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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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October 26, 2023

VIA ELECTRONIC TRANSMISSION

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

Dear Secretary Cardona:

I write today regarding troubling actions the Department of Education (the Department) is taking to undermine a bipartisan agreement to return borrowers to repayment through its broad use of administrative forbearance. Recent reports indicate that the Department is putting a majority of borrowers who are enrolled in an income-driven repayment (IDR) plan or want to enroll in an IDR plan into administrative forbearance in some cases until August 2024 instead of making them pay back their loans.¹ According to Biden administration estimates of the new IDR plan, this would be as many as 20 million borrowers.²

Forbearance has long been used to help borrowers during difficult times, in the hopes of getting the borrowers back to repaying their loans and recouping costs for taxpayers. Current regulations for repayment plans allow for two months of administrative forbearance to process documentation or paperwork necessary to switch repayment plans.³ The creative manner in which the Department is now using forbearance, however, will not get more borrowers back to repayment and exceeds the authority in the Department's own regulations.

When borrowers received their first billing statement in the current return to repayment, the Department reported that servicers miscalculated monthly loan payment amounts for around 1.5% of borrowers, or about 400,000.⁴ Yet it is also being reported that the "majority of

¹ Hornsby, T. (2023, October 13). *Servicers are putting perhaps a majority of all borrowers on income based repayment into an administrative forbearance for \$0 a month.*

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² The White House. (2023, August 22). *FACT SHEET: The Biden-Harris Administration Launches the SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments for Millions of Borrowers.* <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/>

³ 34 CFR 685.205(b)

⁴ Bernard, T. S. (2023, October 16). *More than 400,000 student loan borrowers had wrong monthly payments.* The New York Times. <https://www.nytimes.com/2023/10/16/your-money/student-loans-save-mistakes.html>

borrowers” who plan to pay through an IDR plan are being put into forbearance.⁵ These two statements cannot both be true. The Department has not made clear how many people are being put into administrative forbearance, why they are being put into administrative forbearance, and for how long they will be in these forbearances.

The Department has the sole responsibility to ensure the smooth transition back to repayment as required by a bipartisan act of Congress and signed by the President.⁶ Yet, the Department has consistently been an obstacle for helping both the borrowers and the loan servicers it depends on to efficiently return loans to repayment and implement the law. Instead of using the payment pause to plan for return to repayment, the Department moved borrowers to different servicers often without reason; prohibited servicers from contacting borrowers to adequately prepare them for repayment; and rushed the partial implementation of a complex new IDR plan a year ahead of schedule creating mass confusion.

This expanded use of administrative forbearance is not the first time that the Department has invoked a law or regulation in a novel way to fit its pre-determined policy goal. Just this month, I sent a letter to you asking for the authority you were using to issue IDR account adjustments, which cancelled loans for 800,000 borrowers. I have still not received an answer.⁷

Given the seriousness of this issue, please clarify the facts of the current administrative forbearance situation and respond to the following questions, on a question-by-question basis, by November 24, 2023:

1. How many student loan borrowers are currently in administrative forbearance?
 - a. What are the expected durations for resolution and returning to pay status?
 - b. For the group of borrowers in administrative forbearance, how much will this cost taxpayers?
 - c. For the group of borrowers in administrative forbearance, how much interest will be accrued?
2. Has the Department prepared estimates of the number of student loan borrowers who will enter, exit, and remain in administrative forbearance status through August 31, 2024?
 - a. If so, please provide all documents and relevant information, including cost estimates to taxpayers in terms of missed payments as well as the amount of interest borrowers are projected to accrue while in forbearance.
3. Is the Department actively placing student loan borrowers into administrative forbearance?

⁵ Hornsby, T. (2023, October 13). *Servicers are putting perhaps a majority of all borrowers on income based repayment into an administrative forbearance for \$0 a month.*

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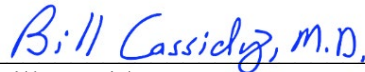
⁶ Ellis, N., Kuhn, C., & Liesendahl, R. (2023, June 2). *The debt deal set a new date for student loan payments to resume.* PBS. <https://www.pbs.org/newshour/politics/student-loan-repayments-will-resume-soon-heres-what-to-know>

⁷ The U.S. Senate Committee on Health, Education, Labor & Pensions. (2023, September 7). *Ranking member Cassidy, chairwoman Foxx seek transparency on Biden’s decision to cancel \$39 billion in student debt.* [Press Release]. <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-chairwoman-foxx-seek-transparency-on-bidens-decision-to-cancel-39-billion-in-student-debt>

- a. For each entry on the list, please include the regulatory authority the Department is using to justify the forbearance and how long on average the forbearance is expected to last.
4. When did the Department decide to shift borrowers into administrative forbearance due to payment miscalculations? Please provide the day and month.
 - a. Why did the Department decide to shift borrowers into administrative forbearance?
 - b. Please provide the name(s) of the administration officials in the decisions.
 - c. How was the decision communicated to servicers?

I look forward to your prompt response.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions