

February 10, 2022

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

We are writing today to thank the Department of Education for committing to reform its practices on opposing and appealing student loan discharges in bankruptcy court. Our organizations call on the Department to immediately withdraw oppositions to individuals seeking undue hardship discharges in bankruptcy proceedings while these reforms are being implemented.

Last year, Chief Operating Officer Richard Cordray testified before Congress that “[t]he [student debt bankruptcy] process doesn’t work well. It needs to be reformed . . . and we’re committed to doing that.” Recent filings in the *Wolfson v. Department of Education* case suggest that the Department is both moving slowly to implement its commitment and does not have a complete grasp on the cases currently pending.

Although we very much welcome the Department’s reversal in the *Wolfson* matter, the events in that case leave us deeply concerned that the Department is fighting other student loan borrowers seeking a fresh start through bankruptcy. We are similarly concerned with arguments made in court by the Department in recent months, which purport to push the “undue hardship” standard to levels not envisioned by Congress.

Moreover, under your watch, the Department has a demonstrated record of successfully opposing discharge requests, leaving those borrowers simply without any recourse. And even the Department statement that borrowers can request a stay shifts the burden to the *borrower* to “hang tight” while the Department takes its review.

According to a July 2021 essay published in the *Minnesota Law Review*, the Department stands to gain little, if any, from appealing these discharges. “A strongly litigated undue hardship adversary proceeding can cost the debtor as much as \$10,000, and most undue hardship proceedings are estimated to cost the debtor at least \$4,000,” the report states. Not only are these appeals damaging and costly for students and the Department, they also pit the Department against the best interests of borrowers, particularly those who find themselves in financial distress.

Moreover, there are bipartisan legislative efforts currently underway that would provide a clearer path forward for borrowers to have their student loan debt discharged in bankruptcy. Given the obvious appetite for reform — both from Congress and the Biden administration — the Department’s opposition of these student debt discharges appears at odds with greater efforts to enact meaningful reform.

The stubborn commitment to this flawed policy is contrary to the Department's mission of protecting students from fraud and ensuring that higher education is a launching point, not a stumbling block, for students' financial mobility.

We ask the Department to immediately cease its practice of opposing borrowers seeking student loan relief in the bankruptcy process. We also ask the Department to review all positions taken in such cases during your Administration, and work with borrowers to assure a just outcome. The Department's persistent opposition to student borrowers in bankruptcy cases is not the only element of the Department's bankruptcy policy to which we take issue, but withdrawing those oppositions is an immediate actionable step the Department can take to indicate that it is reviewing its bankruptcy policy in good faith, with an eye towards substantial reform.

Through it all, the Department should be a leading voice for students, and should refrain from taking legal positions that raise the bar for distressed borrowers.

Sincerely,

The Revolving Door Project
20/20 Vision DC
Alaska PIRG
American Federation of Teachers
Coalition on Human Needs
Consumer Action
Consumer Federation of California
Debt Collective
NC Climate Justice Collective
New York Women's Foundation
Ohio Student Association
People's Parity Project
Rise, Inc.
SEIU Local 500
Student Defense
The Collaborative
UltraViolet

cc:

Richard Cordray, Chief Operating Officer of Federal Student Aid
James Kvaal, Under Secretary of Education