallen into default had been eligible for an IDR plan). Furthermore, borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default—and many would qualify for \$0 payments in IDR. The median debt burden and median wages of these borrowers suggest that the typical defaulted borrower likely would qualify for \$0 IDR monthly student loan payment or substantially reduced payment, up to a 75 percent, under an IDR plan than under a standard repayment plan. See CFPB, Annual report of the CFPB Student Loan Ombudsman (October 2015), available at https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf; See also Adam Looney & Constantine Yannelis, A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions they Attend Contributed to Rising Loan Defaults, BPEA Conference Draft, The Brookings Institution (Sept. 2015), available at <https://www.brookings.edu/wp-content/uploads/2015/09/LooneyTextFall15BPEA.pdf>.

¹² See GAO-15-663 at 13.

towards forbearance and deferment, rather than recommending it as a temporary, stop-gap option, a reasonable borrower is led to believe that these programs are the only options for relief. As servicers well know, deferment and forbearance periods are limited—borrowers will inevitably run out of these options and be forced to enter into repayment. Relatedly, most borrowers will see their loan balances balloon during periods of forbearance and most types of deferment as interest accrues and is capitalized, or added to the loan principal.¹³ Once borrowers run out of forbearance and deferment options, these enormous loan balances will make repayment even more unaffordable, trapping borrowers in a lifetime debt trap they can never pay off. Following years of reliance on servicers’ statements, borrowers believe in good faith that they have no other option but to default because servicers or ED materials¹⁴ have never properly counseled borrowers on entering IDR, which in many cases would have put them on a sustainable repayment plan.

And as with all aspects of our broken student loan system, Black and Latino borrowers are disproportionately harmed.¹⁵ Recent analysis shows that Black borrowers are two times more likely than their white peers to fall behind on their student loans without accessing IDR.¹⁶ Similarly, this analysis showed that more than half of borrowers with incomes below \$20,000 per year fall behind without accessing IDR, even though virtually all of these borrowers would qualify for \$0 monthly payments through IDR.¹⁷

Through the Adjustment, ED should count all of a borrowers’ time since the start of repayment to ensure full and effective relief for borrowers who have unfairly been driven into default by servicer misadvice and misconduct, and ED’s failure to act. Omitting borrowers’ time in default fails to recognize the clear and undeniable link between documented servicer misconduct and defaults, and the disturbing implications these practices have for racial equity.

¹³ https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf;
<https://protectborrowers.org/driving-into-a-dead-end-why-idr-has-failed-millions-with-decades-old-debts/>.

¹⁴ <https://www.gao.gov/assets/gao-22-103720.pdf> at 13;14 (finding that the Department does not provide sufficient information to borrowers about what constitutes a qualifying payment towards IDR forgiveness, including that periods of forbearance and most types of deferments do not count).

¹⁵ Ben Miller, The Continued Student Loan Crisis for Black Borrowers, Ctr. for Am. Progress (Dec. 2, 2019), <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loancrisis-black-borrowers/>.

¹⁶ Ben Kaufman, New Data Show Borrowers of Color and Low-Income Borrowers Are Missing Out on Key Protections, Raising Significant Fair Lending Concerns, Student Borrower Prot. Ctr. (Nov. 2, 2020), <https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns>.

¹⁷ *Id.*

C. Bankruptcy Forbearance Borrowers

Another glaring omission from these relief programs is debtors in Chapter 13 bankruptcies who have been placed into bankruptcy forbearance for years of their repayment plans while they were still making payments. Debtors in Chapter 13 plans, who are by definition financially distressed, continue to make student loan payments during bankruptcy. But because of ED policy and servicer practices, this time is considered as “bankruptcy forbearance” and it appears ED is not considering including such payments in the Adjustment. This is unfair and unjustifiable, particularly in instances in which these debtors made payments in good faith.

III. The Department Must Communicate its Plans Transparently and Clearly to Advocates and Borrowers

While we applaud the Waiver and Adjustment, both actions have been shrouded in silence from ED, resulting in misinformation by servicers and potential predation by debt relief scammers. Many eligible borrowers have no idea that they are eligible for PSLF or for the Waiver because ED has not reached them. Advocacy organizations such as the SBPC have had to step in and fulfill ED’s role in disseminating basic information about PSLF. In a time-limited program, this is unacceptable.

There has been a stunning lack of information about the IDR Adjustment. Two months after the Adjustment announcement, no further information has been communicated to borrowers or advocates—including, for instance, by what deadline FFEL borrowers have to consolidate their loans. These gaps leave room for bad advice and misinformation by servicers, which is not only a known historical problem but also part of the rationale for the Adjustment. The uncertainty also creates conditions ripe for exploitation by debt relief scammers.

Without information about the details of these programs, advocacy organizations are unable to provide borrowers with critical advice on managing their loans. Indeed, NCLC has received and been unable to answer dozens of basic questions about the Adjustment from legal aid attorneys who are trying to figure out how to advise their clients, and are unable to do so. We urge you to immediately reach out to borrowers, their advocates, and the public to communicate the details of the Adjustment and Waiver programs, lest their impact be stymied by ED’s own inaction and secrecy.

IV. Conclusion

While we applaud ED for the announced policies, without more, ED is failing to ensure their success. ED has the authority, resources, and expertise to fully and properly execute borrower relief. It should do so.

We welcome the opportunity to discuss these issues and solutions with you further.

Sincerely,

Center for Responsible Lending

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

National Education Association (NEA)

Student Borrower Protection Center

Student Debt Crisis Center