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May 16, 2024

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

Re: Docket ID ED-2023-OPE-0123

Dear Secretary Cardona,

I write to share my views on the Department of Education's (Department's) Notice of Proposed Rulemaking (NPRM) on student loan debt relief.¹ The Department's proposed rule will give the most vulnerable borrowers in our country increased access to economic mobility.² This NPRM is particularly impactful for borrowers more likely to have higher amounts of federal student loan debt, including borrowers of color.³

Between 1993 and 2023, adjusting for inflation, the average, annual in-state tuition and fees at public, four-year institutions of higher education increased from \$5,380 to \$11,260.⁴ During that same period, inequality in family incomes increased. The average income of the highest earning quintile of families increased by 65 percent, while the bottom quintile increased only by 27 percent.⁵ It is unsurprising that as college costs rose at a much higher rate than income for American families, reliance on federal student loans increased dramatically: over the same 30-

¹ Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program, 89 Fed. Reg. 27564 (April 17, 2024) (to be codified at 34 C.F.R. §§ 30,682) (*hereinafter* "2024 NPRM").

² *Id.* at 27589.

³ Stud. Borrower Protection Ctr., Mapping Exploitation: Examining For-Profit Colleges as Financial Predators in Communities of Color, 6 (July 2021), <https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping-Exploitation-Report.pdf>.

⁴ The College Board, Trends in College Pricing 2023, 3 (November 2023), <https://research.collegeboard.org/media/pdf/Trends%20Report%202023%20Updated.pdf>.

⁵ *Id.*

year period, the annual amount of federal student loan dollars increased almost 250 percent.⁶ Recognizing the outsized role middle and lower class families have had to take in financing higher education, the Biden Administration has already acted to protect students from low-quality education programs and support borrowers burdened by federal student loan debt. For example, the new Saving on A Valuable Education (SAVE) plan lowers monthly payments, ensures protection from runaway interest, and shortens the time to forgiveness for many undergraduate borrowers.⁷ As of April 2024, the Biden Administration has forgiven \$153 billion in federal student loan debt for nearly 4.3 million borrowers.⁸ This proposed rule would expand on those efforts, increasing access to economic opportunity for millions more borrowers.

Addressing Growing Balances

I am encouraged by the Department's proposal to provide multiple pathways to relief for borrowers with loan balances growing due to "runaway interest."⁹ Runaway or ballooning interest occurs when a borrower's legally required minimum payments do not exceed the accruing interest on their balance, requiring the borrower to pay significantly more than their original principal and extending the borrower's time in repayment. To date, interest on Federal student loans has left more than 25 million borrowers owing more than they originally borrowed, including many who have made years of payments.¹⁰ Borrowers have reported feeling stressed, overwhelmed, and hopeless as they make payments yet continue to see their balances rise.¹¹ In addition to negative psychological effects, rising balances can limit access to other forms of credit, stifling borrowers' ability to achieve economic milestones such as homeownership.¹² The consequences are particularly dire for women and people of color, who disproportionately take on larger amounts of debt and are less likely to be able to pay off such debt over their lifetime.¹³ Additionally, I am concerned some borrowers may have spent years making payments solely of interest, and while now better situated, will not benefit from interest relief under this NPRM. Therefore, I encourage the Department to revise the proposed rule to explore ways to provide

⁶ *Id.* at 32.

⁷ U.S. Dept. of Educ., How the New SAVE Plan Will Transform Loan Repayment and Protect Borrowers (2023), (last visited May 9, 2024) <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/idrfactsheetfinal.pdf>.

⁸ U.S. Dept. of Educ, Biden-Harris Administration Releases First Set of Draft Rules to Provide Debt Relief to Millions of Borrowers (April 16, 2024), <https://www.ed.gov/news/press-releases/biden-harris-administration-releases-first-set-draft-rules-provide-debt-relief-millions-borrowers>.

⁹ 2024 NPRM at 27571.

¹⁰ U.S. Dept. of Educ., Biden-Harris Administration Releases First Set of Draft Rules to Provide Debt Relief to Millions of Borrowers (April 16, 2024), <https://www.ed.gov/news/press-releases/biden-harris-administration-releases-first-set-draft-rules-provide-debt-relief-millions-borrowers>.

¹¹ Pew Rsch. Ctr., Borrowers Discuss the Challenges of Student Loan Repayment, (May 20, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment#:~:text=with%20the%20servicer,-.Growing%20balances%20overwhelmed%20and%20discouraged%20off%2Dtrack%20borrowers,-Among%20off%2Dtrack>.

¹² The White House, New Student Loan Repayment Plan Benefits Borrowers Beyond Lower Monthly Payments, (August 22, 2023), <https://www.whitehouse.gov/cea/written-materials/2023/08/22/new-student-loan-repayment-plan-benefits-borrowers-beyond-lower-monthly-payments/>.

¹³ Abigail Johnson Hess, Student loan holders are more likely to be women and people of color, CNBC, (January 22, 2022), <https://www.cnbc.com/2022/01/28/student-loan-holders-are-more-likely-to-be-women-and-people-of-color.html>; <https://nces.ed.gov/fastfacts/display.asp?id=900>.

relief to borrowers who made significant numbers of payments without reducing their principal prior to the promulgation of the rule.

Targeted Relief Opportunities

I commend the Department for taking steps to provide relief for borrowers who are already eligible for, but have not successfully received, targeted loan forgiveness under programs such as Public Service Loan Forgiveness (PSLF), Total and Permanent Disability Discharge (TPD), and Closed School Discharge (CSD), all authorized in the *Higher Education Act* (HEA).¹⁴ Borrowers have historically faced many structural challenges with these programs as they have been implemented by the Department – challenges that created significant gaps between the total number of borrowers *eligible* for relief and the number of borrowers who actually *receive* relief.¹⁵ For example, a 2019 Government Accountability Office (GAO) report found that 99 percent of PSLF applications had been denied due to complications in the application process.¹⁶ The Biden Administration has already made great strides to strengthen targeted relief programs through previous rulemaking.¹⁷ The NPRM would build on this effort by addressing the administrative gaps in these programs to alleviate the burden on borrowers who have not received relief despite meeting all the eligibility criteria. I urge the Department to maintain this provision of the proposed rule to support targeted relief efforts, and I encourage the Department to streamline the process for providing relief under the proposed 34 C.F.R. §30.85 as much as practicable under the law.

Relief Following Closure of Low-Value Programs

The HEA requires career education (non-degree) programs at all institutions as well as programs at for-profit institutions (degree and non-degree), to “prepare students for a gainful employment in a recognized occupation.”¹⁸ Since the Department first established a Gainful Employment (GE) rule in 2011, data continues to show concerning trends for low-quality programs. According to the Biden Administration, nearly 90 percent of students in failing GE programs attend for-profit institutions.¹⁹ Further, a large proportion of programs failing GE metrics enroll

¹⁴ 2024 NPRM at 27578.

¹⁵ U.S. Gov’t Accountability Off., GAO-22-103720, Federal Student Aid: Education Needs to Take Steps to Ensure Eligible Loans Receive Income-Driven Repayment Forgiveness 10-11 (2022), <https://www.gao.gov/assets/d22103720.pdf>; U.S. Gov’t Accountability Off., GAO-22-104403, College Closures: Education Should Improve Outreach to Borrowers about Loan Discharges, 18-19 (2022), <https://www.gao.gov/assets/d22104403.pdf>.

¹⁶ *Broken Promises: Examining the Failed Implementation of the Public Service Loan Forgiveness Program: Hearing Before the Subcomm. on Higher Educ. & Workforce Investment*, 116th Cong. (2019) (statement of Melissa Emrey-Arras, Dir. Educ., Workforce, & Income Security, U.S. Gov’t Accountability Off.), GAO-22-103720, <https://www.gao.gov/assets/gao-19-717t.pdf> at 5.

¹⁷ Off. of Fed. Stud. Aid, Final Regulations: Borrower Defense to Repayment, Pre-dispute Arbitration, Interest Capitalization, Total and Permanent Disability Discharges, Closed School Discharges, Public Service Loan Forgiveness, and False Certification Discharges (November 01, 2022) <https://fsapartners.ed.gov/knowledge-center/library/federal-registers/2022-11-01/final-regulations-borrower-defense-repayment-pre-dispute-arbitration-interest-capitalization-total-and-permanent-disability-discharges-closed-school-discharges-public-service-loan-forgiveness-and>.

¹⁸ Higher Education Act of 1965, 20 U.S.C. 1001 et seq., §§ 101(b), 102(b)(1)(A)(i), (c)(1)(A).

¹⁹ U.S. Dept. of Educ., Fact Sheet: Biden-Harris Administration Announces Landmark Regulations on Accountability, Transparency & Financial Value for Postsecondary Students, (September 27, 2023),

a disproportionate number of low-income students and students of color.²⁰ For example, in 2021, Black students were more than twice as likely to attend for-profit institutions than any two- or four-year institution.²¹ During the previous administration, I spoke out against the Department's GE rule changes under Secretary DeVos, noting that the decision to shield low-quality programs from meaningful regulation will cost taxpayers \$6.2 billion in federal financial aid. By failing to meaningfully regulate these schools, the actions of the last administration were a huge step backwards for access and equity in higher education.

In 2023, the Biden Administration announced their regulations on accountability, transparency and financial value for postsecondary students which included strengthening the GE rule.²² I applaud the Department's proposal to build on these regulations in this NPRM by establishing an ongoing relief process for borrowers who took out debt to attend programs or institutions that failed to provide sufficient financial value.²³ The proposed rule includes provisions to waive full loan balances for borrowers with debt from institutions or programs that lost access to Federal Student Aid following a Secretarial action or closed prior to such an action.²⁴ This proposal makes sure borrowers whose relief is obviously contemplated by the HEA are not denied such relief simply because their school or program closed in the dead of night before the Department could take action that would undeniably qualify them for relief.²⁵ Additionally, the rule provides provisions to help borrowers whose programs closed, and the Department determines their graduates had high levels of debt or insufficient earnings. Programs that fall under these scenarios did not provide adequate value for students; therefore, I would like to emphasize the importance of retaining the aspects of the proposed rule that will ensure borrowers who attended low-value programs are held harmless.

Considerations for Certain Populations of Borrowers

The federal student loan landscape has evolved since its establishment, creating a tangled web of different unique situations that borrowers face depending on the particular loans they have. Given these complexities, it is important for the Department to provide additional clarity, communication, and considerations for borrowers with Federal Family Education Loans (FFEL), PLUS Loans, Joint Consolidation Loans, and Perkins Loans in a final rule.

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/gainful-employment-notice-of-final-review-factsheet.pdf>.

²⁰ Abbie Baronness, Part 1: Untangling Gainful Employment: Mapping a Path Toward Accountability in Higher Education, (last visited May 9, 2024), Nat'l. Ass'n. of Student Fin. Aid Administrators,

https://www.nasfaa.org/news-item/31544/Untangling_Gainful_Employment_Mapping_a_Path_Toward_Accountability_in_Higher_Education.

²¹ Nat'l. Center for Educ. Stats., Characteristics of Postsecondary Students (last updated August 2023),

<https://nces.ed.gov/programs/coe/indicator/csb>.

²² U.S. Dept. of Educ., Fact Sheet: Biden-Harris Administration Announces Landmark Regulations on Accountability, Transparency & Financial Value for Postsecondary Students, (September 27, 2023),

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/gainful-employment-notice-of-final-review-factsheet.pdf>.

²³ U.S. Dept. of Educ., Biden-Harris Administration Releases First Set of Draft Rules to Provide Debt Relief to Millions of Borrowers (April 16, 2024), <https://www.ed.gov/news/press-releases/biden-harris-administration-releases-first-set-draft-rules-provide-debt-relief-millions-borrowers>.

²⁴ 2024 NPRM at 27614.

²⁵ *Id.* at 27590.

The Department should expand the FFEL waiver to consider Parent PLUS loan debt that was not used to calculate a cohort default rate.

While I appreciate the Department’s proposal to establish a waiver application process to waive the outstanding balance for borrowers with commercially-held FFEL loans if they attended an institution that lost Title IV eligibility due to its cohort default rate (CDR), I am concerned the proposal does not fully consider Parent PLUS loans.²⁶ According to the NPRM, borrowers would be able to request a waiver “if they took out loans during the period that generated the outcomes data that led to the aid termination.”²⁷ However, as drafted, the Secretary may only waive the outstanding balance of a loan that was “used to calculate the cohort default rate or rates that were the basis for the loss of [Title IV] eligibility.”²⁸ PLUS loans are unfortunately not used to calculate an institution’s CDR²⁹; therefore, any PLUS loan balances for FFEL borrowers cannot be waived, even though those balances came from those same failing institutions.

With college costs continuing to rise, Direct Loans are often not sufficient to fully cover expenses, and many parents turn to Parent PLUS loans to finance their child’s education.³⁰ Unfortunately, PLUS loan borrowers have higher interest rates and significantly fewer federal programs to manage their debt, leaving many PLUS borrowers to struggle with repayment.³¹ Further, families of color are more likely to take out larger PLUS loans and to struggle with repayment.³² Without Parent PLUS, many students could not attend the school of their choice and effectuate the promise of the HEA President Lyndon Johnson made at its signing, that “. . . a high school senior anywhere in this great land of ours can apply to any college or any university in any of the 50 States and not be turned away because his family is poor.”³³ By extension, without robust relief options for Parent PLUS borrowers, that promise rings hollow, as many of these families will continue to struggle managing loan repayment for their student and along with other household expenses. Therefore, I urge the Department to allow FFEL borrowers with Parent PLUS loans to be considered eligible for the waiver application if the Parent PLUS loan in question was attributable to a student enrolled at an institution during the period that generated the data leading to the institution’s loss of Title IV eligibility.

²⁶ 2024 NPRM. At 27565.

²⁷ *Id.* at 27580.

²⁸ *Id.* at 27616.

²⁹ U.S. Dept. of Educ., How the Cohort Default Rates Are Calculated: Understanding the CDR Calculation Process, 3 (last updated April 2024), <https://fsapartners.ed.gov/sites/default/files/attachments/2019-06/CDRGuideCh2Pt1CDRCalculation.pdf>.

³⁰ Victoria Jackson et al., Parent PLUS Loans Are a Double Edged Sword for Black Borrowers, The Education Trust, 2 (June 2023), https://edtrust.org/wp-content/uploads/2014/09/ParentPLUS_Brief_V6.pdf

³¹ *Id.* at 8; Peter Granville, Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis, The Century Foundation (May 31, 2022), <https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/>.

³² Victoria Jackson et al., Parent PLUS Loans Are a Double Edged Sword for Black Borrowers, The Education Trust, 6-10 (June 2023), https://edtrust.org/wp-content/uploads/2014/09/ParentPLUS_Brief_V6.pdf; Beth Akers et al., A Framework for Reforming Federal Graduate Student Aid Policy, The American Enterprise Institute, EducationCounsel, The Century Foundation, 14 (December 6, 2023), https://production-tcf.imgix.net/app/uploads/2023/12/04172425/grad_loan_report_final.pdf.

³³ Remarks at Southwest Texas State College Upon Signing the Higher Education Act of 1965, (Nov. 8, 1965).

The Department should provide clarity for borrowers with joint consolidated loans.

In 2022, Congress passed the *Joint Consolidation Loan Separation Act* (JCLSA) to provide borrowers with joint consolidation loans the ability to separate the joint loans and reconsolidate into individual Direct Consolidation Loans.³⁴ According to the Department, JCLSA “will likely not be fully implemented until late 2024 at the earliest.”³⁵ If the Department intends to provide student debt relief as proposed in this NPRM any time prior to the full implementation of JCLSA, borrowers will undoubtedly experience confusion about how to navigate both processes.

To address the overlapping implementation time frame, the Department should provide additional details in the regulatory text and guidance for the waiver process for each of the following scenarios:

1. The joint consolidated loan was not separated prior to the rule’s finalization, and the borrower has not requested a forbearance;
2. The joint consolidated loan was not separated prior to the rule’s finalization, but the borrower has either requested to be put in forbearance or is in forbearance at the time of the rule’s finalization;
3. The joint consolidation loan was separated prior to the rule’s finalization through a joint application; and
4. The joint consolidation loan was separated prior to the rule’s finalization through separate applications.

Given the sensitivities and unique circumstances of borrowers aiming to separate their joint consolidated loans³⁶, it is imperative that thorough guidance be provided in a timely manner.

The Department should provide clarity around the treatment of Perkins loans under each proposed waiver.

The proposed §30.80 indicates the Department’s intent to waive all or part of any outstanding balances of many types of student loans, including Federal Perkins loans.³⁷ However, several places throughout the proposed rule fail to specifically address Perkins loans, creating ambiguity for borrowers with Perkins loans. For example, in proposed §30.83, the Department outlines the process to waive balances of loans that first entered repayment prior to 2000 or 2005,³⁸ but there are no details regarding how repayment start dates are determined for borrowers with Perkins loans. To address this, I request additional clarity in both the regulatory text and explanatory

³⁴ Joint Consolidated Loan Separation Act, S. 1098, 117th Cong. (2022); U.S. Dept. of Educ., Joint Consolidation Loan Separation News and Updates, <https://studentaid.gov/announcements-events/joint-consolidation-loans> (last visited May 14, 2024)

³⁵ U.S. Dept. of Educ., Joint Consolidation Loan Separation News and Updates, <https://studentaid.gov/announcements-events/joint-consolidation-loans> (last visited May 14, 2024).

³⁶ See borrower testimonies about the complexities of joint consolidation loans: Chris Alldredge, Kristen Alldredge, Spousal Consolidation Do Us Part Impact Report 2022-2023 (last updated January 2023), https://www.douspart.org/uploads/1/4/0/5/140510702/2023_douspart_impact_report_v12-20230508_print.pdf.

³⁷ 2024 NPRM at 27614.

³⁸ *Id.* at 27614.

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language regarding how borrowers with Perkins loans are treated with respect to each proposed waiver.

Conclusion

Congressional Republicans continue to advance policies that would destabilize our higher education system and harm students struggling to afford college through legislation such as their *College Cost Reduction Act*, which attempts to raise the cost of attending college for students and families by restricting access to federal student aid and eliminating affordable loan repayment plans.³⁹ In stark contrast, I applaud the Department for its continued work to ensure all students are given the tools they need to participate in higher education and receive the economic benefits that should come with it. Thank you for your work to make student loan repayment more manageable for the most vulnerable borrowers. As the Department works to finalize these regulations, I appreciate your consideration of my recommendations.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Ranking Member

³⁹ The College Cost Reduction Act, H.R. 6951, 118th Cong. (2024).