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May 16, 2024

U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Notice of Proposed Rulemaking to Amend the Regulations Related to the Higher Education Act of 1965 to Provide For Waiver of Certain Student Loan Debts (Docket No. 2024-07726).

Dear Secretary Cardona:

On behalf of ACA International or the Association,¹ I am writing in response to the Department of Education's ("Department" or "DOE") Notice of Proposed Rulemaking ("NPRM") to amend the regulations related to the Higher Education Act of 1965, as amended ("HEA") to provide for the broad waiver of numerous student loan debts.² ACA International represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people in the United States. Most ACA International member debt collection companies are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women.

I. Background about ACA International:

ACA International members play a critical role in protecting both consumers and lenders. ACA International members work with consumers to resolve consumers' debts, which in turn saves every American household, on average, more than \$700 annually. The accounts receivable management ("ARM") industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost, thereby protecting one of the safety nets of the most vulnerable consumers in society from unplanned expenses. For example, in 2018 the ARM industry returned over \$90 billion to creditors for goods and services they had provided to their customers. And in turn, the

¹ More information about ACA International can be found here: <https://www.acainternational.org/about/>.

² 34 CFR Parts 30 and 682.

ARM industry’s collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers’ quality of life throughout the country.

ACA International members also follow comprehensive compliance policies and high ethical standards to ensure consumers are treated fairly. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA International members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector’s Pledge³ that all consumers are treated with dignity and respect.

II. The NPRM Seeks to Circumvent Established Jurisprudence Regarding the Ability to Establish Loan Forgiveness Programs Under the HEA

The NPRM proposes regulations to provide additional debt forgiveness under the HEA.⁴ Specifically, the proposed regulations “would modify the Department’s existing debt collection regulations to provide greater specificity regarding the Secretary’s discretion to waive Federal student loan debt and specify the Secretary’s authority to waive all or part of any debts owed to the Department based on a number of different circumstances, such as growth in a borrower’s loan balance beyond what was owed upon entering repayment, the amount of time since the loan first entered repayment, whether the borrower meets certain criteria for loan forgiveness or discharge under existing authority, and whether a loan was obtained to attend an institution or program that was subject to secretarial actions, that closed prior to secretarial actions, or was associated with closed Gainful Employment programs with high debt-to-earnings rates or low median earnings.”⁵ The Department proposes to amend subparts A, C, E, and F of 34 CFR part 30 and to add a new subpart G. The Department also proposes to amend part 682 by adding a new § 682.403.⁶

As drafted, and among other things, the proposed revisions would authorize waivers up to the full amount of the outstanding balance for loans being repaid on income-driven repayment (“IDR”) plans, if the borrower’s annual income is equal to or less than \$120,000 (if the borrower files federal tax returns as “single” or “married filing separately”) or \$240,000 (if the borrower’s filing status is “married filing jointly”).⁷ For borrowers not on an IDR repayment plan, the proposal authorizes a waiver of \$20,000. The plan also contemplates full waivers for borrowers who have been making payments for almost twenty years.⁸

The Supreme Court has already made it unequivocally clear that this type of debt forgiveness is prohibited.⁹ When discussing the Department’s previous attempt to exact a similar loan forgiveness program, the Supreme Court noted that “[t]he Secretary’s comprehensive debt cancellation plan cannot fairly be called a waiver—it not only nullifies existing provisions, but augments and expands them dramatically...[h]owever broad the meaning of ‘waive or modify,’ that language cannot authorize the

³ Collectors Pledge states that ACA members: believe every person has worth as an individual; believe every person should be treated with dignity and respect; will make it their responsibility to help consumers find ways to pay their just debts; will be professional and ethical; will commit to honoring this pledge. (<https://www.acainternational.org/about/>).

⁴ 34 CFR Parts 30 and 682.

⁵ See NPRM at Executive Summary.

⁶ *Id.* at Summary of Select Provision of This Regulatory Action.

⁷ 34 CFR Parts 30 and 682.

⁸ *Id.*

⁹ *Biden v. Nebraska*, 143 S. Ct. 2355, 2369, 216 L. Ed. 2d 1063 (2023).

kind of exhaustive rewriting of the statute that has taken place here.”¹⁰ This time, it seems that the Department believes it has positioned itself similar to the scheme designed by Congress in the Higher Education Relief Opportunities for Students Act of 2003 (“HEROES Act”) as discussed *Biden v. Nebraska*. In essence, the Department believes it has opted to make debt forgiveness available only in a few particular circumstances.

In reality, however, the Department has not provided a narrow set of circumstances in which debt forgiveness applies, and has instead (and once again) “abolished [the current provisions under the HEA] and supplanted them with a new regime entirely.”¹¹ For example, the NPRM lists ten (10) far-reaching categories of debt forgiveness planned under the proposed regulations.¹²

1. The full amount by which the current outstanding balance on a loan exceeds the amount owed when the loan entered repayment for loans being repaid on any IDR plan if the borrower's income is at or below \$120,000 if the borrower's filing status is single or married filing separately, \$180,000 if a borrower files as head of household, or \$240,000 if the borrower is married and files a joint Federal tax return or the borrower files as a qualifying surviving spouse (§ 30.81).
2. Up to \$20,000 or the amount by which the current outstanding balance on a borrower's loan exceeds the balance owed upon entering repayment (§ 30.82).
3. The outstanding balance of a loan taken out to pay for the borrower's undergraduate education, or a Federal Consolidation Loan or a Direct Consolidation Loan that only repaid loans received for a borrower's undergraduate education, that first entered repayment on or before July 1, 2005 (§ 30.83).
4. The outstanding balance of loans that first entered repayment on or before July 1, 2000, if the borrower has any loans obtained for study other than undergraduate study (§ 30.83).
5. The outstanding balance of a loan for borrowers who would be otherwise eligible for forgiveness under an IDR plan or an alternative repayment plan but who are not currently enrolled in such a plan (§ 30.84).
6. The outstanding balance of a loan for borrowers determined to be otherwise eligible for loan discharge, cancellation, or forgiveness, but who did not successfully apply (§ 30.85).
7. The outstanding balance of a loan obtained to pay the cost of attending an institution or program where the Secretary or other authorized Department official has issued a final decision, denial of recertification, or determination that terminates or otherwise ends the institution's or program's title IV eligibility due at least in part to the institution's or program's failure to meet required accountability standards based on student outcomes or to its failure to provide sufficient financial value to students (§ 30.86).
8. The outstanding balance of a loan obtained to pay the cost of attending an institution or program that closed and the Secretary or other Department official has determined the institution or

¹⁰ *Id.*

¹¹ *Id.*

¹² See NPRM at Summary of Select Provisions of This Regulatory Action.

program failed, for at least one year, to meet an accountability standard based on student outcomes, or failed to deliver sufficient financial value to students and there was a pending program review, investigation, or other Department action at the time of closure (§ 30.87).

9. The outstanding balance of a loan that is associated with enrollment in a Gainful Employment program that has closed and prior to closure had high debt-to-earnings rates or low median earnings rates (§ 30.88).
10. In the case of Federal Family Education Loan (“FFEL”) Program loans held by a private loan holder or a guaranty agency, the outstanding balance of a FFEL Program loan when a loan first entered into repayment on or before July 1, 2000; when the borrower is otherwise eligible for, but has not successfully applied for, a closed school discharge; or when the borrower attended an institution that lost its title IV eligibility due to a high cohort default rate (“CDR”), if the borrower was included in the cohort whose debt was used to calculate the CDR or rates that were the basis for the institution's loss of eligibility (§ 682.403).

For many of these categories, no application is required, and the Department simply waives all or a portion of the borrower’s repayment obligations.¹³

Despite clear Supreme Court jurisprudence and congressional intent to only provide debt forgiveness in particular *exigent* circumstances, the Department seeks to forgive a sweeping spectrum of student loans owed by borrowers, despite their ability to make payments. This is an obvious circumvention of established precedent. ACA International supports tailored forgiveness programs that address circumstances for consumers who truly are in need and cannot afford to pay their debt. However, the Department’s actions here are another attempt at broad and sweeping efforts, that reward consumers who can afford to pay their debt, while punishing Americans, who have worked to resolve outstanding obligations.

III. The NPRM Fails to Exclude Well-Off Americans Who Can Afford To Make Payments

The Biden Administration, Consumer Financial Protection Bureau, and the DOE have been critical of student loan servicers and have identified student loan debt as an area where consumer contracts that were originally agreed to do not need to be honored. Unfortunately, these broad blanket forgiveness policies the Administration is working to implement are not tailored only to those in need. They include affluent Americans who can afford their student loan bills, which have provided them advantages over others in the workforce. These programs also harm colleges and universities, who in turn will pass costs on to future and current students.

For example, proposed § 30.83 (which would allow debt forgiveness of the outstanding balance of loans that first entered repayment on or before July 1, 2000, if the borrower has any loans obtained for study other than undergraduate study) is extremely broad, and makes no substantial differentiation between those who can and cannot make payments on their student loans. Moreover, for borrowers whose income exceeds the thresholds § 30.81, while they would not receive a waiver under this provision, they “could have the lesser of \$20,000 or the amount by which their balance upon entering repayment exceeds their current outstanding balance waived under § 30.82.”¹⁴ These two examples alone illustrates that the proposed regulations are inequitable and unfounded. Additionally, it sends a

¹³ 34 CFR Parts 30 and 682.

¹⁴ *Id.*

confusing message to current students or young adults that they will not have to pay for college—even if that may not be the case—since there has not been a discussion about prospective forgiveness. Rewarding only a certain percentage of the population, many of whom are not the most in need, simply makes no sense. It also creates a slippery slope for the economy and the credit-based ecosystem.

The abovementioned sentiments are also shared with numerous members of Congress who have been critical of the NPRM and have explicitly disapproved of the Department’s proposed debt forgiveness provisions:

Rep. Virginia Foxx (R-N.C.), Chairwoman of the House Committee on Education and the Workforce, stated “[l]ike clockwork, the Biden administration continues to drag the nation into a debt spiral by forcing hardworking taxpayers — many of whom never stepped foot on a college campus — to foot the bill for this reckless and fiscally irresponsible action,” Your scheme is not steeped in benevolence or goodwill. It is mired in utter contempt for the Supreme Court and every student, family, and hardworking taxpayer in this country.”¹⁵

Sen. Bill Cassidy (R-La.), ranking member of the Senate Health, Education, Labor, and Pensions (“HELP”) Committee, noted that “[t]he Supreme Court already ruled the Biden administration doesn’t have the authority to unilaterally take student debt from those who willingly took it on and transfer it to taxpayers who chose not to go to college or already worked to pay their loans off. Now, the Department of Education is completely rewriting the Higher Education Act piece by piece to resurrect this unconstitutional student loan scheme,” “Where is the relief for the guy who didn’t go to college but is working to pay off the loan on the truck he takes to work? What about the woman who paid off her student loans, but is now struggling to afford her mortgage? Instead, the Biden administration is sticking these Americans with the bill of someone else’s student debt.”¹⁶

It is evident that such all-encompassing student debt forgiveness programs cross the line on what is equitable and fair, especially when many of the people who qualify for such programs can afford to pay their student loan payments.

Furthermore, many of the proposed actions for broad student loan forgiveness ignore structural changes that could be made to the price of college, to the education system in general, and other reforms that would actually address the heart of the problem. However, the focus on eliminating debts in certain portions of the economy, or eliminating the credit reporting system, is not the answer. Neither is blaming the hardworking people that are part of the student loan servicing industry. ACA members that have worked in the student loan servicing area have successfully helped consumers develop income-driven repayment programs that work as well as explain the many options for consumers that truly cannot afford to pay. Discussions with servicers can also in many cases rectify past financial decisions that are not a consumer’s best option.

ACA supports an increased focus on education and financial literacy, particularly for younger people, and all efforts to help consumers better understand early steps they can take to avoid breaching

¹⁵ See <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410448>; <https://www.nasfaa.org/news-item/33437/ED-Releases-Draft-Rules-to-Provide-Student-Debt-Relief-for-Subsets-of-Borrowers>.

¹⁶ See <https://www.nasfaa.org/news-item/33437/ED-Releases-Draft-Rules-to-Provide-Student-Debt-Relief-for-Subsets-of-Borrowers>; <https://www.help.senate.gov/ranking/newsroom/press/ranking-member-cassidy-slams-bidens-backup-student-loan-scheme-shifting-debt-onto-taxpayers>.

contractual financial obligations. However, we disagree with sweeping actions related to student loans that make no distinction for consumers, many who have professional degrees, that simply just do not want to pay.

IV. The Majority of Americans Experiencing Financial Hardship Already Qualify Under Existing Debt Forgiveness Programs

Many of the Americans who are most in need clearly qualify under the existing debt relief programs, rendering the proposed regulations complete unnecessary. To date, the Biden Administration has approved \$146 billion in student debt relief for 4 million Americans through more than two dozen executive actions.¹⁷ That includes revising Public Service Loan Forgiveness and IDR plans, launching the SAVE plan – which cuts undergraduate loan payments in half, drops millions of borrowers’ monthly payments down to \$0, and cancels debt for low-balance borrowers faster.¹⁸

Already, nearly 8 million borrowers have enrolled in the SAVE plan, 4.5 million borrowers have a monthly payment of \$0 under the plan, and an additional 1million borrowers have a monthly payment of less than \$100.¹⁹ The Biden Administration even admits that “if implemented, [the proposed regulations] would provide debt relief to over 30 million Americans when combined with actions the Biden-Harris Administration has already taken to cancel student debt over the past three years.”²⁰

It is unmistakable that the Americans who need debt relief have options to receive it. ACA strongly supports that. However, overbroad efforts do more harm than good as outlined in our comments.

Thank you for your attention and due consideration. Please let me know if you have any questions.



Scott Purcell
Chief Executive Officer
On behalf of ACA International

¹⁷ See <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/08/president-joe-biden-outlines-new-plans-to-deliver-student-debt-relief-to-over-30-million-americans-under-the-biden-harris-administration/#:~:text=The%20plans%2C%20if%20implemented%2C%20would,over%20the%20past%20three%20years.>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*