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COMMONWEALTH OF MASSACHUSETTS
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September 29, 2023

The Honorable Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

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

Dear President Biden and Secretary Cardona:

As the U.S. Department of Education (“Department”), borrowers, and servicers prepare for over 40 million federal student loan borrowers to return to repayment, we the undersigned Attorneys General from Washington, Massachusetts, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Michigan, Minnesota, Nevada, New York, Oregon, Pennsylvania, Vermont, and Wisconsin, write to express serious concerns about the challenges of this process and impending harm to federal loan borrowers in our states. Our views are informed by our work as consumer protection officials in our respective states, including enforcing consumer protection laws to curb unlawful practices by student loan servicers and receiving consumer complaints from borrowers struggling to get timely and accurate information from servicers.

We commend the historic work that your Administration has undertaken to transform our broken federal student loan repayment system, including creating a new more affordable income-driven repayment (IDR) plan,¹ providing loan cancellation for borrowers qualified under long-established IDR criteria,² restoring borrowers’ credit toward Public Service Loan Forgiveness (PSLF), making total and permanent disability discharge more accessible to disabled borrowers,³

¹ The White House, “New Student Loan Repayment Plan Benefits Borrowers Beyond Lower Monthly Payments” (Aug. 22, 2023), <https://www.whitehouse.gov/cea/written-materials/2023/08/22/new-student-loan-repayment-plan-benefits-borrowers-beyond-lower-monthly-payments/> (last visited Sept. 14, 2023).

² Press Release, U.S. Dep’t of Education, “Biden-Harris Administration Begins Discharges for 804,000 Borrowers with \$39 Billion in Automatic Loan Forgiveness as a Result of Fixes to Income-Driven Repayment Plans” (Aug. 14, 2023), <https://www.ed.gov/news/press-releases/biden-harris-administration-begins-discharges-804000-borrowers-39-billion-automatic-loan-forgiveness-result-fixes-income-driven-repayment-plans> (last visited Sept. 14, 2023.)

³ Press Release, U.S. Dep’t of Education, “Over 323,000 Federal Student Loan Borrowers to Receive \$5.8 Billion in Automatic Total and Permanent Disability Discharges” (Aug. 19, 2021), <https://www.ed.gov/news/press->

and providing group discharges to defrauded students.⁴ We recognize and appreciate your efforts to support student loan borrowers, including building an “on-ramp” to repayment that will protect borrowers who miss monthly payments in the first twelve months of repayment from credit harm and default.⁵

At the same time, we are concerned that circumstances are aligning to create serious and widespread loan servicing problems. Unprecedented volumes of borrowers must now navigate a complex system, many for the first time, with new servicers that have little to no experience with such volumes and do not appear to be sufficiently staffed to respond to them. Compounding this, the historic number of loans that transferred to new servicers during the COVID-19 payment pause has created the potential for significant and widespread account errors. Simultaneously, servicers appear to be struggling to operationalize some of the recent and necessary improvements that the Department made to the federal loan repayment system.

In the face of these challenges, we appreciate the ongoing efforts of Department staff to prepare for repayment in a way that will support borrowers’ success. However, at this critical moment the Department itself appears to lack sufficient resources to provide needed assistance to borrowers, meaningful oversight of servicers, and enforcement of borrower protections.⁶ We are particularly troubled by a looming government shutdown during the first week of repayment if Congress fails to pass legislation to fund government operations by the time current funding expires on September 30th.

While many of the problems associated with the return to repayment may not be avoidable at this stage, we believe the Department can and should do more to mitigate harm to borrowers. Specifically, we believe the Department should instruct servicers to liberally place affected borrowers in non-interest-bearing administrative forbearances that count toward potential debt forgiveness while account issues are researched and resolved.

Since the system-wide payment pause began in March 2020, several federal student loan servicers have left the market, causing the transfer of over 30 million borrower accounts to

[releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges](#) (last visited Sept. 14, 2023).

⁴ Press Release, U.S. Dep’t of Education, “Education Department approves \$3.9 billion group discharge for 208,000 borrowers who attended ITT Technical Institute” (Aug. 16, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute> (last visited Sept. 14, 2023).

⁵ The White House, “FACT SHEET: President Biden Announces New Actions to Provide Debt Relief and Support for Student Loan Borrowers” (Jun. 30, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/> (last visited Sept. 14, 2023).

⁶ S. Hughes, *Federal Student Aid Office Has a Big To-Do List in 2023, But the Same Budget*, Marketplace (Dec. 29, 2022), <https://www.marketplace.org/2022/12/29/federal-student-aid-office-has-a-big-to-do-list-in-2023-but-the-same-budget/> (last visited Sept. 14, 2023); K. Knott, *Federal Student Aid Funding Woes Complicate Resuming Student Loan Payments*, INSIDE HIGHER ED (May 11, 2023), <https://www.insidehighered.com/news/government/student-aid-policy/2023/05/11/federal-student-aid-funding-woes-complicate-resuming> (last visited Sept. 14, 2023).

another servicer.⁷ We know from experience that servicing transfers create a high risk of servicing errors. Before the COVID-19 pandemic, borrowers regularly reported issues with servicer transfers, such as lost paperwork, incorrect records, and delays in communication.

Last year, the Consumer Financial Protection Bureau (CFPB) issued a report detailing its supervisory activity of federal student loan servicing transfers. The CFPB's findings included: transferee servicers receiving insufficient information to accurately service loans; transferee and transferor servicers reporting different numbers of total payments that count toward forgiveness or discharge; servicer communications to hundreds of thousands of borrowers with inaccurate information about the next payment due date; and a transferee servicer automatically placing incoming accounts into a transfer-related forbearance instead of the CARES Act forbearance more advantageous to the borrower.⁸

Given this history, returning over 30 million accounts to repayment after a servicing transfer presents risks of errors on an unprecedented scale.

In recent weeks, even before any payments have become due, borrowers have complained about servicers billing inaccurate amounts. While some of these complaints may relate to issues that stem from servicing transfers, others clearly relate to servicer struggles to operationalize the new IDR plan, Saving on a Valuable Education (SAVE). In fact, earlier this month, MOHELA, the servicer solely in charge of accounts on track for PSLF, had to re-issue repayment notices for borrowers automatically transferred to the new SAVE repayment plan. This became necessary because MOHELA's original notice, issued in August 2023, indicated a higher monthly payment than provided under the SAVE plan guidelines that took effect in July 2023. Other complaint examples include:

- Payments that increased following automatic REPAYE to SAVE conversions. For example, one borrower reported that their monthly payment increased from \$293 to \$444.⁹
- Payments that increased because servicers unilaterally and inexplicably removed borrowers from their existing repayment plans (*e.g.*, removed borrowers from SAVE, PAYE, IBR, or extended repayment plans). For example, one borrower reported that their monthly payment increased from \$759 to \$6,843 after seemingly being removed from an extended repayment plan.
- Payments that increased well beyond the amounts borrowers were initially quoted when applying for IDR through studentaid.gov.

⁷ A. Hegji, *Federal Student Loans: Return to Repayment*, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/product/pdf/IF/IF12472> (updated Sept. 1, 2023).

⁸ Consumer Financial Protection Bureau, *Supervisory Highlights Student Loan Servicing Special Edition* (Sept. 2022), https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf, at 11 (last visited Sept. 14, 2023).

⁹ Prior to MOHELA's reissuance of payment notices, the payment was calculated at \$471.

- Payment due dates in September 2023, when Department guidance states payments are to resume beginning in October.¹⁰
- Incorrect loan balances and interest rates.

Notably, many of these issues are affecting low-income borrowers who need to make use of IDR plans and whom the Department explicitly sought to protect from the harmful effects of interest accrual with the rollout of the new SAVE plan.

We are concerned that as borrowers encounter these and other types of problems, many will have difficulty reaching their student loan servicers to resolve them. Complaints indicate that borrowers are regularly encountering hold wait times over 60 minutes, and that some have been quoted hold times exceeding 400 minutes. Borrowers with work and care responsibilities may be unable to spend hours of their day on hold. Even our offices and state student loan ombudspersons are having trouble obtaining timely responses from some servicers through government complaint escalation channels. And when borrowers do reach servicers, many report dissatisfying interactions, including representatives being unable to explain how payments were calculated, unable to resolve problems, or providing inconsistent information.

During the payment pause, most borrowers were not in communication with their servicers and may not know which company is now servicing their loans, exacerbating these challenges. This environment creates opportunities for bad actors to prey on borrowers who have a hard time contacting their servicer when hold wait times reach or exceed the 60-minute mark. Meanwhile, the Department's oversight is constrained by lack of adequate funding.

Although the Department has opened potential additional avenues toward loan forgiveness, their scope and efficacy to resolve return to repayment problems are limited. For example, the "limited PSLF waiver" ended on October 31, 2022. The upcoming IDR payment count adjustment is a "one-time" event that will only count payments through the end of the year, and does not count short-term forbearances toward forgiveness.¹¹ The new IDR regulations only count very specific administrative forbearance periods toward forgiveness, and the associated IDR loan forgiveness "buyback" option, once it becomes available on July 1, 2024, will not be available retroactively.¹² Further, the Department has stated that the buyback option for PSLF borrowers will not apply to pre-consolidation periods, even though many PSLF borrowers need to consolidate before the end of the year to maximize the payment count adjustment.¹³ Moreover,

¹⁰ U.S. Dep't of Education, Federal Student Aid, "Prepare for Student Loan Payments to Restart," <https://studentaid.gov/manage-loans/repayment/prepare-payments-restart>; see also U.S. Dep't of Education, Federal Student Aid, "COVID-19 Emergency Relief and Federal Student Aid," <https://studentaid.gov/announcements-events/covid-19> (last visited Sept. 20, 2023).

¹¹ U.S. Dep't of Education, Federal Student Aid, "Payment Count Adjustments Toward Income-Driven Repayment and Public Service Loan Forgiveness Programs," <https://studentaid.gov/announcements-events/idr-account-adjustment> (last visited Sept. 20, 2023).

¹² 34 C.F.R. § 685.209(k)(6)(i); *Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program*, 88 Fed. Reg. 43820, 43854 (July 10, 2023).

¹³ U.S. Dep't of Education, Federal Student Aid, "Public Service Loan Forgiveness FAQ," <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/questions> (last visited Sept. 20, 2023).

none of these measures provide interest accrual relief for low-income borrowers—a problem that the new SAVE plan was created to address.

Many of the undersigned states have taken legal action against servicers for consumer protection violations such as failing to provide accurate information to borrowers about their repayment options, failing to process IDR applications, or failing to accurately process borrower payments.¹⁴ In many cases, such practices were economically efficient for the servicers, even while they harmed consumers. In the weeks ahead, as borrowers enter repayment, many will need information and assistance. We are deeply concerned that the infrastructure to support federal student loan borrowers is not sufficiently robust to adequately respond to this need.

We are also concerned that these challenges and failures will exacerbate racial inequity. Due to the enduring racial wealth gap, student loan debt is disproportionately held by people of color. On average, Black borrowers borrow \$39,500, while white borrowers take out \$29,900.¹⁵ Prior to the COVID-19 pandemic, borrowers of color defaulted at significantly higher rates than white borrowers.¹⁶ Given this, the issues discussed here will disproportionately harm borrowers of color.

In light of these concerns, to mitigate harm to borrowers, we urge you to direct servicers that any borrower or group of borrowers, who through no fault of their own, is unable to obtain accurate information or access affordable monthly payments consistent with the Department's guidelines, must be returned to administrative forbearance in which interest accrual is paused, while the forbearance period nonetheless counts toward potential debt discharge, and that such a forbearance must remain in place until the issues are fully resolved. We believe that taking this step is not only in the interest of borrowers, but also in the interest of the Department, as it will help avoid a situation in which a new round of waivers or payment account adjustments becomes necessary. We also ask that you instruct servicers to apply the same forbearance for cohorts or groups of borrowers who have applied for forgiveness or discharge and are awaiting a determination or are otherwise known to the Department to be potentially eligible.

We appreciate all of the efforts and resources the Administration has devoted to improving outcomes for student loan borrowers. Our offices also appreciate all the work the Department has

¹⁴ Press Release, Washington State Attorney General's Office, "AG Ferguson files suit against Sallie Mae offshoot Navient Corp., announces Student Loan Bill of Rights legislation" (Jan. 18, 2017), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student> (last visited Sept. 14, 2023); Press Release, Massachusetts Attorney General's Office, "AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer" (Nov. 22, 2016), <https://www.mass.gov/news/ag-healey-secures-24-million-significant-policy-reforms-in-major-settlement-with-student-loan-servicer> (last visited Sept. 28, 2023).

¹⁵ M. Wright, *How Student Loan Forgiveness Can Help Close the Racial Wealth Gap and Advance Economic Justice*, LEGAL DEFENSE FUND (Apr. 17, 2023), <https://www.naacpldf.org/student-loans-racial-wealth-gap/> (last visited Sept. 15, 2023).

¹⁶ K. Welbeck, *Communities of Color in Crisis: Examining Racial Disparities in Student Loan Debt and Borrower Outcomes*, STUDENT BORROWER PROTECTION CENTER (Jan. 8, 2020), <https://protectborrowers.org/communities-of-color-in-crisis-examining-racial-disparities-in-student-loan-debt-and-borrower-outcomes/> (last visited Sept. 15, 2023).

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done to prepare borrowers for the return to repayment, and to get messaging out to help borrowers navigate this process, starting with logging into their studentaid.gov accounts. We have and will continue to collaborate with the Department in sharing this important information with the public. Our offices also stand ready to hold companies that cause financial harm to our borrowers accountable for any unlawful conduct.

At this critical time, we urge you to take further action to meet the unprecedented challenges created by the return to repayment and ensure that borrowers are not harmed by a system that they do not control.

Sincerely,



BOB FERGUSON
Washington State Attorney General



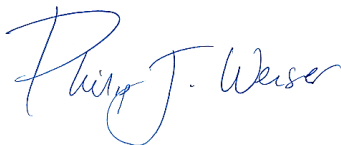
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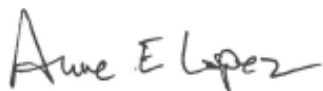
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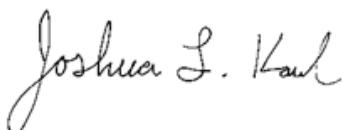
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