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**Student Loan  
Borrower Assistance**  
National Consumer Law Center

## Restoring the Promise of Income-Driven Repayment: An IDR Waiver Program Proposal

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Even before the COVID-19 pandemic and recession, student loan borrowers struggled under the weight of more than \$1.6 trillion in debt. One in four borrowers was in default or serious delinquency, and many more struggled to make student loan payments while covering basic needs. Because of decades of structural inequities and discrimination, student loans have burdened Black and Latino borrowers more than other groups, and now these borrowers are also among those disproportionately harmed by the COVID-19 crisis. Millions of lives were already stymied by student loan debt before the crisis; now, as borrowers struggle with COVID-19 and continuing economic uncertainty, they are bracing for financial disaster.

When Congress passed the first of the modern income-driven repayment (IDR) plans in 1992, it made a promise to borrowers that federal student loan payments would be affordable, and that, through eventual cancellation, student loans would not be a lifetime burden even for low-income borrowers. IDR has failed to deliver on every aspect of that promise. It is time now for the Biden administration to deliver on this promise through the creation of an IDR restoration project, or an IDR waiver.

On October 6, 2021, Education Secretary Miguel Cardona announced a set of sweeping changes to the Public Service Loan Forgiveness program, referred to as the PSLF Limited Waiver.<sup>1</sup> This long-overdue relief is designed to address the barriers that prevented borrowers from obtaining PSLF cancellation, including the many ways that the federal student loan system failed to help them navigate into IDR. As part of the PSLF Waiver, U.S. Department of Education (ED) has redefined the way that it is counting qualifying payments towards forgiveness in that program. Under the terms of the PSLF Limited Waiver, public service workers will be eligible to get credit for their service, up to and including complete debt cancellation, regardless of the type of federal student loan taken out or the repayment plan selected.

**Many of the problems that led to the failure of the Public Service Loan Forgiveness (PSLF) program are IDR problems in disguise—such as borrowers being steered into the wrong repayment plan and Family Federal Education Loan (FFEL) servicers failing to tell borrowers of consolidation options. These problems will not be corrected by a solution that only addresses the PSLF program.** A similar administrative initiative is needed to restore the promise of income-driven repayment and provide relief to millions of borrowers, and in particular, to low-income borrowers and borrowers of color.

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<sup>1</sup> U.S. Department of Education. (October 6, 2021). *Fact Sheet on Public Service Loan Forgiveness Overhaul*. Available at <https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul>.

## The Broken Pathway to Cancellation for Low-Income Borrowers

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Cancellation under income-driven repayment has been theoretically possible since the first group of borrowers reached twenty years in repayment through the IDR program in 2016. Yet, the most recent data from ED reveals that only 32 IDR borrowers have *ever* successfully obtained loan cancellation,<sup>2</sup> even though 4.4 million borrowers have been in repayment for 20 years or longer.<sup>3</sup> The shockingly low rate of cancellation is emblematic of ED's failure to deliver the relief Congress intended when it passed the statutes enabling the creation of these IDR programs.<sup>4</sup>

Problems with IDR worsen racial disparities in the student loan system.<sup>5</sup> The Education Trust recently published a study based on a nationwide survey of nearly 1,300 Black borrowers and in-depth interviews with 100 Black borrowers. It found that IDR plans are not easing the student debt crisis for Black borrowers, as default rates remain high, despite the availability of these plans.<sup>6</sup> Other studies of Black borrowers, including a recent collaboration between the United Negro College Fund, the University of North Carolina at Chapel Hill's Center for Community Capital, and the Center for Responsible Lending, found that Black students strongly support policy efforts to improve, simplify, and automate IDR plans.<sup>7</sup>

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<sup>2</sup> National Consumer Law Center & Student Borrower Protection Center. (March 2021). *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt*. Available at [https://www.nclc.org/images/pdf/student\\_loans/IB\\_IDR.pdf](https://www.nclc.org/images/pdf/student_loans/IB_IDR.pdf). An updated number was requested by negotiators at the most recent negotiated rulemaking involving income driven repayment and by the Student Borrower Protection Center on December 1, 2021.

<sup>3</sup> U.S. Department of Education. (April 2, 2021). *Responses to Data Request by Senator Warren*. Available at <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%202024-8-21.pdf>.

<sup>4</sup> See, e.g., 153 Cong. Rec. S9536 (daily ed. July 19, 2007), <https://www.govinfo.gov/content/pkg/CREC-2007-07-19/html/CREC-2007-07-19-pt1-PgS9534.htm>. There are five separate repayment plans tied to a borrower's income: the income-based repayment (IBR) plan, income-contingent repayment (ICR) plan, pay as you earn (PAYE) plan, revised pay as you earn (REPAYE) plan, and income-sensitive repayment (ISR) plan. With the exception of the FFEL ISR plan, all of the income-driven plans work in a similar way. The income-driven repayment plan calculates the borrower's monthly payment using the borrower's income and, if the borrower is unable to repay the loan within a certain number of years, the remaining balance is forgiven. See NCLC, *Student Loan Law* §3.3.1 (6th ed. 2019), updated at [www.nclc.org/library](http://www.nclc.org/library).

<sup>5</sup> Pearl, J. (September 2021). "Driving Inequity, Policy Choices are Driving Racial Disparities in Access to Income-Driven Repayment." *Student Borrower Protection Center*; See also: Kaufman, B. November 2020. "New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns." *Student Borrower Protection Center*.

<sup>6</sup> Mustaffa, J.B. & Davis, J.C.W. (October 2021). "Jim Crow Debt: How Black Borrowers Experience Student Loans." *The Education Trust*. Available at <https://edtrust.org/resource/jim-crow-debt>; See also: Pearl, J. September 2020. "Driving Inequity: Are IDR's Documentation Requirements Hurting Borrowers of Color?" *Student Borrower Protection Center*. Available at [https://protectborrowers.org/wp-content/uploads/2021/09/Driving\\_Inequity.pdf](https://protectborrowers.org/wp-content/uploads/2021/09/Driving_Inequity.pdf).

<sup>7</sup> Center for Responsible Lending, United Negro College Fund, and the University of North Carolina at Chapel Hill's Center for Community Capital. (October 2021). *My Yard, My Debt: National Survey Finds Strong Support Among*

To receive debt cancellation under IDR, student loan borrowers must enroll in one of the several income-driven repayment options and remain in that plan for decades.<sup>8</sup> Currently, there are a variety of IDR plans with different structures and eligibility requirements. Monthly payments can be capped anywhere between 10 percent to 20 percent of discretionary income depending on the plan.<sup>9</sup> Income-contingent repayment (ICR) plan, the first to provide cancellation, is only available to Direct Loan borrowers. However, through loan consolidation, FFEL borrowers could have accessed ICR as early as 1995. Only payments following consolidation would count towards cancellation.

**Estimates suggest that out of a total of 4.4 million borrowers in repayment for more than two decades, fewer than 200 student loan borrowers will benefit from debt cancellation under IDR between 2020 and 2025—or a 1-in-23,000 chance.**

Unneeded complexity makes these programs notoriously difficult for borrowers to navigate. Moreover, the application process requires borrowers (and servicers) to understand and evaluate the many IDR options, submit documentation, and re-enroll on an annual basis.<sup>10</sup> Many borrowers are unable to meet annual deadlines or understand, have confidence in, and access the very plans that could help them repay their loans successfully. On top of all that, there is also ample evidence indicating that servicers have consistently engaged in a variety of abusive practices and that servicers make many errors that have long-term negative consequences for borrowers.<sup>11</sup> The historical failure of student loan servicers to keep low-income borrowers in IDR over the long term presents an immediate policy problem. Because of these failures, millions of borrowers remain trapped in the student loan system for decades on end. For many, their only prospect for relief is to

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*Black Borrowers for Cancellation, Increasing Pell Grant Amount, More Funding for HBCUs, and More.* Available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-uncf-policy-memo-nov2021.pdf>.

<sup>8</sup> Borrowers may also count monthly payments made under a range of other options so long as the payment amount is equivalent to the amount owed under a standard, 10-year repayment plan. Because of the amount of the payment required under these other options, borrowers cannot persist in them for an extended period of time without repaying their student loans. Consequently, only enrollment and persistence in IDR will lead to debt cancellation.

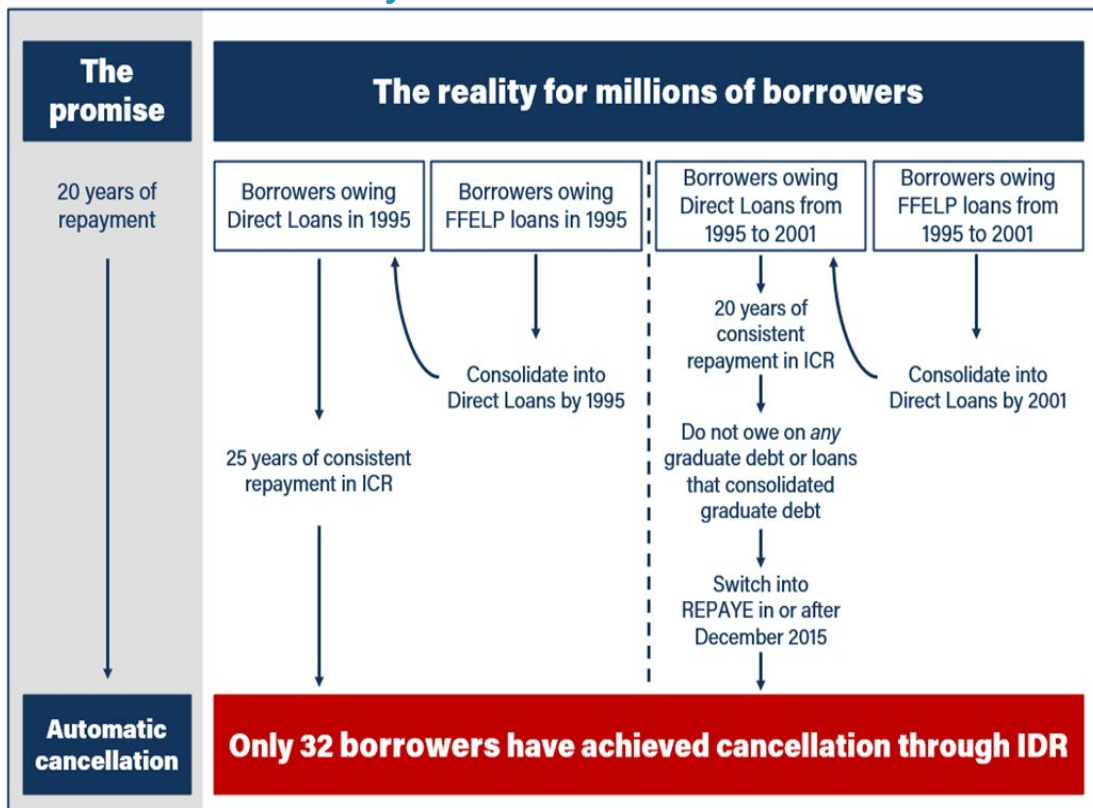
<sup>9</sup> United States Office of Federal Student Aid. (October 2020). *Repayment Plans*. Available at <https://studentaid.gov/manageloans/repayment/plans>.

<sup>10</sup> National Consumer Law Center. (September 2019). *Testimony of Persis SiChing Yu Before the United States House Committee on Financial Services: A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable*. Available at <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-yup-20190910.pdf>.

<sup>11</sup> Consumer Fin. Prot. Bureau. (April 25, 2017). *CFPB Monthly Snapshot Spotlights Student Loan Complaints*. Available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/>.

begin again and spend additional decades awaiting debt cancellation as if they had just entered repayment. The following diagram (Figure 1) illustrates the convoluted pathway that borrowers must flawlessly navigate in order to access cancellation through IDR. Failing to get on the appropriate pathway when repayment begins often means that borrowers must start over. This highlights the dilemma borrowers who owe decades-old debts today face—missing the opportunity to consolidate a loan or enroll in IDR two decades ago creates an absolute bar to debt cancellation on the timeline promised under the law.

**Figure 1: The Broken Pathway to Debt Cancellation for Low-Income Borrowers<sup>12</sup>**



Note: This diagram shows the various steps that borrowers who have been in debt for more than 20 years would have needed to take to achieve cancellation through IDR. Only 32 borrowers navigated such complexity.

In fact, an internal analysis prepared by the largest student loan servicer, PHEAA, found that of its more than 8.5 million customers, only 48 borrowers would receive debt cancellation under IDR by

<sup>12</sup> National Consumer Law Center & Student Borrower Protection Center. (March 2021). *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt*. Available at [https://www.nclc.org/images/pdf/student\\_loans/IB\\_IDR.pdf](https://www.nclc.org/images/pdf/student_loans/IB_IDR.pdf). This image has been lightly adapted for inclusion in this report. For additional context and a longer description of each of these steps, see id.

2025.<sup>13</sup> Moreover, PHEAA's internal data projects the number of IDR borrowers receiving debt cancellation will decline by 83 percent between 2022 and 2025: the number will peak in 2022, when 23 people are estimated to qualify, and taper back down to four individuals by 2025.

Based on market share, these estimates suggest that out of a total of 4.4 million borrowers in repayment for more than two decades, fewer than 200 student loan borrowers will benefit from debt cancellation under IDR between 2020 and 2025—or a 1-in-23,000 chance.<sup>14</sup> As a member of PHEAA's staff noted when sharing this analysis with ED officials, "[i]t seems very low...".<sup>15</sup>

## Servicers Systematically Fail Borrowers in IDR Plans

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A combination of illegal industry practices and needlessly complex public policies have created additional insurmountable hurdles for those with the oldest debts and have prevented borrowers with more recent loans from accessing the pathway to a debt-free future. Barriers include:

- **Systematic steering of borrowers into deferments and forbearance.** Public enforcement actions allege that the government's largest student loan contractors have systematically steered financially distressed borrowers away from IDR and into high-cost repayment options that are temporary in nature and offer no long-term path to debt cancellation.<sup>16</sup> Public enforcement actions allege this has happened both to borrowers with government-owned student loans and to borrowers with older federal loans held by private creditors.<sup>17</sup>
- **Illegal servicing practices including deception regarding eligibility to enroll in IDR.** These abuses include alleged deception by ED and FFEL student loan servicers as to the availability of IDR and the necessary steps to qualify, dating back to the earliest days of the

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<sup>13</sup> Student Borrower Protection Center. (September 2021). *Driving Into a Dead End: Why IDR Has Failed Millions With Decades-Old Debts*. Available at [https://protectborrowers.org/wp-content/uploads/2021/10/SBPC\\_Driving\\_Into\\_A\\_Dead\\_End.pdf](https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf).

<sup>14</sup> Id.

<sup>15</sup> Id. at Appendix, Pennsylvania Higher Education Assistance Agency, Correspondence with the U.S. Department of Education regarding debt cancellation under IDR (Dec. 24, 2020).

<sup>16</sup> *New York v. Pa. Higher Educ. Assistance Agency*, No. 1:19-cv-09155 (S.D.N.Y. Oct. 3, 2019), [https://ag.ny.gov/sites/default/files/pheaa\\_complaint\\_with\\_file\\_stamp.pdf](https://ag.ny.gov/sites/default/files/pheaa_complaint_with_file_stamp.pdf); *Consumer Fin. Prot. Bureau v. Navient Corp.*, No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017).

<sup>17</sup> *Vullo v. Conduent Educ. Serv., LLC*, Consent Order (N.Y. Dep't of Fin. Serv. Jan. 4, 2019), [https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104\\_conduent.pdf](https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104_conduent.pdf) (alleging that ACS obstructed borrowers' access to federal loan programs; claiming in part, that ACS failed to provide borrowers who sought to consolidate their loans the necessary account information, preventing some from doing so for more than three years); *Consumer Fin. Prot. Bureau v. Navient Corp.*, No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017).

program.<sup>18</sup> Borrowers have also been knocked off track due to systemic mismanagement of borrower accounts by the sole servicer contracted to handle Direct Loans during the first two decades following the creation of the first IDR plan.<sup>19</sup>

- **Widespread servicing errors depriving borrowers of the ability to stay in IDR.** As the federal Consumer Financial Protection Bureau (CFPB) first reported in 2015, shoddy student loan servicing may have prevented as many as *three-in-five* borrowers who managed to enroll in IDR from staying on track year-over-year.<sup>20</sup> Allegations made in public enforcement actions against one large student loan servicer offer evidence that illegal servicing practices are a major driver of this shocking record of failure, which costs these borrowers progress toward debt cancellation under IDR.

Yet another administrative hurdle that prevents borrowers from accessing the benefits of IDR is that borrowers have no way of knowing how close they are to cancellation or why their servicer has decided that certain months in repayment do not count towards cancellation.<sup>21</sup> Borrowers also report that they have encountered an array of problems arising from servicer incompetence, including processing delays and extensive periods in administrative forbearance, inaccurate denials, lost payment histories, lost paperwork, and insufficient information or guidance.<sup>22</sup> These barriers have profound and long-lasting implications for millions of families.

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<sup>18</sup> Consumer Fin. Prot. Bureau, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*. Available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>.

<sup>19</sup> As noted, for the first two decades following the creation of the first widely available IDR plan, Income-Contingent Repayment (ICR), all eligible borrowers had loans serviced by a single company-- Affiliated Computer Services or ACS, formerly a division of the Xerox Corporation. Government records show that this single company committed more than five million individual servicing errors before its contract was finally terminated by the Department of Education in 2013. For further discussion, see Student Borrower Prot. Ctr. & Am. Fed'n of Tchrs., *Broken Promises: How the Department of Education's Failures and Industry's Abuses Deny FFEL Borrowers Public Service Loan Forgiveness* (2020), [https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises\\_FFEL.pdf](https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises_FFEL.pdf); Student Borrower Prot. Ctr. & Am. Fed'n of Tchrs., *Broken Promises: The Untold Failures of ACS Servicing* (2020), [https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises\\_ACS.pdf](https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises_ACS.pdf).

<sup>20</sup> Consumer Fin. Prot. Bureau, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, supra note 17.

<sup>21</sup> See e.g., Pearl, *Driving Inequity*, supra note 4.

<sup>22</sup> Consumer Fin. Prot. Bureau. (April 2017). *CFPB Monthly Snapshot Spotlights Student Loan Complaints*. Available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finds-consumers-complain-needless-hurdles-applying-lower-student-loan-payments/>.

## Recommendations

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The Biden administration should pursue broad-based debt cancellation via executive action as the simplest, most comprehensive, and most equitable remedy for the failures outlined above. But in addition, ED should follow the same reasoning that it applied in creating the temporary PSLF waiver and implement a Retroactive Income-Driven Repayment Waiver. An IDR Waiver would offer a path forward for policymakers who are committed to delivering on the promise of IDR to ensure that borrowers can access affordable loan payments in the short term and to provide a way out for borrowers experiencing long-term financial hardship.

### To remedy the decades of IDR failures, the Retroactive IDR Waiver should:

- 1. On a retroactive basis, count all months since the borrower entered repayment following their grace period as qualifying months towards forgiveness,** regardless of which repayment plan the borrower was in, whether they were in forbearance, and whether they were in default. Any months since the first IDR plan was implemented in 1995, up through the date of the waiver, should count as qualifying under this limited retroactive waiver.

Counting all months would address all of the past problems with IDR program rules, implementation, and servicing identified above that have led borrowers to lose out on time toward eventual cancellation. Counting time not just in different repayment plans, but also in forbearances, delinquency, and default is critical to addressing the vast and well-documented servicing problems. Poor servicing, along with servicer delays, and harmful forbearance-steering resulted in struggling borrowers who should have been in IDR instead being shunted into temporary payment delays that only increased and prolonged their indebtedness. Too often these borrowers became delinquent and subsequently defaulted when their deferments or forbearances ended.<sup>23</sup> If the system had worked, such borrowers would instead have been in IDR during that time gaining credit toward forgiveness. Counting all time also has the benefits of being clear and straightforward to communicate to borrowers and operationally simple to implement. And because it is a broad waiver and is retroactive only, this design does not create an incentive for borrowers to voluntarily default or delay repayment going forward.

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<sup>23</sup> Given the widespread prevalence of forbearance and deferment steering and the resulting harm caused by borrowers falling into default, simply counting the number of months in forbearance as qualifying may be insufficient to redress the problem. Giving borrowers two or three times the credit for this time, could more adequately address this harm.

2. **Provide relief automatically.** The data that ED needs in order to implement the IDR Waiver is readily available through National Student Loan Data System (NSLDS), and a clean waiver that counts all prior months since entering repayment toward the forgiveness clock is operationally simple to implement. Therefore, borrowers should not need to affirmatively apply for this relief. As experience has demonstrated, imposing bureaucratic hurdles on relief effectively denies relief to the borrowers who need it the most.
3. **Apply the IDR Waiver to all federal loan borrowers, regardless of loan program.** Properly counseled, borrowers with Federal Family Education Loans and Perkins borrowers could have accessed the more generous IDR payment plans through loan consolidation. However, few borrowers received this advice and thus have been denied the benefits of the program. ED can and should fix this through the IDR waiver.

Detailed data must also be made available so that researchers can track borrower progress and time in repayment. Data is needed on the portfolio overall and by loan type, institution type, race/ethnicity, gender, servicer, progress towards forgiveness, and loan status. Unfortunately, the lack of publicly available data makes it difficult for advocates and researchers to identify problems in real time. Indeed, no publicly available data discloses how long borrowers have been enrolled in IDR, provides the average number of qualifying IDR payments borrowers have made after 5, 10, 15, and 20 years of repayment, or accounts for how often servicers are leaving borrowers to languish in administrative forbearances. Additionally, ED must provide borrowers with complete information about their own payment histories and progress towards IDR forgiveness so that borrowers can identify errors and know where they stand now—and not after 20 years have already passed.

**Once these fixes have been applied to remedy borrower harms in the past, it is also important to develop forward-looking policy solutions to improve the IDR program for current and future borrowers.** Basic principles for improving the repayment system for borrowers in IDR include simplicity, automation, and affordability for the lowest-income borrowers.

ED has an opportunity to produce a new and improved IDR plan through the ongoing rulemaking process. It should embrace the opportunity and use it to put forth a generous and simple plan that will provide borrowers with truly affordable payments that will result in forgiveness after years of repayment. A plan like the Affordable and Budget-Conscious Plan (ABC Plan), outlined in *Road to Relief*, a 2020 publication from the Center for Responsible Lending and the National Consumer Law Center, would help borrowers make progress without subjecting them to burdensome payments that stretch over many decades.<sup>24</sup>

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<sup>24</sup> Center for Responsible Lending & National Consumer Law Center. (November 2020). *Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond*. Available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/nclc-crl-road-to-relief-23nov2020.pdf>.