United States Senate
WASHINGTON, DC 20510

May 21, 2021

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

Dear Secretary Cardona:

We write to ask for updates on your actions to protect student borrowers during a critical moment for borrowers and our national economy. The economic recovery from the COVID-19 pandemic is likely to take years, especially for the most disadvantaged borrowers. At the same time, the Federal Student Aid system is facing crucial decisions that will shape borrowers' experiences for years to come, including the planned transition to the NextGen platform and an opportunity to reshape its relationship with student loan servicers.

The COVID-19 economic recovery has so far been "K-shaped," meaning that unemployment and financial stress have disproportionately hurt those who were already struggling before the pandemic.[1] For many millennials, who are now 24 to 39 years old, this is the second economic crisis of their working lives; millennials have seen lower rates of economic growth as young adults than any generation in the 20th century.[2] They are also struggling under an increasing student debt burden, which disproportionately affects Black and Latino borrowers.[3]

While the pause on student loan payments and interest has been extremely valuable in keeping student loan borrowers afloat during this crisis, [4] it is currently slated to expire at the end of September, only a few weeks after the enhanced unemployment benefits run out.[5] Cancelling $50,000 in student loan debt would dramatically lighten this burden and entirely eliminate student debt for 84% of borrowers, but even this major step toward relief would still leave millions of borrowers facing the resumption of payments in the fall. During the pandemic, borrowers have reported confusion about how pandemic assistance provisions apply to them,

---

[1] Quartz, "US millennials were grappling with the inequality of a K-shaped economy long before COVID-19," Karen Ho, December 7, 2020, https://qz.com/1942211/what-a-k-shaped-economy-means-for-us-millennials/.
[2] *Id.*
[3] Center for American Progress, "New Federal Data Show a Student Loan Crisis for African American Borrowers," Ben Miller, October 16, 2017, https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/; Brookings, "Black-white disparity in student loan debt more than triples after graduation," Judith Scott-Clayton and Jing Li, October 20, 2016, https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/.
[4] Wall Street Journal, "A Year Without Student-Loan Payments," Amber Burton and Julia Carpenter, March 20, 2021, https://www.wsj.com/articles/a-year-without-student-loan-payments-11616252402.
[5] U.S. Department of Labor, "The American Rescue Plan," accessed on April 29, 2021, https://www.dol.gov/general/american-rescue-plan.

suggesting that proactive steps prior to the end of the payment pause are needed to prevent them from falling through the cracks.[6] Currently, little is publicly known about how loan servicers have supported borrowers during the pandemic or how they are preparing for payments to resume.

Experts are also concerned that when COVID-19 protections such as stimulus payments, unemployment benefits, and mortgage forbearance expire, there could be a sharp increase in consumers filing for bankruptcy.[7] As you know, it is much more difficult to discharge student loan debt in bankruptcy than other types of consumer debt; the borrower must demonstrate "undue hardship" in an adversarial proceeding in bankruptcy court, and courts' interpretations of this standard vary across the country.[8] However, as the creditor on federal direct loans, the Education Department (ED or "the Department") has the discretion to decide when to contest these claims, and it could make this option more accessible for the most distressed borrowers by publicizing its own definition of "undue hardship" under which it would decline to contest the borrower's claim.

As borrowers face these difficult economic circumstances, ED is also facing important choices about the future of the student loan program. All of the major student loan servicers' contracts are set to expire in the next year,[9] opening a crucial opportunity to reshape the student loan servicing system with greater accountability for performance and borrowers' outcomes. The contracting process for the Department's long-planned shift to the NextGen platform is currently on hold.[10] NextGen could provide an opportunity to improve borrowers' experiences and diminish the power of loan servicers, which have historically subjected borrowers to poor service and misleading or illegal practices. At the same time, its implementation has been plagued with delays and confusion. The decisions you make in the coming months about the future of NextGen and related servicing contracts will affect borrowers' experiences of loan repayment for years to come.

In order to better understand how the Department plans to address these crucial and time-sensitive issues, we request answers to the following questions by June 4, 2021:

1. All of the major loan servicers' current contracts are set to expire in the coming year.
    a. Will the current contracts be extended?

---

6 Pew Charitable Trusts, "Outreach From Borrowers Could Overwhelm Student Loan System When Pandemic Pauses End," Sarah Sattelmeyer and Lexi West, November 3, 2020, https://www.pewtrusts.org/en/research-and-analysis/articles/2020/11/03/outreach-from-borrowers-could-overwhelm-student-loan-system-when-pandemic-pauses-end.

7 Forbes, "After the Covid-19 Deluge, A Bankruptcy Tidal Wave?" Mark Hendricks and Daphne Foreman, September 23, 2020, https://www.forbes.com/sites/advisor/2020/09/23/after-the-covid-19-deluge-a-bankruptcy-tidal-wave/?sh=4a5e5e204aba.

8 Bloomberg Law, "Student Loan Debtors Seek High Court Standard in Debt Discharge," Leslie A. Pappas, April 30, 2021, https://news.bloomberglaw.com/bankruptcy-law/student-loan-debtors-seek-high-court-standard-in-debt-discharge.

9 Student Loan Hero, "Education Department Gets New Federal Loan Servicers; Others Stay for Now," Andrew Pentis, October 23, 2020, https://studentloanhero.com/featured/nextgen-student-loan-servicers/.

10 Interim Servicing Solution – Amendment 0003, January 8, 2021, https://beta.sam.gov/opp/2ab38dd62ff34f38b0ce817947f9cc3b/view.

   b. Will the Department commit to restructuring future servicer contracts to include specific, outcome-based incentives for effective loan management and customer service, with penalties up to and including termination for servicers who fail to meet these benchmarks?

2. If ED determines that a contractor has a history of poor performance, abusive practices, or practices that violate consumer protection laws, will you ensure that that contractor is not awarded future contracts with ED and that borrowers are provided with adequate remedies??

3. What is the current status and timeline for the NextGen project?
   a. Specifically, what is the current status and timeline for implementing the Business Process Operations Solution solicitation?
   b. How do you plan to structure the contracts for this project to improve incentives for performance and reduce opportunities for abuse?
   c. Will NextGen contractors be required to adhere to state and federal law and refrain from making claims to evade legal accountability?
   d. How will the Department ensure that borrowers are not subject to illegal or abusive practices by current contractors during this transitional period?
   e. How will the Department ensure that borrowers who are subject to illegal or abusive practices, or otherwise are harmed in the transition to NextGen are provided with adequate remedies?

4. Please provide a breakdown for each of the Title IV loan servicers of the number of loans they service that have:
   a. Received a Total and Permanent Disability discharge during the pandemic;
   b. Received a Death discharge;
   c. Enrolled in an IDR program during the pandemic;
   d. Achieved forgiveness under an IDR program during the pandemic;
   e. Achieved forgiveness under PSLF during the pandemic;
   f. Achieved forgiveness under TEPSLF during the pandemic;
   g. Received a closed school discharge during the pandemic;
   h. Received a false certification discharge during the pandemic
   i. Received a unpaid refund discharge during the pandemic; and
   j. Been fully repaid during the pandemic.

5. Federal direct loan payments and interest are scheduled to resume after September 30, 2021.

a. What steps is the Department taking and what requirements will it make of loan servicers to ensure that loan servicers are conducting the needed proactive outreach to prepare borrowers for this transition?
b. How is the Department measuring loan servicer outreach to borrowers for each servicer?
c. What steps will you take if a loan servicer is found to be conducting inadequate outreach?
d. Will you commit to ensuring that loan servicers are not paid active repayment rates for loans that go into default following the resumption of payments?
e. How should FSA and loan servicers identify at-risk student loan borrowers who struggled prior to the pandemic and target outreach to these borrowers prior to automatic repayments going into effect?
    i. Of these at-risk borrowers, how many were enrolled in auto-debit payments prior to the pandemic?
    ii. To date, what percentage of student loan borrowers have contacted ED, FSA, or their servicers to let them know their financial circumstances have changed?
f. What steps is the Department taking to help borrowers get out of default during the remainder of the payment suspension?
g. Does ED plan to implement changes to streamline enrollment in IDR programs to ensure that borrowers are able to enroll quickly and easily?
h. Does ED plan to implement a penalty-free period for non-payment after the pause ends?

6. Will ED commit to cease contesting undue hardship petitions or, alternatively, publishing a definition of “undue hardship” under which the Department will decline to contest bankruptcy claims for all borrowers?

7. How many bankruptcy claims on direct federal loans are currently pending?
    a. In how many cases has the Department contested bankruptcy claims where borrowers argued that they faced “undue hardship” since 2016?
    b. In how many cases has the Department declined to contest bankruptcy claims due to “undue hardship” since 2016?

Thank you for your attention to this important matter. We look forward to continuing to work with you to address these critical issues.

Sincerely,

______/s/____________________
Elizabeth Warren
United States Senator

______/s/____________________
Tina Smith
United States Senator

______/s/____________________
Chris Van Hollen
United States Senator

______/s/____________________
Richard Blumenthal
United States Senator