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May 17, 2024

The Honorable Miguel Cardona
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Rene Tiongquico
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Docket ID ED-2023-OPE-0123

Dear Secretary Cardona and Mr. Tiongquico,

We, the undersigned Attorneys General of Massachusetts, California, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, write in support of the U.S. Department of Education's (Department) notice of proposed rulemaking (NPRM) proposing regulations which would provide targeted and critical debt relief to federal student loan borrowers. The proposed regulations articulate the Secretary's discretionary authority to waive borrowers' repayment obligations in a number of specific contexts where debt relief is of particular necessity. For example, the proposed regulations articulate the Department's authority to waive repayment for borrowers who have seen their debt balloon beyond the amounts they originally owed, who have been struggling under the burden of student loan debt for decades, and who attended schools that failed to provide sufficient value to their students. We support these proposed regulations and urge the Department to implement the relief they envision expeditiously to help alleviate the extreme burden posed by continuing student loan indebtedness on such borrowers.

State Attorneys General have long been on the front lines of the student debt crisis, fighting on behalf of student loan borrowers who have been struggling for years due to the undeniable shortcomings of the student loan system. Our Offices have worked with borrowers to help identify errors in their accounts and take steps to avoid default. We have led enforcement actions against student loan servicers to protect borrowers' rights to obtain loan forgiveness under

existing federal programs like the Public Service Loan Forgiveness (PSLF) program and Income Driven Repayment (IDR) plans. Through our work, we have seen firsthand the devastating consequences of the failures of the student loan system, which are disproportionately borne by low-income borrowers and borrowers of color.

Most students have no choice but to go into significant debt to afford higher education. The failures of the student loan system have left many borrowers unable to navigate the Department's unduly complicated and opaque loan repayment and forgiveness programs. Borrowers rely on federal student loan servicers to help them access these programs and manage their payments, but years of servicer misconduct have prevented borrowers from doing so and have trapped borrowers in unaffordable debt. Such borrowers are often pushed into preventable default, exposing them to wage garnishment, seizure of Social Security income, and loss of earned income tax credits. These consequences threaten their ability to afford necessities and render them more likely to face housing insecurity and job loss, and less able to care for dependent family members.

We commend the Department's recent efforts to improve loan repayment programs and help borrowers get out of default, but we recognize that such forward-looking changes cannot adequately address the massive student debt crisis that has resulted from the past failures of the student loan system. The Department must use its statutory authority to provide debt relief to borrowers who have borne the burdens of these failures. Indeed, Congress saw fit to provide the Secretary with meaningful authority to cancel student loan debt under the Higher Education Act, which authorizes the Secretary to modify existing student loans and to "compromise, waive, or release any right, title, claim, lien, or demand, however acquired."[1]

The regulations proposed by the Department in this NPRM articulate a targeted application of the Department's statutory authority to waive repayment for borrowers. Providing the relief envisioned in these regulations is not only squarely within the Department's existing authority, it is also a matter of "equity and fairness," as acknowledged by the Department. 89 Fed. Reg. 27,567. The borrowers included in each of the categories identified in these regulations have endured some of the greatest burdens associated with student loan indebtedness and require the Department's assistance.

Borrowers with Ballooning Loan Balances

The Department's proposals in § 30.81 and § 30.82 are aimed at providing debt relief to borrowers who have seen their loan balances balloon beyond their original indebtedness. Such borrowers have shouldered the burden of astronomical accrued interest resulting from misguided policy choices made by the Department in the past. For example, due to the structure of prior IDR plans, borrowers with lower incomes making payments under these plans saw their loan balances grow month-to-month through the accrual of unpaid interest. The impact of such

[1] 20 U.S.C. § 1087hh (made applicable to the Direct Loan Program by 20 U.S.C. § 1087a(b)(2)).

interest accrual has been further exacerbated by interest capitalization triggered by events that are difficult for borrowers to avoid, such as transitioning between repayment plans and entering forbearance.

Many borrowers mired under such skyrocketing debt balances have made consistent payments on their loans without seeing their balances decrease. Notably, the burden of such ballooning balances is disproportionately borne by borrowers of color. One study conducted by the Institute on Assets and Social Policy found that, 20 years after starting college, the average Black student loan borrower still owes 95% of their original balance, while the average White borrower owes only 6%.[2]

While the Department has recently undertaken regulatory efforts to address the risk of ballooning interest going forward and to eliminate interest capitalization that is not required by statute, direct debt relief is essential for addressing the harms that have already occurred as a result of the Department's previous misguided policy choices. We support the Department's acknowledgment that such borrowers require relief and encourage the Department to expand the amount of relief for which such borrowers are eligible.

Borrowers with Older Loans

We support the Department's acknowledgement that borrowers with loans that entered repayment many years ago should receive debt relief. As the Department describes, millions of borrowers have loans that have been in repayment for more than twenty or twenty-five years. 89 Fed. Reg. 27,575. This is the case notwithstanding the existence of IDR plans designed to provide forgiveness for loans that reach these thresholds.

Providing relief for borrowers with older loans is necessary for relieving the financial and psychological burdens associated with long-term indebtedness and to address the Department's failures that have contributed to the prevalence of this problem. Through our work advocating on behalf of student loan borrowers and investigating the misconduct and failures of the Department's student loan servicers, we have observed widespread and systematic servicing deficiencies that resulted in borrowers being deprived of opportunities to enroll in programs designed to prevent them from becoming mired in intractable debt. Such servicing failures include forbearance steering, the provision of misinformation to borrowers, and document processing delays. These widespread errors on the part of federal student loan servicers caused borrowers to enroll in suboptimal repayment plans, experience interest capitalizing events, and fall into avoidable default, all of which can contribute to protracted loan durations. Borrowers should not be left holding the bag for servicers' misconduct and the Department's oversight failures.

[2] Sullivan et al., *Stalling Dreams: How Student Debt Is Disrupting Life Chances and Widening the Racial Wealth Gap*, Institute on Assets and Social Policy, September 2019, https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf.

We commend the Department for articulating the need to provide relief to borrowers whose loans have been in repayment for an extended period through the proposed § 30.83. As drafted, § 30.83 envisions the Department providing relief to certain cohorts of borrowers with loans that entered repayment 20 or 25 years ago, based on the date the loans entered repayment. As discussed by many negotiators during the negotiated rulemaking, while we agree that borrowers who fit these parameters should get relief, we encourage the Department to extend such relief to borrowers on a rolling basis to include additional borrowers with older loans that do not meet the proposed date cut-offs. Such relief is appropriate in light of the well-documented and pervasive failures of the federal student loan system that occurred during the last decade and earlier.

Borrowers Eligible for Relief Under Existing Programs

The Department has correctly identified that many borrowers who meet the eligibility criteria for loan forgiveness under existing IDR programs or other loan forgiveness programs, such as the PSLF program, have not achieved forgiveness because they have not successfully enrolled in or applied to these programs. Under §§ 30.84 and 30.85 of the proposed regulations, the Department would waive the remaining loan balances for such borrowers.

As appropriately acknowledged in the NPRM, the Department's "past practices of administering IDR plans have made it too challenging for borrowers to successfully navigate these processes." 89 Fed. Reg. 27,978. Similarly, unnecessary complexity and student loan servicing failures have prevented eligible borrowers from seeking and obtaining forgiveness under existing loan forgiveness programs. Ensuring that borrowers who meet the eligibility requirements for debt forgiveness are actually able to obtain it is critical, and we support the Department's goal in these proposed provisions. At the same time, we caution the Department to ensure that borrowers who may obtain forgiveness through the proposed regulations—rather than the underlying forgiveness programs—enjoy any attendant benefits associated with the original programs, such as beneficial tax treatment.

Borrowers Who Attended Schools Subject to Departmental Actions and Determinations

We strongly support the Department's proposal in § 30.86 to grant debt relief to borrowers who attended a school that lost Title IV eligibility as a result of institutional problems associated with student outcomes or a determination by the Department that the school failed to provide adequate financial value to students. 89 Fed. Reg. 27,579. The Department does not terminate schools' Title IV eligibility lightly. Where the Department decides to do so based on a school's failure to satisfy accountability criteria related to student outcomes, it does so to protect future prospective students from taking out loans to attend such deficient institutions. *Id.* at 27,580. We agree with the Department that the same consideration should be extended to borrowers who attended these schools during the relevant time periods. Borrowers should not remain burdened by student loan debt when their schools demonstrably failed to hold up their end of the bargain. Similarly, borrowers whose schools engaged in misconduct that undercut the value of the borrowers' education should not be left bearing the burden of student loan debt taken out to attend these

schools. The Department's proposal of regulations aimed at providing relief to borrowers in these circumstances is both fair and appropriate.

Borrowers whose schools choose to voluntarily close in anticipation of losing Title IV eligibility—for example, where the schools have failed a relevant Title IV accountability standard—are no better off than students who attend schools where a final agency action has occurred. The proposed § 30.87 creates parity between borrowers in both situations and ensures that borrowers are not worse off when schools strategically shut down to avoid contending with the consequences of Departmental sanctions. The same rationale justifies the Department's proposed extension of relief under § 30.88 to borrowers who attended Gainful Employment programs with high debt-to-earnings rates or low median earnings that chose to close down before the Department finished its official rate calculations.

Borrowers Who Took Out Loans under the FFEL Program

We strongly support the Department's decision to provide debt relief to Federal Family Education Loan (FFEL) Program borrowers with commercially held loans. Since FFELs stopped being issued in 2010, it is likely that a particularly high proportion of borrowers with still-outstanding FFELs have had difficulty paying them off. These borrowers have been subjected to some of the worst student loan servicing misconduct, including missing opportunities to consolidate their loans and to access more affordable repayment plans and loan forgiveness programs due to servicing errors and misinformation.

It is critical that borrowers with commercially held FFELs have access to debt relief, and we commend the Department for proposing regulations geared at establishing a process by which FFEL borrowers with commercially held loans will be able to obtain such relief under the proposed § 682.403(b). In particular, we support the Department's effort to grant debt forgiveness to borrowers who: (1) hold older commercially held FFELs; (2) meet the eligibility requirements for closed school discharges; or (3) attended a school that lost its Title IV eligibility due to its cohort default rate, where the borrower was in the relevant cohort.

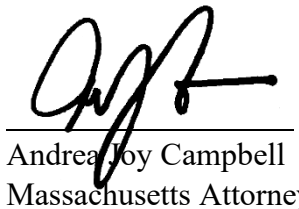
While we are heartened that the Department is proposing regulations designed to provide debt relief to borrowers with older commercially held FFELs, we note that for borrowers who do not meet the eligibility requirements for closed school discharge or attend a school that lost its Title IV eligibility due to its cohort default rate, the Department's proposal to limit relief to borrowers with loans that entered repayment on or before July 1, 2000 excludes many FFEL borrowers from relief. As noted above, *all* FFELs are old by definition, and many borrowers who currently have FFEL loans have struggled to repay them and have suffered as a result of the historic failures of the student loan system. We encourage the Department to create avenues for debt relief to borrowers with older loans that entered repayment *after* July 1, 2000.

* * *

In sum, the targeted debt relief envisioned in the Department's proposed regulations would make

a material difference in the lives of borrowers who have struggled under the burden of student loan debt, often for many years. We commend the Department for undertaking this crucial effort and encourage the Department to implement this relief expeditiously.

Sincerely,



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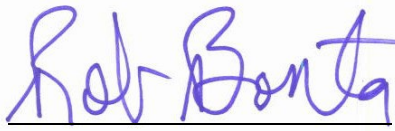
Massachusetts Attorney General



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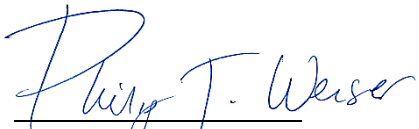

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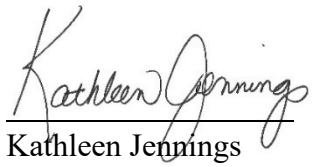

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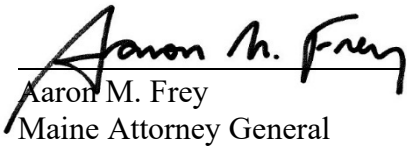

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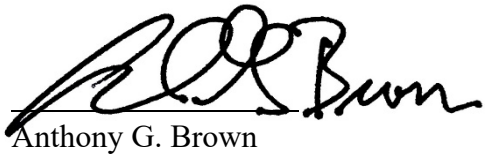

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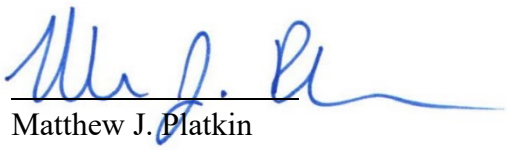

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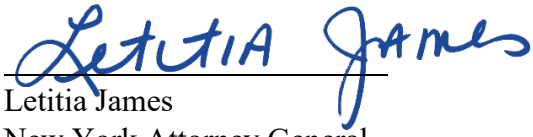

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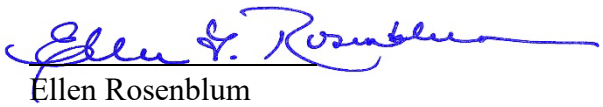

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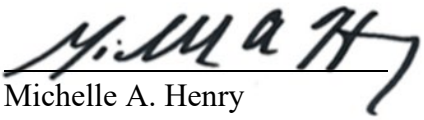

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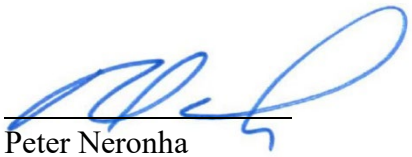

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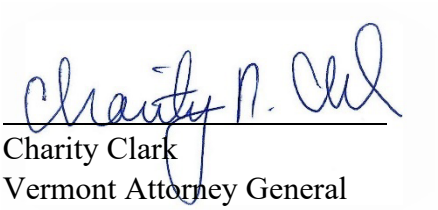

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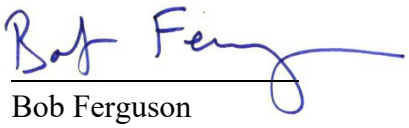

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