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July 20, 2023

U.S. Department of Education
Office of the Secretary
400 Maryland Avenue SW
Washington, DC 20202

RE: U.S. Department of Education's Intent to Establish a Negotiated Rulemaking Committee (Docket ID ED-2023-OPE-0123)

The National Consumers League ("NCL" or "the League")[1] strongly supports universal student debt cancellation. Via the noticed negotiated rulemaking, NCL urges the U.S. Department of Education ("ED" or "the Department") to implement universal debt cancellation without income eligibility thresholds or other means tests, revise existing relief programs to utilize incremental cancellation, and center the expertise of student borrower advocates on the negotiating committee.

Student Debt in the United States Harms Borrowers' Financial Health and Exacerbates Socioeconomic Inequalities

[1] Founded in 1899, the National Consumers League is the nation's oldest consumer advocacy organization. "About NCL" *National Consumers League.* https://nclnet.org/about-ncl/about-us/

When repayment begins, it is estimated that borrowers will owe between $400[2] and $500[3] on average per month. Prior to the payment pause, 41% of borrowers had at least one delinquency within their first year after graduation and 11% of borrowers defaulted within their first year of repayment.[4] Given these facts, the Department correctly assessed that it must take action to alleviate the student debt crisis.

Educational debt does not affect all borrowers equally.[5] Four years after completing their bachelor's degrees, the average white borrower had paid off 27% of their student loans—5 percentage points more than the average borrower. Conversely, average Pacific Islander, Hispanic, and Native American borrowers paid off less of their debts compared to the national mean at 18%, 16%, and 13%, respectively. Black borrowers fared the worst, with Black graduates being the only demographic to see their debts grow after degree completion. Specifically, the average Black college graduate owed 105% of their original balance four years later.

These trends compound other systemic inequalities as well. Women of color, particularly Black women, typically require more degrees to approach income parity with white men.[6] This disparity worsens Black women graduates' economic health as their debt burden is often greater than their white peers with comparable salaries. Individuals with disabilities also face a similar discrepancy as their earnings remain lesser than their non-disabled peers, even with the same educational attainment.[7] Student debt relief would ease these compounding disparities.

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[2] "Report on the Economic Well-Being of U.S. Households in 2016 – May 2017" *Board of Governors of the Federal Reserve System.* (May 2017). https://www.federalreserve.gov/publications/2017-economic-well-being-of-us-households-in-2016-education-debt-loans.htm

[3] Hanson, Melanie. "Average Student Loan Payment" *Education Data Initiative.* (May 30, 2023) https://educationdata.org/average-student-loan-payment

[4] Hanson, Melanie. "Student Loan Default Rate" *Education Data Initiative.* (January 8, 2022) https://educationdata.org/student-loan-default-rate

[5] "Federal Loan Debt 4 Years After Completion" *National Center for Education Statistics.* (2020) https://nces.ed.gov/fastfacts/display.asp?id=900

[6] Roux, Mathilde. "5 Facts About Black Women in the Labor Force" *U.S. Department of Labor Blog.* (August 3, 2021) https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force

[7] Yin, Shaewitz, and Megra. "An Uneven Playing Field: The Lack of Equal Pay for People With Disabilities" *American Institutes for Research.* (December 2014)

The Department Should Eliminate Federally Held Student Debt Without Means Tests

NCL supported the Department's original plan to cancel student debts broadly by utilizing authority under the Higher Education Relief Opportunities for Students Act of 2003 ("HEROES Act").[8] However, the League has also maintained that ED has numerous options to achieve widespread debt cancellation, including authorities granted by the Higher Education Act of 1965 ("HEA"). NCL urges the Department to utilize the noticed negotiated rulemaking to implement universal debt cancellation.

Specifically, ED should cancel all student debts the Department holds. This cancellation should happen automatically and apply to all borrowers—it should not be contingent on borrower income or any other means test. While the League appreciates the Department's intentions to deliver relief to individuals who need it the most, as it attempted to do with its targeted debt cancellation program under the HEROES Act, such contingencies unintentionally deny aid to the very same persons the Department would seek to assist.

To review borrower eligibility for its first debt cancellation program, the Department required potential beneficiaries to complete an application, with the first wave of debts to be released months after the government opened the application process. As a result, roughly 35% of eligible individuals (14 million borrowers) never applied for debt relief during the nearly month-long period the application was open.[9] These non-applicants likely included borrowers who did not know about the program, did not have the ability to

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https://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf

[8] "National Consumers League applauds President Biden's plan to cancel $10,000 in federal student loan debt to millions of Americans" *National Consumers League.* (August 24, 2022) https://nclnet.org/biden-student-loan-debt/

[9] "FACT SHEET: Biden-Harris Administration Releases New Data Showing 26 Million People in All 50 States Applied or Were Automatically Eligible for One-Time Student Debt Relief" *The White House.* (January 27, 2023) https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/27/fact-sheet-biden-harris-administration-releases-new-data-showing-26-million-people-in-all-50-states-applied-or-were-automatically-eligible-for-one-time-student-debt-relief/

access the application online, or were unable to provide income verification. In many cases, these non-applicants may have benefited the most from the program.

Had ED not placed administrative burdens on its program, debt relief would have gone to 100% of eligible beneficiaries and borrowers would have received tangible cancellation long before partisan actors were able to intervene. To ensure the success of a new program, NCL urges ED to use this rulemaking process to implement automatic, universal debt cancellation without means tests for beneficiaries.

The Department Should Implement Incremental Cancellation for Permanent Forgiveness Plans

Under existing income-driven repayment ("IDR") plans, including the new Saving on A Valuable Education ("SAVE") plan, borrowers have permanent pathways to debt cancellation. However, for much of these programs' existence, cancellation was not achievable. For decades, the Department did not apply qualifying periods of repayment toward borrowers' cancellation thresholds, an issue exacerbated by loan servicers' misconduct and abuses.[10] By 2021, only 32 borrowers had achieved debt cancellation under an IDR plan.

To address the historical failures of these existing pathways to cancellation, the Department has issued fixes and count adjustments to these programs, with the most recent efforts targeted at IDR plans providing loan discharges to more than 804,000 borrowers.[11] NCL applauds ED's actions to ensure that borrowers receive the relief they are entitled to. However, without major changes to the IDR plans' pathways to cancellation,

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[10] "Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt" *National Consumer Law Center* and *Student Borrower Protection Center.* (March 2021) https://www.nclc.org/wp-content/uploads/2022/08/IB_IDR.pdf

[11] "Biden-Harris Administration to Provide 804,000 Borrowers with $39 Billion in Automatic Loan Forgiveness as a Result of Fixes to Income Driven Repayment Plans" *U.S. Department of Education.* (July 14, 2023) https://www.ed.gov/news/press-releases/biden-harris-administration-provide-804000-borrowers-39-billion-automatic-loan-forgiveness-result-fixes-income-driven-repayment-plans

borrowers will be dependent on the Department's continued willingness and ability to accurately count payments and issue fixes as long as these programs exist.

To reduce the risk of jeopardizing cancellation should the Department, loan servicers, or borrowers make administrative mistakes in the future, the League urges ED to revise its IDR plans to deliver debt cancellation incrementally and proportionally to the borrower's time in repayment. For example, under the existing SAVE plan, a borrower with a principal balance of $12,000 could see their loan discharged after 10 years of payments. Under NCL's proposal, that same borrower would see their principal balance reduced by $1,200 each year for 10 years instead.

The current plan's all-or-nothing pathway to cancellation depends on borrowers not making a single mistake for a decade or more, such as failing to recertify their income. With almost 6 in 10 borrowers failing to certify their income by the annual deadline, all-or-nothing cancellation is particularly punishing.[12] Incremental cancellation would reduce the severity of a single mistake by providing regular, tangible relief directly to a borrower's principal balance and reducing the long-term interest burden.

The Department Should Appoint Negotiators Representing Student Borrowers

At the center of the student debt crisis are the 43 million student borrowers themselves. To protect the public interest, NCL urges ED to appoint advocates and experts representing student borrowers to the negotiating committee. Furthermore, the Department should rely on borrower advocates' guidance and expertise throughout the rulemaking process to ensure that federal actions deliver relief to as many borrowers as possible.

While there are many qualified student borrower experts and advocates, the League especially supports the appointment of individuals from the Student Borrower Protection

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[12] "Student loan servicing" *Consumer Financial Protection Bureau.* (September 2015) Pages 31-32. https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf

Center ("SBPC" or "the Center") to the negotiating committee.[13] SBPC employs the nation's leading student debt advocates and legal experts to deliver relief for student borrowers. Across its staff, the Center has decades of regulatory, legal, and research experience that would be invaluable to the Department in this rulemaking.

The National Consumers League appreciates the opportunity to provide input on the U.S. Department of Education's noticed negotiated rulemaking. NCL urges the Department to use this opportunity to implement universal debt relief, improve its permanent cancellation programs, and prioritize borrower advocates' expertise.

Sincerely,

/s/

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[13] *Student Borrower Protection Center.* https://protectborrowers.org/