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September 9, 2022

United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-625

**Re: Responses to Written Questions re: Senate Committee on the Judiciary hearing  
“Student Loan Bankruptcy Reform” Tuesday, August 3, 2021**

Chair Durbin, Ranking Member Grassley, and Members of the Committee,

Thank you for the written questions related to the August 3, 2021 hearing. Below, please find responses. Should you require any additional information, please do not hesitate to contact me at [egonzalez@publiccounsel.org](mailto:egonzalez@publiccounsel.org).

Preliminarily, the proposed changes to the bankruptcy code will simply return the dischargeability of federal student loans to a stricter temporal discharge standard than existed prior to the 1998 changes to the bankruptcy code. Prior to 1998, borrowers were able to discharge their federal student loans in bankruptcy if they could either establish undue hardship *or* prove the loan first became due at least seven years before filing for bankruptcy. (*See* P.L. 95-598, § 523(a)(8), 92 Stat. 2549 (1978); Crime Control Act of 1990, P.L. 101-647, § 3621(2), 104 Stat. 4789 (1990).) The proposed changes will reinstate the temporal discharge option, but extend it to 10 years.

Second, as discussed in my written and oral testimony, bankruptcy is never a debtor’s first choice. Prior to 1998, not every borrower who had been in repayment for seven years filed for bankruptcy. There has been no data supporting the belief that individuals will rush to file bankruptcy if the temporal discharge is reinstated.

Third, we must remember that a Chapter 7 bankruptcy is available only to lower-income individuals. Currently in California, an individual earning more than \$65,895 per year is not eligible to file a Chapter 7 bankruptcy unless they go through extensive means testing. (*See* [https://www.justice.gov/ust/eo/bapcpa/20220515/bci\\_data/median\\_income\\_table.htm](https://www.justice.gov/ust/eo/bapcpa/20220515/bci_data/median_income_table.htm).) For the most part, individuals earning more than the median family income allowed must file a Chapter 13, which requires a plan to repay debts. Indeed, hardworking Americans are the ones forced to file for bankruptcy because of an unexpected loss of income, or because of unexpected medical bills. (*See e.g.*, <https://www.cnbc.com/2019/02/11/this-is-the-real-reason-most-americans-file-for-bankruptcy.html>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1127305/>.)

Turning to the written questions:

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1. My understanding is that the income driven repayment programs (IDR) have a number of issues. What are some easy steps Congress or the Department of Education can take to fill gaps in the IDR programs?

**Response:**

Congress or the Department of Education can take the following steps, including some that the Biden Administration has already taken:

A. Reduce the amount of discretionary income borrowers must pay towards their loans to five percent. This will provide affordable monthly payments to lower-income earners.

B. Guarantee that no borrower earning under 225% of the federal poverty level will be required to make a monthly payment on their student loans. By raising the amount of income that is considered non-discretionary, individuals earning the equivalent of a \$15 per hour minimum wage will be able to meet their basic needs without having to choose between paying rent or defaulting on student loans.

C. For borrowers with loan balances of \$12,000 or less, forgive loan balances after 10 years of payments instead of 20 years.

D. For borrowers who are enrolled in an IDR plan, set interest rates at 0% or cancel the monthly interest. This will allow borrowers to actually make progress towards paying down their loans. It will also protect those borrowers with lower monthly payments from seeing their loan balances grow exponentially.

E. Include all federal student loans in the IDR program, whether or not they are held by the Department of Education, including without limitation, FFEL, Perkins, and Department of Health and Human Services loans.

F. Fully implement the FUTURE Act and allow the Department of Education to automate the process of annually recertifying income and family size for the purpose of remaining in IDR. By allowing the Department of Education to access borrower tax records held by the Internal Revenue Service, one of the biggest obstacles borrowers face to staying enrolled in IDR will be eliminated.

G. Automatically enroll all borrowers on public assistance in an IDR plan with a \$0 monthly payment.

H. Allow all borrowers, including those in default and those with judgments against them, to participate in the IDR program in the same manner as other borrowers. Currently, borrowers in default must rehabilitate their loans to enter into an IDR program. Borrowers who

have been sued on their federal student loans and have a judgment against them are unable to rehabilitate or consolidate their loans, and therefore cannot participate in the IDR program.

2. What do you think about the concept of shortening the time for loan forgiveness under IDR for borrowers under a certain amount but extending it for borrowers with a graduate or professional degree?

**Response:**

The idea that obtaining a graduate or professional degree translates into higher earning potential is no longer true. Many for-profit schools offer graduate degrees that are basically worthless. We currently have a client who holds a graduate degree from a for-profit school. She also holds over \$100,000 in student loans. If anything, this degree decreased her earning potential, as is the case with so many for-profit degrees.

In addition, many professionals obtained a professional degree with the intention of entering into public service. The earning potential for someone working in a non-profit or government agency cannot be compared to someone in the private sector.

Introducing more complexity into the IDR loan forgiveness program will only lead to more confusion and will harm borrowers. The concept of shortening the time for loan forgiveness for *all* borrowers is a good one.

3. Should we require the DOE to automatically place borrowers in IDR programs or the lowest repayment option program instead of the standard repayment option?

**Response:**

There is no standard repayment option in IDR programs. The length of repayment varies from 20 to 25 years depending on the program.

If you are referring to automatically placing borrowers into the IDR plan with the lowest monthly payment, it depends on what other changes the Department of Education or Congress make. Automatically placing borrowers into the IDR plan with the lowest monthly payment without capping interest or reducing the number of years in repayment before loans are forgiven may create a larger burden on borrowers with lower incomes. Without knowing what other changes will apply, I cannot provide more of a response.

4. What do you think about permanently providing zero interest loans to students? Would that make repayment easier and significantly reduce the number of defaults?

**Response:**

This is certainly a good start, but cannot be the only option. A zero interest rate alone will not make repayment easier, nor will it significantly reduce the number of defaults. Because the IDR payment is based on the borrower's income, discretionary income, and loan balance, someone may still be unable to afford a monthly payment under an IDR plan if their loans do not accrue or capitalize interest.

5. What steps should we take to reform the public service loan forgiveness program? Should we consider tightening the eligibility criteria but, in return, reducing the number of years needed for forgiveness?

**Response:**

Tightening the already tight criteria will not help borrowers. What will help is making the changes contained in the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) opportunity permanent. Limiting this opportunity only to those who apply during the year it is available is simply not enough. Servicers have historically put borrowers in repayment plans that do not qualify for PSLF and this will continue.

Allowing all borrowers with FFEL, Perkins, and other federal student loans to participate in PSLF using the TEPSLF eligibility would also greatly assist borrowers. Counting pre-consolidation payments made on Direct Loans and Direct Parent PLUS loans toward PSLF will allow borrowers to benefit from the program and ensure borrowers do not lose years of progress towards forgiveness by consolidating.

Allowing borrowers who were wrongfully steered into forbearance or deferment, or who were the victims of servicer misconduct to get credit for PSLF payments will ensure that borrowers whose path to loan forgiveness was delayed by these actions will get back the time lost.

6. If we took all or some of these measures, would it significantly address the bulk or majority of concerns we are currently seeing in student loan debt and repayment?

**Response:**

Taking some or all of the recommendations I have provided will significantly address a number of the concerns we are currently seeing in student loan debt and repayment.

Major servicing changes are on the horizon, which will likely lead to new concerns. In addition, we are just a few years from the first non-PSLF forgiveness under IDR programs. Currently, such forgiveness will be considered taxable income to borrowers. If Congress does not address this soon, millions of borrowers will be plunged into massive tax debt.

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I appreciate the opportunity to provide you additional information. Please do not hesitate to contact me if you require additional information.

Sincerely,

*EmmaElizabeth Gonzalez*

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