

United States Senate

WASHINGTON, DC 20510

November 1, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

We write regarding the U.S. Department of Education's ("Department") current negotiated rulemaking process to provide relief to federal student loan borrowers. The Department's initial proposals to simplify and expand student loan discharge options and repayment plans were a positive and much-needed step forward in helping borrowers get the assistance they need and deserve. We applaud the Department for its work alongside negotiators to deliver additional student debt relief and protections. Accordingly, we request the Department consider the following changes as the negotiated rulemaking process moves forward:

1. The Department should streamline income-driven repayment (IDR) into a single plan that expands relief for borrowers.

IDR provides millions of student loan borrowers with affordable monthly payments of no more than 10 percent of their income. However, the current number of plans creates significant barriers and confusion for borrowers to understand how to enroll in IDR and which plan they should choose. Sections 455 and 493C of the *Higher Education Act* (HEA) provide the Department with clear authority to establish terms of IDR and to consolidate the current plans into a single IDR plan. While the HEA contains multiple IDR authorities, if the Secretary maintains a single IDR plan that meets all the minimum requirements of these different provisions, such streamlined IDR plan would satisfy the statutory requirements and would be most consistent with the intent of Congress to provide better repayment options for borrowers.

The Department should sunset new enrollment in all existing IDR plans and create a single IDR plan for all borrowers who are newly enrolling, or seeking to switch repayment plans. This plan should be available to all current and future federal student loan borrowers regardless of when their loan was first disbursed. This new plan should also ensure monthly payments are capped at no more than 10 percent of a borrower's income for a period of repayment of no more than 20 years, regardless of a borrower's level of education. Additionally, the new plan should protect an amount equal to 250 percent of the poverty guideline applicable to the borrower's family size to ensure that struggling borrowers can prioritize their basic living expenses. The plan should be given a simple name that resonates with borrowers and consumers.

Finally, the Department should ensure that borrowers who could be eligible for a loan discharge under current IDR plans, and any new streamlined IDR plan, have simplified and expanded access to such discharge. Prior payments on consolidation loans or under any federal student loan repayment plan, and all periods of deferment or forbearance other than an in-school deferment, should count for borrowers retroactively and prospectively toward the total cap on the number of years of their repayment obligation.

2. The Department should speed the processing of borrower defense claims and expand protections for students.

The proposal for “borrower defense” is a significant improvement from both the 2019 and 2016 final rules promulgated by previous Administrations. In order to fulfill the spirit of this proposal, the Department should establish a reasonable timeline for adjudicating claims submitted on behalf of groups or individuals. Further, this policy should include safeguards that ensure a future Secretary cannot use any such timeline as an excuse to deny claims that are not processed within the allowable period.

We also support the Department’s proposal to reinstate a ban on forced arbitration and class action waivers at institutions. Forced arbitration and class action waivers prevent students from seeking to hold bad actors directly accountable for abuses in an open and impartial forum. The Department’s proposals in this area currently apply only to complaints or claims that are, or are related to, a “borrower defense claim.”

In this or future rulemaking, the Department should ensure that the scope of covered claims includes any acts or omissions related to the provision of education services or programs, not just those that could be subject to a borrower defense claim. For example, the scope of covered claims should not exclude discrimination, harassment, and sexual assault, which can clearly limit or foreclose students’ ability to access educational services. The forced arbitration ban should also be expanded to third parties maintaining any arrangement with the institution, including marketing companies, private lenders, and income share agreements.

Further, under the proposed rule, only Direct Loan recipients benefit from the protections against forced arbitration, class action bans, and mandatory internal dispute processes. The proposed rule, therefore, excludes other borrowers and Pell Grant recipients as well as veterans who attend school on the G.I. Bill or other grant aid but who do not receive assistance through the Direct Loan program. All students should have the protections that Direct Loan borrowers have, and we believe the Department has the authority to ensure that the final rule adequately safeguards veterans and other students who attend schools that participate in the Direct Loan Program.

In particular, Section 454(a)(6) of the Higher Education Act of 1965 provides that the Department has the authority to include provisions in the Direct Loan participation agreement with institutions “as the Secretary determines are necessary to protect the interest of the United States and to promote the purposes of this part.” Protecting all students from forced arbitration related to the provision of education services or programs would bring more misconduct to light and is clearly in the interest of the United States and the Title IV programs.

3. The Department should eliminate any restriction on closed school discharge related to whether a student transferred to another institution.

When institutions of higher education close their doors permanently, whether abruptly or over a more gradual period, all students who attended that institution are harmed—even if the student is later able to navigate the gauntlet of the transfer process. We appreciate the Department’s proposal to expand automatic closed school discharge, but strongly urge further improvements.

When a future employer or institution attempts to validate a student’s time and education at a college that has closed, they are likely to question the quality of the education provided and even whether the institution was “real” to begin with. This creates incalculable reputational harm to the former student that attended a close school. Furthermore, the vast majority of school closures in the history of the federal student aid programs have been predatory for-profit colleges, which are already proven to provide students with far fewer job opportunities and lower earnings potential and have often loaded students up with unmanageable levels of debt they cannot repay.

Section 437(c)(1) of the *Higher Education Act* provides the authority for the Secretary to discharge the loans from “*an institution at which the student was unable to complete a course of study*” – full stop. This section does not authorize the Secretary to limit the discharge to a student if they were later able to transfer to another institution. As such, the Department’s current proposal to continue this restriction for closed school discharge is inconsistent with the statute and blocks relief to struggling borrowers.

All students who are in attendance at the time a school closes (or up to 180 days prior to such closure) who do not finish their program should be eligible for a closed school discharge as authorized by the statute. Once the limitation against transferring credits is removed from the closed school discharge regulations, there will be no other reason that a student could not receive a full, expedient, and automatic discharge of their loans. As such, the Department should also automatically discharge the outstanding federal loan balance of students from the closed institution who did not complete a degree or credential and not more than 90 days after the institution closes, just as Pell Grant eligibility is restored for students that attended closed schools. Students who are able to transfer to another institution immediately after a school closure (i.e. less than 90 days) should have the option to have their loans discharged immediately to ensure they can afford to continue their education, as such students may be at or near their applicable borrowing limits at the time of transfer.

4. The Department should make recent improvements to Public Service Loan Forgiveness (PSLF) permanent.

We applaud the Department’s recent announcement of an overhaul of the PSLF program, including the waiver capturing additional loan types and repayment plans used by dedicated public servants. To the greatest extent practicable, the Department should codify these tremendous improvements in regulation.

As announced, the Department’s waiver process will expire on October 31, 2022. After this time, borrowers will still need help navigating donut holes that exist in the current program. We believe this is consistent with the goals of the Department’s issue paper, but draft regulations have not been presented yet. Therefore, we continue to encourage the Department to propose regulations that ensure borrowers who consolidate their loans will not have their payment count reset—and all prior payments on consolidation loans during a period of public service should count toward PSLF, regardless of the loan type or plan of the borrower.

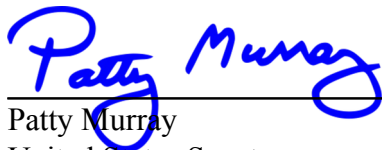
As with IDR, all periods of deferment or forbearance other than an in-school deferment should also count for borrowers retroactively and prospectively toward PSLF. This will ensure that periods of service in which the borrower was in deferment during service under the Peace Corps Act or Domestic Volunteer Service Act of 1973 are also counted toward PSLF.

Our requests for student loan discharge programs and repayment plans will help protect students and support struggling student loan borrowers. For all applicable programs where additional relief is proposed for students and borrowers relative to current regulations, we strongly encourage the Department to pursue early implementation as provided by the HEA. Thank you for your attention to our requests.

Sincerely,



Richard J. Durbin
United States Senator



Patty Murray
United States Senator



Sherrod Brown
United States Senator



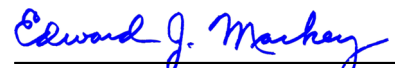
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