

From: Yael Shavit, Primary Negotiator Representing State Attorneys General; Kyra Taylor, Primary Negotiator Representing Legal Assistance Organizations that Represent Students or Borrowers; Jessica Ranucci, Primary Negotiator for Consumer Advocates; John Whitelaw, Primary Negotiator for Individuals with Disabilities or Groups Representing Them; and Lane Thompson, Primary Negotiator for State Officials
To: U.S. Department of Education
Re: Proposed revision to 34 C.F.R. § 30.80(d)-(e) regarding servicer errors
Date: November 14, 2023

For more than a decade, borrowers, State Attorneys General, consumer protection officials, and advocates have documented widespread mismanagement and abuse by student loan servicers and private collection agencies hired by the Department to administer the student loan system.¹ As has been made clear by recent federal and state actions against student loan servicers, servicing abuses do not just cause immediate financial harm to borrowers, they also undermine borrowers' rights to debt cancellation under the Higher Education Act. As a result, we ask that the Department codify that it may use its waiver authority to provide relief to borrowers whose ability to access loan relief has been compromised due to servicing misconduct.²

Our proposed regulatory language below is consistent with borrowers' bill of rights laws that have been passed by 19 states.³

Proposed Regulatory Text:

§ 30.80 Waiver of Federal student loan debts.

[....]

¹ See *Broken Promises, the Untold Failures of ACS Servicing*, Student Borrower Protection Center (Oct. 2020); *Rewriting the TEACH Grant Rules: Lessons From A History of Mismanagement*, Public Citizen (Dec. 2018); Cory Turner, [How the most affordable student loan program failed low-income borrowers](#), NPR (April 1, 2022); *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); *People v. Navient Corp.*, No. 17CH761 (Ill. Cir. Ct. Cook Cty. Jan. 18, 2017); *People v. Navient Corp.*, No. CGC-18-567732 (Cal. Super. Ct. Nov. 1, 2018); *Mississippi v. Navient Corp.*, No. 25CH1:18-CV-00982 (Miss. Ch. Ct. Hinds Cty. July 17, 2018); *Pennsylvania v. Navient Corp.*, No. 3:17-cv-1814 (M.D. Pa. Jan. 12, 2022); *Commonwealth v. Pa. Higher Educ. Assistance Agency*, 34 Mass. L. Rptr. 616 (Mass. Super. Ct. Mar. 1, 2018); *Berman v. Pa. Higher Educ. Assistance Agency*, 2022 WL 767530 (M.D.N.C. Mar. 14, 2022).

² On November 7th, the Department of Education released [a new framework](#) for servicer accountability that was narrowly focused on FSA's role as administrator of servicing contracts. Our proposal builds on and complements this framework.

³ Specifically, this regulatory language reflects laws passed in California (Ca. Civ. Code. 1788.103(c)), Virginia (Code of Va. § 6.2-2619), and Nevada (added by 2023, Ch. 466, §47, eff. 1/1/2024).

(d) Forgiveness based upon repayment plan. (1) The Secretary may waive the outstanding balance of a loan where the Secretary determines that a borrower is not enrolled in, but otherwise meets the eligibility requirements apart from recertification requirements for forgiveness under—

- (i) An income-based repayment plan under § 682.215 or § 685.221;
- (ii) An income-contingent repayment plan under § 685.209; or
- (iii) An alternative repayment plan under § 685.208(l).

(2) The Secretary may waive up to the outstanding balance of a loan pursuant to paragraph (1) upon a determination by the Secretary that:

(i) an entity awarded a contract by the Secretary under 20 U.S.C. 1087f, or any servicer or guaranty agency for any loan issued under Part B, has engaged in conduct that interferes with one or more borrowers' right to an alternative payment arrangement; loan forgiveness, cancellation, or discharge; or any other financial benefit as established under the terms of a borrower's promissory note or under the Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.), as from time to time amended, and the regulations promulgated thereunder; and

(ii) a borrower does otherwise not meet eligibility requirements for forgiveness specified under paragraph (1).

(e) Targeted forgiveness programs. (1) The Secretary may waive ~~up to the entire~~ outstanding balance of a loan where the Secretary determines that a borrower has not successfully applied for, but otherwise meets the eligibility requirements for—

~~(i) Public Service Loan Forgiveness under § 685.219;~~

~~(ii) Closed School Discharge under § 674.33(g), § 682.402(d), or § 685.214;~~

~~(iii) Borrower Defense to Repayment under part 685, subpart D; or~~

~~(iv) any other~~ loan discharge, cancellation, or forgiveness program under parts 674, 682 or 685.

(2) The Secretary may waive up to the outstanding balance of a loan pursuant to paragraph (1) upon a determination by the Secretary that:

(i) an entity awarded a contract by the Secretary under 20 U.S.C. 1087f, or any servicer or guaranty agency for any loan issued under Part B, has engaged in conduct that interferes with one or more borrowers' right to an alternative payment arrangement; loan forgiveness, cancellation, or discharge; or any other financial benefit as established under the terms of a borrower's promissory note or under the Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.), as from time to time amended, and the regulations promulgated thereunder; and

(ii) a borrower did otherwise not meet eligibility requirements for forgiveness specified under paragraph (1).

(3) For any loan that that meets the criteria of paragraphs (1) or (2) but that has been repaid by a Federal Consolidation Loan or Direct Consolidation Loan that has an outstanding balance, the Secretary may waive the portion of the outstanding balance of the Consolidation Loan attributable to the loan meeting the criteria of paragraph (1).

(4) For any loan that meets the criteria of paragraphs (1) or (2) with respect to unpaid refund discharge under § 685.216 or 685.402(1), the Secretary may waive the portion of the outstanding balance of the loan or Consolidation Loan not to exceed the relief the borrower would be entitled to upon receiving that unpaid refund discharge.

§ 682.403 Waiver of FFEL Program loan debt.

Waivers.

(1) The Secretary may waive the outstanding balance on an FFEL Program loan if the loan would qualify for a waiver under--

(i) 34 CFR 30.80(c);

(ii) 34 CFR 30.80 (d)~~(1)(i)~~; or

(iii) 34 CFR 30.80 (e)~~(1)(ii)~~ and (e)~~(1)(iv)~~.

(2) After determining that a loan qualifies for a waiver under paragraph (a)(1) of this section, the Secretary may direct the lender to submit a claim to the guaranty agency so the loan can be assigned to the Secretary.

(3) After the loan is assigned, the Secretary may waive all or a portion of the loan in accordance with 34 CFR 30.80.

(b) Lender and guaranty agency actions.

(1) If the Secretary determines that a loan qualifies for a waiver under paragraph (a)(1) of this section—

(i) The Secretary notifies the lender that the loan qualifies for a waiver;

(ii) The lender must submit a claim to the guaranty agency, within 60 days of the date the lender received the notification, that includes the following documentation:

(A) An original or a true and exact copy of the promissory note.

(B) The notification described in paragraph (b)(1)(i) of this section.

(2) If the claim meets the requirements of paragraph (b)(1)(ii) of this section, the guaranty agency must pay the claim submitted by the lender.

(3) The Secretary reimburses the guaranty agency for a claim paid to the lender after the agency pays the claim to the lender.

(4) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the claim and receives the reimbursement payment or within 45 days of the date the guaranty agency receives the notification described in paragraph (a)(2) of this section if the guaranty agency is the lender.