



STUDENT BORROWER
PROTECTION CENTER

COLLECTIONS CATASTROPHE

New Evidence Exposes Fundamental Failures
of the Federal Government's Student Loan
Collection Machine

December 2022

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Introduction

Advocates have warned for years that the federal government's system for collecting on defaulted federal student loan borrowers is predatory both by design and implementation.¹ Leveraging unparalleled powers including the ability to garnish borrowers' wages, offset Social Security checks, and seize badly-needed benefits such as Child Tax Credit payments—all without a court order—the U.S. Department of Education (ED) has cemented its position as one of the most aggressive debt collectors in the nation.²

Worse yet, a growing pile of evidence establishes that this collection machinery has spun beyond ED's ability to manage it, let alone ensure that it follows the law. The result is widespread harm that lands hardest on low-income borrowers, and on Black and Latino communities.³

The sorry state of federal student loan debt collection was thrust into the spotlight during the COVID-19 pandemic, when far-reaching government failures denied hundreds of thousands of borrowers access to critical relief.⁴ Following passage of the CARES Act in March 2020, Congress required ED to stop using collection techniques, including wage garnishment. However, subsequent court filings⁵ and investigations⁶ show that ED and its contractors were unable to do so, and that borrowers instead continued to struggle under the weight of a broken student loan system.

This report brings to light new evidence showing how the student loan system's failures during COVID-19—under both Secretary DeVos and Secretary Cardona—were far more profound than previously known.

In particular, documents uncovered through the Freedom of Information Act reveal that:

- **ED continued to illegally garnish borrowers for nearly a year longer than previously reported, all while grasping unsuccessfully for a way to rein in the debt collection system.** ED's Inspector General reported in June 2021 that ED's Office of Federal Student Aid (FSA) was still garnishing 1,930 borrowers as late as October 23, 2020. It is now clear that garnishments continued at least through August 2021, with hundreds of borrowers having tens of thousands of dollars illegally removed from their paychecks in the intervening months. Underlying this failure, new documents show how ED scrambled in vain to tame the debt collection system and stop runaway garnishments. Attempts included resorting to searching on Google (often unsuccessfully)

to fill glaring holes in its databases of borrower and employer contact information, and cold calling employers to leave voicemails requesting that they halt garnishments. ED's chaotic response did not fully stomp out illegal wage garnishment, and ED appears in some cases to have simply given up trying to locate borrowers' employers.

- **ED's internal records reveal inconsistencies with representations it made in public and to courts regarding wage garnishment, raising troubling questions about its ability to control this collection tool.** During the first year of the pandemic, borrowers who were being illegally garnished filed a class action lawsuit against ED to enjoin the practice. As part of that lawsuit, ED provided bi-weekly reports to the US District Court for the District of Columbia from May 2020 to January 2021 detailing its progress in ending the illegal garnishments. But it appears there are several key discrepancies between the representations ED made in reports to the court and internal records documenting ED's progress stopping garnishments. These gaps raise the question of whether ED reliably and comprehensively understood the extent of ongoing collections during COVID-19.
- **Borrowers looked unsuccessfully to ED for help, relaying harrowing narratives of illegal garnishments' devastating effects and the difficulty they faced trying to get assistance from their servicers.** Hundreds of never-before-seen complaints to ED from borrowers who continued facing garnishments during COVID-19 illustrate the depth of the student loan industry's failure to deliver borrowers quality customer service when they needed it most, and the massive personal and financial hardship that these collections imposed.
- **ED chose not to shield expanded COVID-19 related unemployment checks from student loan repayment, ushering possibly tens of thousands of borrowers into default.** ED explicitly noted in an internal memorandum that it had the power to exempt borrowers' \$600 expanded unemployment insurance checks from being counted as income for the purposes of student loan monthly payment calculations, but internal documents reveal that it specifically chose to forgo using this authority. ED's decision likely led thousands of borrowers to default on their student loans during the pandemic.

In April 2022, as part of an extension of the pandemic-related federal student loan payment pause, ED announced that it intends to bring roughly 7.5 million federal student loan borrowers out of default through

an administrative action called “Fresh Start.”⁷ While this is an important first step that will help many borrowers access pathways back into repayment, it does nothing to fix the underlying problems with ED’s debt collection system.⁸

And those problems are substantial. The findings of abusive failure outlined here pertain to Congressionally mandated relief in the context of COVID-19, but these breakdowns are not limited to pandemic-related disaster response. Instead, the situation that defaulted borrowers faced during COVID-19 is emblematic of the central, existential flaw in the administration of wage garnishment: once started, ED cannot guarantee that wage garnishment will stop, even when required by law.

ED is not legally required to garnish borrowers’ wages to recoup defaulted debt. Borrowers have a right not to be subjected to illegal and financially devastating abuse when they fall into default—and nobody deserves to be at the mercy of a broken system that ED cannot control. Accordingly, ED should not restart the use of administrative wage garnishment when payments resume.

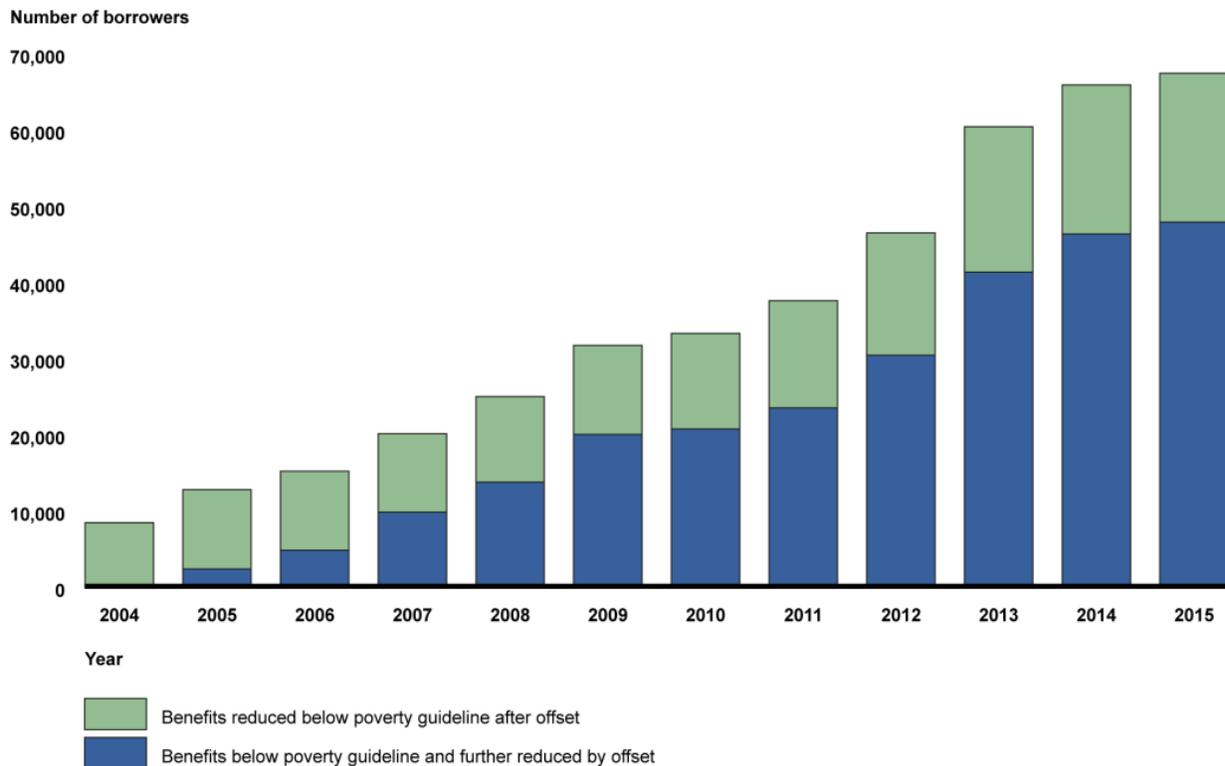
It is long past due for ED to rein in its runaway debt collection machinery.

Background: Administrative Wage Garnishment and COVID-19

Borrowers who fall more than 270 days behind on their federal student loan payments are considered to be in default, making them subject to a host of draconian debt collection measures carried out by ED and its contractors.⁹ Many of these borrowers are in dire economic straits long before they default, and a disproportionate share of them are Black and Latino borrowers and borrowers who attended for-profit colleges.¹⁰ Having sought a better life through higher education, these borrowers now face extraordinary debt collection tactics including the seizure of wages, federal benefits like Social Security, and tax refunds—even anti-poverty tax credits such as the Child Tax Credit and Earned Income Tax Credit.¹¹

The devastating effect these penalties have on the most economically vulnerable cannot be overstated. Having a student loan in default can make it difficult for struggling borrowers to qualify for housing or to find the employment necessary to reenter repayment and bring their loan back into good standing.¹² The consequences of default are particularly ruinous for borrowers with fixed incomes, including the elderly and disabled, who often find themselves falling below the federal poverty line when ED skims off the top of their Social Security benefits to recoup defaulted student loans.¹³ In 2016, for example, the Government Accountability Office found that the offset of Social Security benefits due to defaulted student loans pushed tens of thousands of seniors into or further into poverty from 2001 to 2015.¹⁴

Figure 1: GAO data show tens of thousands of seniors on fixed incomes are pushed into or further into poverty by Social Security offsets.¹⁵



The Higher Education Act and the Debt Collection Improvement Act (DCIA) authorize—but do not require—ED to collect on defaulted federal student loans by extrajudicially taking money out of borrowers' wages, a measure referred to as administrative wage garnishment (AWG).¹⁶ To implement AWG, ED must first provide the defaulted borrower with notice of the proposed garnishment.¹⁷ If the borrower does not request a hearing within thirty days of the notice's mailing, ED will issue a garnishment order directly to the borrower's employer.¹⁸ ED can then order the employer to withhold up to 15 percent of the defaulted borrower's disposable income during each pay period until the student loan is repaid in full, including interest, penalties, and substantial collections costs.¹⁹

Despite having the legal right to do so, few borrowers in jeopardy of wage garnishment actually request a hearing in response to notice that their defaulted loans have been designated for collection.²⁰ As such, most employed borrowers who fall into default find themselves trapped in the wage garnishment scheme with no recourse.²¹

ED outsources the operations of this powerful machinery to a private contractor, Maximus Federal Services, Inc. (Maximus), which has been criticized for its treatment of student loan borrowers.²² Maximus is at the heart of the operations of the AWG system, handling everything from designating borrowers for garnishment in the servicing platform used to manage defaulted borrowers to notifying borrowers of the proposed garnishment and drafting responses to borrowers' requests for hearings.²³

The number of federal student loan borrowers who are subject to this debt collection system is staggering. There are currently 8.2 million borrowers in default on a federal student loan.²⁴ In the last year before the COVID-19 pandemic, 1.2 million borrowers defaulted, a rate that is equivalent to a borrower defaulting on a federal student loan every 26 seconds.²⁵

Moreover, while default leads borrowers to become prey to debt collectors and to face devastating consequences across their financial and personal lives, there have long been clear signals that ED does not meaningfully control its own debt collection system.²⁶ An early example is ED's filings in *Calvillo Manriquez v. Cardona* (then DeVos), a federal class action lawsuit brought by borrowers defrauded by the for-profit college chain Corinthian Colleges.²⁷ These borrowers were entitled to have all collections on their loans ceased while ED processed their applications for Borrower Defense to Repayment, a protection for defrauded students.²⁸ Nevertheless, ED continued to use involuntary collection actions, such as AWG, to collect on their loans. Even after the *Calvillo Manriquez* court ordered ED to cease collections against those borrowers, ED admitted that its contractors had continued collections despite the court order.²⁹ Secretary DeVos was ultimately held in contempt for these failures.³⁰

ED was, once again, unable to comply with law, leaving hundreds of thousands of borrowers to face illegal garnishments at the start of the pandemic.

When COVID-19 arrived in 2020, roughly 9.5 million federal student loan borrowers were in default.³¹ Recognizing that the pandemic could worsen conditions for defaulted borrowers, Congress took action. Through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act), Congress directed ED to pause payment obligations, interest charges, and collections efforts—including AWG—on student loans for tens of millions of federal student loan borrowers.³²

But ED was, once again, unable to comply with law, leaving hundreds of thousands of borrowers to face illegal garnishments at the start of the pandemic. In June 2021, ED's Office of the Inspector General (OIG) reported that 392,600 defaulted student loan borrowers were subject to more than one million instances of illegal garnishments between March and September 2020, with the total amount taken out of these borrowers' paychecks at the height of COVID-19 amounting to more than \$582 million.³³ The OIG noted that these garnishments continued for 1,930 defaulted borrowers as late as October 23, 2020, more than seven months after the CARES Act required them to cease.³⁴

Barber v. DeVos, a federal class action lawsuit regarding ED's failure to stop garnishing wages as required by the CARES Act, highlighted the human cost of ED's misconduct.³⁵ Named plaintiff Elizabeth Barber, a home health aide earning \$12.89 per hour, remained subject to ED's garnishments for nearly two months after the CARES Act made the garnishment illegal, compounding pressures sparked by a COVID-19 related decrease in her work hours.³⁶ Ms. Barber was already financially strained before the pandemic, and stated in her complaint that she often had to leave bills unpaid in order to cover her basic needs. She had no money in her checking or savings accounts, was in arrears on various local taxes, and was subject to a lien on her home. She was also past due on both her water and electric bills, which she could not afford to pay in full each month.³⁷ ED's illegal garnishments further diminished her ability to secure basic necessities.³⁸

Similarly, guaranty agencies, the student loan companies responsible for servicing privately held Federal Family Education Loan Program (FFELP) loans, garnished more than \$3.9 million in wages from defaulted borrowers in June 2021 alone—three months after borrowers in default on privately held FFELP loans were offered protection from garnishments.³⁹ These companies had also neglected to refund more than \$37 million in garnished wages as required by ED by mid-2021.⁴⁰

Unfortunately, new evidence shows that ED and its agents' failure to protect the most vulnerable student loan borrowers was even more profound than has already come to light.

Findings: AWG is More Broken than Previously Understood

Following *Barber* and the June 2021 OIG report, advocates have continued to investigate ED's implementation of the CARES Act. In July 2021, the National Student Legal Defense Network (Student Defense) submitted a Freedom of Information Act (FOIA) request to ED seeking internal and external AWG communications between ED and private third parties, records of borrower complaints concerning garnishment, and more.⁴¹

ED refused to release responsive records within the timeframe required by FOIA, leading Student Defense to sue to compel a response. Spurred by the litigation, in late 2021 ED released roughly 2,000 pages of reports, communications, and other records concerning its management of the AWG program during COVID-19.⁴²

An examination by the Student Borrower Protection Center (SBPC) of the released records (FOIA Release) reveals that ED appears powerless to implement protections for defaulted borrowers as required by law. This problem is not political; the records reflect that the issues with AWG are systemic.

In particular, the FOIA Release establishes that ED struggled to end illegal garnishments for far longer and in much more profound ways than previously known. The depth of these difficulties appears to extend beyond the situation relayed to the *Barber* court, raising troubling questions about ED's understanding and monitoring of its own debt collection system. Further, the FOIA Release shows that ED played a more instrumental role than previously known in ushering borrowers into default. Finally, borrower narratives submitted to ED and made public for the first time here illustrate the devastating personal and financial consequences that ED and the student loan system's failure imposed on borrowers.

Specific findings by SBPC from the FOIA Release include the following:

- I. ED continued to illegally garnish borrowers for nearly a year longer than previously reported, all while grasping unsuccessfully for a way to rein in the debt collection system.**

As mentioned above, ED’s OIG reported in July 2021 that ED was garnishing wages from 1,930 borrowers as late as October 23, 2020, roughly seven months after the practice became illegal.⁴³

But this was not the end. Instead, the FOIA Release establishes that ED continued improper garnishments through *at least* August 2021—almost 18 months after passage of the CARES Act —with hundreds of borrowers having tens of thousands of dollars unlawfully taken from paychecks long after the period covered in the OIG’s report.⁴⁴ It is not clear that the situation has changed.

Exhibit A highlights records on illegal garnishments that were included in the FOIA Release. These records provide quantitative detail on the garnishments that took place over two periods: first, from the start of the payment pause until the reopening of the AWG lockbox, and second, from the reopening of the AWG lockbox until the end of the period covered in Student Defense’s FOIA request. As discussed below, the “lockbox” is a physical mailbox that employers send garnishment checks to when administering AWG. ED took the drastic step of closing this lockbox from October 2020 to May 2021 in an effort to stop the flow of garnishments. ED eventually reversed the lockbox’s closure after realizing that employers were still attempting to send in garnishment checks months after the CARES Act made these collections illegal.

Exhibit A: Hundreds of thousands of borrowers had millions of dollars improperly taken out of their paychecks during COVID-19—and garnishment continued even after the AWG lockbox was closed.⁴⁵

Garnishments continued after they were meant to stop in March 2020. . .

AWG Payment Summary			
Timeframe	Number of Payments	Total Dollar Amount	Average Payment Amount
March 13 - 27, 2020	318,171	\$ 106,818,408.03	\$ 335.73
April 3 - 24, 2020	258,341	\$ 89,788,423.06	\$ 347.56
May 1 - 29, 2020	104,908	\$ 28,863,945.63	\$ 275.14
June 5 - 26, 2020	17,234	\$ 3,632,623.72	\$ 210.78
July 3 - 31, 2020	16,638	\$ 3,008,032.82	\$
August 7 - 28, 2020	8,648	\$ 1,741,450.73	\$
September 4 - 25, 2020	4,069	\$ 698,052.83	\$
October 2 - 30, 2020	3,813	\$ 656,196.71	\$
November 6 - 27, 2020*	103	\$ 16,819.26	\$
December 4 - 25, 2020*	96	\$ 20,000.29	\$
January 1 - 29, 2021*	98	\$ 13,035.21	\$
February 5 - 26, 2021*	32	\$ 6,420.09	\$
March 5 - 26, 2021*	9	\$ 782.29	\$
April 2 - 30, 2021*	5	\$ 481.41	\$ 96.28
May 7 - 28, 2021*	1	\$ 23.50	\$ 23.50
Total	732,167	\$ 235,264,695.58	\$ 321.33

And they persisted even after ED closed the Administrative Wage Garnishment “lockbox.”

Summary of payments received in the AWG Lockbox from 5/31/21 – 8/27/2021:

Type of Payment Received	Number of Payments Received	Amount Received	Number of Employers	Number of Borrowers
AWG Payments	186	\$30,311.75	60	70
Non-AWG Payments	18	\$120,523.41		
Total	204	\$150,835.16	60	70

Summing records from before and after the lockbox's closure, Exhibit A cumulatively shows that borrowers had more than \$87,000 taken out of their paychecks through AWG after October 2020, the point where the OIG report left off.

These illegal garnishments persisted during COVID-19 despite heightened efforts by ED to contact employers who continued to improperly administer AWG. The FOIA Release shows that ED's outreach efforts were stymied by an array of breakdowns, including that ED's databases of borrower and employer contact information were riddled with glaring gaps⁴⁶ and that ED's tools for contacting those employers for whom it did have phone numbers, email addresses, or mailing addresses were frequently ineffective.⁴⁷ Worse, the FOIA Release shows that ED's reaction to these pitfalls was haphazard and ad-hoc, with ED and Maximus eventually resorting to searching online for employers' public-facing phone numbers and leaving cold voicemail messages that they knew regularly failed to reach company management.⁴⁸ In some cases, ED and Maximus appear to have simply given up trying to contact garnishing employers.⁴⁹

In some cases, ED and Maximus appear to have simply given up trying to contact garnishing employers.

A timeline of ED's efforts to end illegal wage garnishments during COVID-19 by closing the AWG lockbox and by reaching out to offending employers, as revealed by the FOIA Release, includes the following:

- Noting that it had not succeeded in stopping garnishments as required by the CARES Act, ED staff recommended on October 19, 2020 that leadership at ED's FSA "instruct [the Department of the] Treasury [(“Treasury”)] to temporarily close the AWG lock box," the physical mailing box that garnishments are sent to, "effective November 1, 2020" and lasting for as long as the payment pause.⁵⁰ Illustrating what ED hoped to accomplish with this closure, a letter that ED prepared to send to employers regarding this action reads, "Any payments received after [November 1] will be returned to you, unopened, by the U.S. Postal Service. Upon receipt of this returned mail, you should promptly restore the garnished funds to the employee."⁵¹ Note that even if a check were not accepted by ED, the amount of the garnishment would have already been taken out of the employee's paycheck.
- On October 28, 2020, ED reported to Maximus that 2,400 federal student loan borrowers (roughly

500 more than those that OIG identified as still facing garnishments as of five days prior) were still being garnished by 1,700 employers.⁵²

- On October 30, 2020, ED closed the AWG lockbox. Only one week later, on November 6, 2020, ED reported to Maximus that employers **appeared to still be garnishing borrowers' wages**, as AWG checks with the wrong address had continued arriving in a separate ED lockbox designated to receive voluntary student loan payments.⁵³ Curiously, Maximus later reported to ED in December 2020 that garnishments had fully ceased after the AWG lockbox was closed.⁵⁴
- On December 21, 2020 Maximus sent ED a "CARES Act Stop Wage Garnishment Weekly Report" (hereafter "the December 2020 Garnishment Report"). That report contained the following revelations, compiled in Exhibit B:
 - As of April 2020, more than **18,000 employers** that had improperly collected on more than **47,000 borrowers** did not have a valid mailing address on file with ED.⁵⁵
 - ED had maintained a steady pace of weekly outreach to employers who continued garnishing throughout the summer and fall of 2020, but **69 to 87 percent** of the employers that ED attempted to contact each week did not ultimately have a valid address.⁵⁶
 - Even when ED did have contact information for employers, its efforts to halt garnishment floundered, with only **12 percent** of **more than 60,000** outreach attempts to employers from July 2020 through October 2020 leading to confirmation that garnishments would stop.⁵⁷

Exhibit B: Maximus reveals that ED lacked contact data for tens of thousands of borrowers' employers, and that it failed to reach employers even when it had their information.

Status of Address Validity			
Date	Address Status	Count	%
7/20/2020	Valid	2,506	13%
	Invalid	16,317	87%
	Total	18,823	100%
7/25/2020	Valid	3,378	18%
	Invalid	15,445	82%
	Total	18,823	100%
8/1/2020	Valid	4,083	22%
	Invalid	14,740	78%
	Total	18,823	100%
8/8/2020	Valid	4,477	24%
	Invalid	14,346	76%
	Total	18,823	100%
8/15/2020	Valid	4,753	25%
	Invalid	14,070	75%
	Total	18,823	100%
8/22/2020	Valid	4,982	26%
	Invalid	13,841	74%
	Total	18,823	100%
8/29/2020	Valid	5,113	27%
	Invalid	13,710	73%
	Total	18,823	100%
9/5/2020	Valid	5,256	28%
	Invalid	13,567	72%
	Total	18,823	100%
9/12/2020	Valid	5,356	28%
	Invalid	13,467	72%
	Total	18,823	100%
9/19/2020	Valid	5,400	29%
	Invalid	13,423	71%
	Total	18,823	100%
9/26/2020	Valid	5,544	29%
	Invalid	13,279	71%
	Total	18,823	100%
10/3/2020	Valid	5,647	30%
	Invalid	13,176	70%
	Total	18,823	100%
10/10/2020	Valid	5,717	30%
	Invalid	13,106	70%
	Total	18,823	100%
10/17/2020	Valid	5,776	31%
	Invalid	13,047	69%
	Total	18,823	100%
10/24/2020	Valid	5,824	31%
	Invalid	12,999	69%
	Total	18,823	100%

ED knew that the vast majority of addresses it sent letters to each week were "invalid."

As of 4/23 all Employers have been notified.		
Address Status	New Employer Count	Percent
Valid (all mailed as of 4/20)	203,980	91.0%
Contacted via telephone prior to 4/20	2,000	0.9%
Not Validated but mailed non PII letter on 4/23	18,219	8.1%
Total	224,199	100.0%

As 4/23 of AWG the employers of all AWG borrowers have been contacted

AWG Groupings	Borrower Count	%	Comment
Total AWG Borrowers	917,677	100%	# of borrowers on AWG, Requested to Start or Received an AWG payment in 2020
Employer Stop Garnishment Letters – Borrower Count	441,520	48%	# of borrowers from the 204K Employer Letter population
Employer Contacted – Borrower Count	429,069	47%	No Additional Action at this time
Employers w/Invalid Address – Borrower Count	47,088	5%	# of borrowers from the 18K Employers with an Invalid Address to be mailed on 4/23/20.
Total	917,677	100%	

ED reported that "the employers of all AWG borrowers have been contacted"—even when it knew that the employers for more than 47,000 borrowers had "Invalid" addresses.

Resume Employer Outreach to ALL Non-Compliant Employers			
Week	Employer Outreach Attempts	Employers Confirmed Stopped Garnishment	% Confirmed Stopped
7/20 - 7/25	3,552	336	9.46%
7/27 - 8/1	4,486	675	15.05%
8/3 - 8/8	5,524	868	15.71%
8/10 - 8/15	5,787	844	14.58%
8/17 - 8/22	5,919	737	12.45%
8/24 - 8/29	5,680	678	11.94%
8/31 - 9/4	5,505	611	11.10%
9/8 - 9/11	4,109	336	8.18%
9/14 - 9/18	4,192	384	9.16%
9/21 - 9/25	3,064	347	11.33%
9/28 - 10/2	3,059	305	9.97%
10/5 - 10/9	2,960	317	10.71%
10/13 - 10/16	2,283	258	11.30%
10/19 - 10/23	2,441	291	11.92%
10/26 - 10/30	1,834	212	11.56%
11/2 - 11/6	0	0	0.00%
Total	60,395	7,199	11.92%

Even when ED did contact garnishing employers, it could confirm they would halt collections in fewer than one-in-eight cases.

- On February 2, 2021, ED emailed Maximus to officially raise concerns that garnishments had not stopped despite the lockbox being closed, noting reports that “there continue to be a number of AWG payments that come into the voluntary lockbox . . . of which your staff has identified dating back to November”⁵⁸

Exhibit C: Even with the AWG lockbox closed, ED knew borrowers were still getting garnished.⁵⁹

From: Tyrrell, Pete <Pete.Tyrrell@ed.gov>
Date: Tuesday, February 2, 2021 at 10:33 AM
To: Santos, Bob F <RobertSantos@maximus.com>
Cc: Szathmary, Michael <Michael.Szathmary@ed.gov>, Mark.Wise@ed.gov <Mark.Wise@ed.gov>, Bryant, Michael <Michael.Bryant@ed.gov>
Subject: [EXTERNAL] AWG Payments into the Voluntary Payment Lockbox

Bob –

According to reporting, there continue to be a number of AWG payments that come into the voluntary lockbox.....of which your staff has identified dating back to November I believe.

Can you please have your staff identify these particular employers and provide us with a list that includes what actions have been take with those particular employers (in reaction to payments coming into the voluntary lockbox). That list should also include the address and phone number (if available).

(b)(5)

Please make this a priority – and let me know if you'd like have a quick call to talk through and we can do that.

Thanks.

- On February 12, 2021, noting the continued difficulty it faced while trying to identify contact information for employers that were still garnishing, ED staff revealed in emails that they had “**literally googled**” at least one employer’s information and noted that Maximus staff had apparently taken “the same approach. . . .”⁶⁰ This strategy proved successful in leading to contact with an employer in at least one instance, but it is not clear whether its success was widespread.⁶¹
- On February 17, 2021, Maximus indicated that it was **preparing to give up** attempting to contact certain borrowers who had been garnished since November 2020 or earlier, stating, “We have a plan to call the borrowers over the next two week’s [sic] to see if they can get the employers to stop. After

that we will be ready to say we have done what we can.”⁶²

Exhibit D: Maximus appears to have been ready to give up attempting to contact certain borrowers.⁶³

From: Smith, Karen M <KarenMSmith@maximus.com>
Sent: Wednesday, February 17, 2021 11:18 AM
To: Tyrrell, Pete <Pete.Tyrrell@ed.gov>
Cc: Santos, Bob F <RobertSantos@maximus.com>
Subject: RE: Employers Sending AWG Payments to Voluntary Lockbox

We have a plan to call the borrowers over the next two week’s to see if they can get the employers to stop. After that we will be ready to say we have done what we can.

Thank you,

Karen M Smith
Senior Director Business and Financial Operations
Debt Management and Collections System (DMCS)

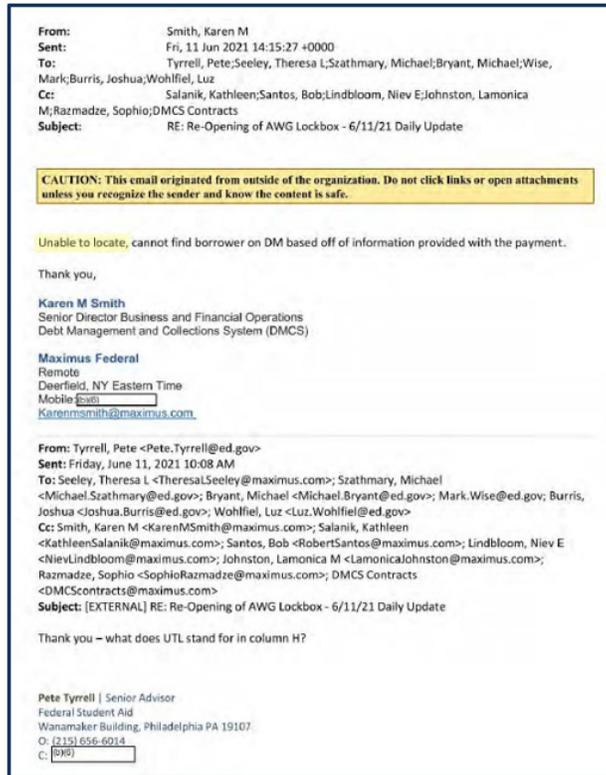
Maximus Federal
5202 Presidents Court
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Mobile: (b)(6)
Karenmsmith@maximus.com

- Scrambling to address the continuing garnishments, ED emailed Treasury on May 13, 2021 to request a “temporary 6-week re-opening” of the AWG lockbox from “5/31/21 through 7/9/21.”⁶⁴ ED staff explained that “Ideally, we would see no AWGs coming in” during that time, but that “opening the lockbox temporarily will give us some visibility into which employers may remain non-compliant with the CARES Act (if any).”⁶⁵
- On May 31, 2021 the AWG lockbox reopened. Data included within the FOIA Release shows that from October 2020 through May 28 2021, the period during which the AWG lockbox was closed, borrowers had **\$57,562.05** taken in improper garnishments.⁶⁶
- ED began receiving improper AWG payments through the reopened AWG lockbox as soon as June 4, 2021, **only four days** after its reopening.⁶⁷ ED would continue to receive garnished wages

throughout the summer of 2021, including from employers that had **previously confirmed** they would stop the practice.⁶⁸

- On June 11, 2021, Maximus emailed ED to explain that it was “unable to locate” so many borrowers that it had developed a special reporting code, “UTL,” for its weekly reports to ED on ongoing garnishments.⁶⁹

Exhibit E: ED was “unable to locate” so many garnished borrowers that Maximus developed a special reporting code for these borrowers for its weekly reports to ED.⁷⁰



- On June 28, 2021, Maximus sent ED a report revealing that employers who were still garnishing had already been contacted as many as 50 or more times by October 2020.⁷¹

Exhibit F: Employers who were still garnishing borrowers at the end of October 2020 had been contacted as many as 50 or more times.⁷²

Employer	# of Borrowers Receiving Garnishment	Confirmed Stopped Garnishment	Confirmed Stopped (Date)	Employer Outreach Attempts (includes phone calls and emails)	Voice Message Left	Made Contact and Spoke to Representative
7ELEVEN	64	No		56	Yes	Yes
PARKER HANNIFIN	53	No		10	Yes	No
COMMUNICATIONS TEST DESIGN	42	No		4	No	No
GOODWILL	31	No		50	Yes	Yes
HYATT	28	No		53	Yes	Yes
HEARTHSTONE FOOD SOLUTIONS	28	No		6	Yes	Yes
LOEWS HOTELS	19	No		11	Yes	Yes
WASTE MANAGEMENT	18	No		5	Yes	No
MAVERIK COUNTRY STORES	15	No		6	Yes	No
TACO BELL	13	No		35	Yes	Yes
THE PARADISE SHOPS	12	No		22	Yes	No
EXETER FINANCE	11	No		8	Yes	No
GLAXOSMITHKLINE	11	No		2	Yes	No
BURBERRY	9	No		31	Yes	Yes

- On July 8, 2021, ED asked Treasury to keep the lockbox open through August 31, 2021.⁷³
- On July 26, 2021, Maximus reported to ED on garnishments from July 19 to July 23, 2021. Illustrating the situation on the ground, that report included the following:
 - Maximus noted that it was **entirely “unable to identify one borrower”** who had been garnished and had not received a reply from the garnished borrower’s employer.⁷⁴
 - Maximus indicated it had “[l]eft **multiple voicemails** with payroll for two employers,” but had not gotten a response while wages continued to be garnished from workers’ paychecks.⁷⁵
- On August 25, 2022, an ED employee said in an email that some borrowers appeared to have had wages garnished only because of COVID-19 related employment disruption, noting “it looks like garnishment is commencing when employees who got laid off because of COVID-19 return to work.”⁷⁶ Though this was clearly not the only reason that borrowers faced garnishments, the ED staff member’s observation is echoed in borrower narratives describing instances of garnishment commencing after the borrower was “rehired” later in the pandemic.⁷⁷

- On August 27, 2021, ED requested that Treasury keep the AWG lockbox open “indefinitely.”⁷⁸
- On August 30, 2021, Maximus reported to ED on garnishments from August 23 to August 27, 2021. That report included the following:
 - Of a group of 11 companies that had sent garnishment through the same payroll company, only four confirmed they would stop garnishing.⁷⁹
 - For five of these companies, Maximus could only leave a voicemail that it would have to hope these employers would eventually find, and for two of the companies Maximus could not even leave a voicemail.⁸⁰ It is not clear whether Maximus had a systematic strategy to address instances where it could not leave a voicemail with an employer.

By the end of the period covered in the FOIA Release, dozens of borrowers were still facing garnishments each week, and ED was still scrambling to end these collections.⁸¹

Some borrowers appeared to have had wages garnished only because of COVID-19 related employment disruption.

The FOIA Release does not explain why ED believed that closing the lockbox would lead employers, who had not previously ceased the practice, to suddenly stop garnishing wages. When an employer mails a garnishment check to ED, the money has already been taken from the employee’s paycheck. Closing the lockbox would only return that money to the employer, not the employee. Given that these employers had already failed to stop the initial withholding, it is unlikely that the funds would have been returned to the employee—a fact that ED seemingly did not track. Moreover, because ED did not track any of the mail that it returned to sender as a result of the closed lockbox, it is unknown how many employers ultimately withheld money that was neither returned nor attributed to the borrower’s account.

The FOIA Release reveals how years of poor recordkeeping and reliance on ineffective outreach tools contributed to ED’s inability to protect defaulted student loan borrowers from illegal collections during the pandemic.

II. ED's internal records reveal inconsistencies with representations it made in public and to courts regarding AWG, raising troubling questions about its ability to control this collection tool.

In June 2020, after receiving initial reports from ED regarding its efforts to cease garnishment, the *Barber* court ordered ED to submit bi-weekly status reports describing: "(1) the percentage of borrowers whose wages are being garnished; (2) the percentage of refunds issued; (3) the means the Department [of Education] is using to contact employers continuing to garnish wages; (4) how many borrowers do not have a valid address on file; and (5) a description of the Department's attempts to reach them."⁸² In total, ED filed nineteen status reports from May 2020 through January 2021.

Compared to the documents that ED provided to the court in *Barber*, the FOIA Release depicts a very different situation regarding what went on as ED attempted to end illegal collections during COVID-19.

Notable discrepancies between the *Barber* records and the FOIA Release include at least the following:⁸³

- **ED's internal estimate of the number of employers that had continued wage garnishment during COVID-19 was far greater than the number it reported to the *Barber* court.** In an internal memo uncovered through the FOIA Release dated October 19, 2020—seven months after garnishments became illegal—ED staff noted that "[d]espite outreach efforts, at least **1,000** employers were still garnishing defaulted borrowers' wages. . . ."⁸⁴ By contrast, on October 19, 2020, the *same day* as the date on ED's internal October 2020 memo, ED submitted a status report to the *Barber* court stating: "[f]or the week ending October 15, 2020, the Department received payments from garnishment by approximately **509** employers . . ."⁸⁵ Similarly, in a status report for the *Barber* court dated to June 8, 2020, ED stated that "For the week ending on June 4, 2020, the Department received payments from garnishments by approximately **2,500** employers. . . ."⁸⁶ However, the internal December 2020 Garnishment Report cited above states that between June 1, 2020 and June 5, 2020 the "# of Employers garnishing wages" was **3,398**.⁸⁷ The FOIA Release offers no explanation of how ED reconciled the differences between these various figures.

it had used addresses that ED itself acknowledged were faulty. Employers with invalid addresses who were counted as having been contacted as of April 23, 2020 were garnishing more than 47,000 borrowers.⁹¹

Moreover, it appears from the FOIA Release that ED and Maximus's rate of *successful* contact with garnishing employers remained well below 100 percent for long after General Brown's May 2020 declaration. For example, the December 2020 Garnishment Report shows that ED was still trying to contact thousands of still-garnishing employers well into December 2020, and that as of that month only 12 percent of outreach efforts to those garnishing employers overall had led to contact and confirmation that they would cease AWG.⁹² Additional records show that ED and Maximus were still searching for a means to instruct employers to cease collections as late as February 12, 2021, the date on which (as noted above) they were "googling/calling/etc" to make contact with employers.⁹³

ED's and Maximus's difficulties in making contact with garnishing employers appear to have continued through the end of the period covered in the FOIA Release. For example, in the final weekly report from Maximus to ED regarding ongoing garnishments that was included in the FOIA Release (covering garnishments that took place from August 23 to August 27, 2021), Maximus notes that from among a set of eleven companies that were still garnishing, it was able only to leave a voicemail for five and did not even have a phone number at which to leave a voicemail for another two.⁹⁴ It is unclear whether ED and Maximus did eventually make successful contact with 100 percent of garnishing employers, or how General Brown reconciled these ongoing difficulties in making contact with employers with his representations to the *Barber* court.

The inconsistencies between ED's representations to the court in *Barber* and internal communications from ED staff are troubling. The documents do not shed any light on whether these discrepancies are intentional or whether ED does not have its arms fully around its own debt collection system. In either case, ED should immediately clarify the nature and causes of these gaps.

struggling to feed their families and avoid homelessness,⁹⁹ grappling with the effects of pandemic-related unemployment,¹⁰⁰ and scrambling to overcome other massive hardships, all due to illegal wage garnishments. These borrowers included parents,¹⁰¹ high school teachers,¹⁰² disabled retirees,¹⁰³ and others floundering under the weight of defaulted student loans.

Exhibit I: Student loan borrowers reported to ED that they struggled with food, housing, and financial insecurity due to wage garnishments.¹⁰⁴

*"They keep calling my job and are still trying to garnish my check. I can **barely feed my family and we are about to be homeless.** Please make it stop!"*

*"I'm **completely disabled** and will die from my disability. I'm no longer capable of working so that money would **really help with food and bills** at the moment. I would never ask for anything back unless I thought it was unfair and desperately nee[ded.]"*

*"I have **depleted my 401K savings** to provide for my family. This garnishment is a hardship for my family, even before the pandemic . . . If the wage garnishment continues at this time I **will not be able to support my family.**"*

*"Customer called and stated that she had paid off her defaulted loans and they still are taking out wage garnishments **even after she paid them.** I verified the customer advised that **the system did show that she was paid in full . . .**"*

*"I only bring home \$2000 a month after the garnishment and my rent [is] \$1055. I **need the money back please so I [don't] get evicted from my home.**"*

*"[The borrower] is being garnished for her loans being in Default. . . she is **disabled and lives off of Social [Security]** . . . she said that she **[can't] afford to live . . . this is hurting her being able to pay for food and other necessities . . .**"*

Moreover, these borrowers detailed how ED and the student loan collection system as a whole failed to respond adequately to reports of borrower distress. In particular, it appears ED knew that student loan companies were not answering the phone when borrowers called seeking help, and that ED went so far as to defend the servicers' inaction to the complaining borrower. In one instance, ED told a borrower that the Default Resolution Group, operated by the student loan company Maximus that is responsible for assisting federal student loan borrowers who are in default,¹⁰⁵ was "not accepting calls due to call volume."¹⁰⁶

Exhibit J: ED staff informed a borrower that Maximus's Default Resolution Group was "not accepting calls due to call volume."¹⁰⁷

5/19/2020 8:45	Complaint	(b)(6)	Repaying Student Financial Aid - In Default	Wage Garnishment	<p>Have you contacted the entity associated with your issue: Yes Have you contacted the Department of Education regarding this issue: No Please describe details of your issue: She is calling with a general question but not about her loans. She works for employer (Reproductive Biology) and they received a notification to stop the AWG due to CARES Act. Call Notes: They received another notification to stop AWG. Both letters are for the same person. If requests to send email while the other (first letter) didn't. She tried to call the number on the letter and receives a VM. She has called 800-621-3115. I asked if she already had a case in our office and she said no. I explained that phone number was associated with the defaulted servicer DRG. I explained they were not accepting calls due to call volume. I advised that I didn't feel they would need to call and say they have stopped the AWG, if the notice says it needed to be stopped, that action would need to be taken. I suggested to send inquiry to DRG via online: myeddebt.ed.gov</p>	Confirmation to report stopped AWG	5/19/2020 9:41
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*"[The] phone number was associated with the defaulted servicer [Maximus]. I explained they were **not accepting calls due to call volume.**"*

Worse, consumer narratives illustrate how ED's failure to manage its wage garnishment system was particularly devastating to borrowers already facing the greatest economic fallout from the pandemic. As one borrower explained:

My wages are still being garnished at the max amount 15% and it's making extremely difficult times to stay afloat now that I'm the sole income in my household. My work hours have been drastically cut, although I am grateful that at least still have my job, however I need more relief and was told that would be provided. I haven't been able to pay my rent and insurance and other Bill's trying to stock my home on essential things to survive this pandemic and im still having \$400 taken from me every two weeks. How can my family and I survive? Please help!!!!¹⁰⁸

Complaints like this are only the tip of the iceberg. A review of the complaints included in the FOIA Release reveals the extent of the pain that ED's illegal garnishments inflicted on borrowers:

- **Borrowers faced garnishment on loans already paid in full.** Borrowers found themselves being garnished for loans that ED could confirm they had already paid off.¹⁰⁹ Indeed, even when these

collections were illegal *and* the borrower did not actually owe any debt to collect on in the first place, ED still could not reliably top its garnishment machinery.

- **Borrowers struggled with housing insecurity due to garnishments.** Many borrowers reported facing housing insecurity during COVID-19 due to garnishments. For example, one borrower reported fearing eviction¹¹⁰ and a single mother of two stated she had already received an eviction notice due to garnishments.¹¹¹ Another borrower indicated that she had lost her family home while waiting on a refund for a garnishment that ED had taken and admitted was in error.¹¹²
- **Borrowers dug into retirement funds to cover necessities due to garnishments.** Borrowers reported needing to use retirement funds to cover money lost to garnishments, possibly pointing to an even more widespread phenomenon.¹¹³ As a result, one of these borrowers stated, “I have depleted my 401K savings to provide for my family.”¹¹⁴
- **Borrowers grappled with garnishments that stopped and restarted.** Many borrowers whose garnishments had initially ended as required under the CARES Act reported that collections improperly restarted for them after subsequent extensions of the payment pause.¹¹⁵ It appears that this outcome was attributable both to poor messaging by ED and incompetence or indifference by the employers on whom the AWG system relies, underscoring how broken the debt collection system is.¹¹⁶

Compounding these problems, borrowers were inconsistently able to contact customer service representatives when they tried to correct improper garnishments. For example:

- One borrower reported to ED in October 2020 that he had been “garnished every 2 weeks since March 2020,” but that “he cannot get [his servicer] to answer the phone for him.”¹¹⁷
- Another borrower reported having “left several messages with my loan servicer’s default department” and that they “promise that they will promptly call me back,” but that a call back “has not happened and it has been about 2 years of attempting.”¹¹⁸

Worse, borrowers who did get in contact with a customer service representative often experienced weeks or months of misinformation and delay. Borrowers reported “getting different answers from different people”¹¹⁹ and enduring endless chains of phone calls and letter-writing to resolve garnishments that should

have never happened in the first place.¹²⁰ Even borrowers who confirmed that their complaints had been escalated to management waited weeks for refunds, only for them to not arrive and for new hurdles to relief to appear.¹²¹ ED told at least one borrower whom it could confirm was eligible for CARES Act relief that it would provide refunds for illegal garnishments, then did not for a span of months.¹²²

These narratives demonstrate how the many failures in the student debt collection system cause extreme hardship to borrowers, which cannot be remedied by a simple refund. As one borrower put it:

*They need to abide by the department of education's decision to not garnish federal wages during this pandemic. I'm a single mother of 4 and have been restricted to 1 job as a result of the pandemic and I need at least 2 jobs to support my children.*¹²³

Reports like this one and the others included here should be a wake-up call for those who would frame the student loan system's failures during the pandemic as a set of unfortunate but excusable operational hiccups—let alone as ones that can be rectified with a check in the mail.

IV. ED chose not to shield expanded COVID-19 related unemployment checks from student loan repayment, ushering possibly tens of thousands of borrowers into default.

ED's affirmative policy decisions during the pandemic exacerbated borrower harms more than previously known. In particular, the FOIA Release reveals that ED acknowledged having the power to exempt borrowers' \$600 expanded unemployment checks from being counted as income for the purposes of student loan repayment, but that it purposefully chose to forgo using this authority. This move likely pushed thousands of borrowers who had been carved out of the payment pause into default.

In October 2020, as they prepared for the then-scheduled end of the first payment pause on January 1, 2021, ED staff grappled with whether to use emergency powers under the HEROES Act of 2003 to exclude the \$600 monthly expanded unemployment checks that were available under the CARES Act from counting as income for the purposes of income-driven repayment (IDR).¹²⁴ IDR is a set of repayment plans that allow borrowers to have their monthly federal student loan bills be calculated as a percent of their earnings instead of being based on their loan balance and interest rate.¹²⁵ IDR is one of the main protections borrowers rely on to avoid default, including by offering borrowers with particularly acute financial distress the ability to qualify for a \$0 monthly "payment."¹²⁶

Although unemployment benefits are normally counted as income for IDR, ED staff recognized that the HEROES Act gave it the authority to modify this requirement as a result of the pandemic.¹²⁷ The Trump Administration had already used the HEROES Act as the basis for the first payment pause in March 2020 (before the passage of the CARES Act).¹²⁸ Using the same authority to waive provisions of the law requiring that borrowers' expanded \$600 unemployment benefits be counted as income for the calculation of their monthly payments under IDR would have meant massive savings, particularly for low-income borrowers who had lost their jobs to COVID-19 or otherwise faced heightened financial pressures due to the pandemic.

The FOIA Release reveals that ED acknowledged having the power to exempt borrowers' \$600 expanded unemployment checks from being counted as income for the purposes of student loan repayment, but that it purposefully chose to forgo using this authority.

To resolve this matter, Chris Greene, the Deputy Chief Operating Officer for Student Experience and Aid Delivery at FSA, wrote a memorandum to his boss, FSA COO Mark Brown.¹²⁹ Acknowledging ED's powers under the HEROES Act, Greene framed the IDR question for General Brown as follows:

As a result of the CARES Act, unemployed citizens may be eligible for additional unemployment benefits of up to \$600 per week. Under the CARES Act, this additional benefit ended July 31, 2020. Existing interpretations of 34 CFR 685.209 and 685.221 [the regulations governing IDR] require FSA to consider all taxable income that a borrower receives toward the calculation of the borrower's payment amount under an Income-Driven Repayment (IDR) plan, including unemployment benefits. Should FSA seek a waiver of these regulations under the HEROES Act to temporarily ignore all unemployment or additional unemployment benefits?¹³⁰

Greene then offered the following fateful recommendation, which General Brown approved:

Recommendation: FSA should not seek a waiver to the current regulations for the HEROES Act. Further, FSA should inform servicers to use the existing IDR instructions with the full amount of income represented by borrower documentation (including the 'increased' unemployment benefits if they are extended and a suspension in student loan payments is not).¹³¹

While details on the rationale for this recommendation and General Brown's approval were redacted or excluded from ED's production, the Greene memo makes clear that ED chose to go after the expanded unemployment insurance checks of borrowers in income-driven repayment plans knowing full well that it did not have to.

Though subsequent extensions of the payment pause protected many borrowers from the consequences of this policy, possibly millions of people with privately held FFELP loans, which are not eligible for the payment pause, would go on to have expanded unemployment benefits placed within the government's crosshairs. Research from the Federal Reserve Bank of New York shows that FFELP borrowers in general uniquely "struggled with their debt payments" throughout COVID-19,¹³² and data from ED shows that at least 180,000 FFELP borrowers eventually defaulted during the pandemic.¹³³ An untold number of these defaulted borrowers may have avoided this outcome and its massive consequences—including wage garnishment—if ED had simply exercised its acknowledged authority under the HEROES Act to exclude borrowers' \$600 expanded unemployment checks from being counted as income for IDR.

More generally, ED's actions underscore a troubling but long-standing trend: even in instances where ED has authority to protect borrowers, it chooses not to. The history of IDR is emblematic of this pattern, with ED deciding in several instances spanning decades to make this protection less generous, less far-reaching, and less accessible than Congress intended.¹³⁴ In this case, Congress gave ED the power to help unemployed people in IDR better manage their student loans during the pandemic, but ED decided it would rather let borrowers pay the price.

The Law Does Not Require Wage Garnishment and ED Should Not Turn Back On a Broken System

When Congress passed the CARES Act, it determined that, due to the pandemic, borrowers should be free from involuntary collections on federal student loans, including wage garnishment. The findings outlined in this report illustrate that ED and its contractors struggled, and ultimately failed in many cases, to implement protections for the most financially strained borrowers. This breakdown only worsened the widespread financial harm already wrought by the pandemic.

The implications of ED's inability to control its wage garnishment system are not limited to pandemics and natural disasters. For example, involuntary collection efforts should cease during the pendency of an individual's Borrower Defense to Repayment application and when ED fails to meet certain deadlines in an AWG hearing. Yet as evidenced by *Calvillo Manriquez*, ED has fared no better in that context—showing a remarkable inability to timely cease collection.

Critically, ED is not required to use AWG as a debt collection mechanism. Under the Debt Collection Improvement Act, Congress *authorized*, but did not *require*, federal agencies to use administrative wage garnishment. Congress delegated to agencies the responsibility to devise the means by which it goes about debt collection.¹³⁵ Similarly, although the Higher Education Act *authorizes* ED to use administrative wage garnishment to collect amounts owed, it does not *require* ED to do so.¹³⁶

ED has the power to ensure that borrowers are no longer left at the mercy of a system it cannot control. Given that ED is not required to use AWG at any point, and that it cannot guarantee its command of this dangerous tool, it should immediately terminate its use of AWG as a method of debt collection for as long as it takes to ensure that this collection mechanism can be deployed lawfully—regardless of how long that takes.

Simply put: **if ED cannot turn off administrative wage garnishment, then it cannot turn it back on.**

Conclusion and Recommendation

Advocates have long contended that the government's system for collecting on defaulted federal student loans is predatory and broken. The performance of this collection machinery during COVID-19 may be the best indication yet that these warnings were correct. New evidence examined here lays bare that the administrative wage garnishment system is out of control, leading to immeasurable harm for millions of the most financially vulnerable student loan borrowers. The government does not have to turn this runaway system back on, and it should not do so unless and until it can be sure that AWG can operate within the law.

Endnotes

¹ Persis Yu, Deanne Loonin, *Pounding Student Loan Borrowers: The Heavy Cost of the Government's Partnership with Debt Collection Agencies*, NAT'L CONSUMER L. CTR. (Sep. 17, 2014), <https://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf>; *ED Turns 325,000 Student Loan Borrowers Over to Debt Collectors It Fired for Breaking the Law*, NAT'L CONSUMER L. CTR. (Dec. 14, 2017), <https://www.studentloanborrowerassistance.org/ed-turns-325000-student-loan-borrowers-debt-collectors-fired-breaking-law/>; Andrew Martin, *Debt Collectors Cashing in on Student Loans*, N.Y. TIMES (Sep. 8, 2012), <https://www.nytimes.com/2012/09/09/business/once-a-student-now-dogged-by-collection-agencies.html>; Stacy Cowley and Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May Be Wiped Away*, N.Y. TIMES (July 17, 2017), <https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>.

² See, e.g., Jonnelle Marte, *Department of Education Criticized for How It Pays Debt Collectors to Chase Student Loan Dollars*, WASH. POST (Sep. 4, 2014), <https://www.washingtonpost.com/news/get-there/wp/2014/09/04/how-the-department-of-education-pays-debt-collectors-for-chasing-student-loan-dollars/>.

³ Jason Houle and Fenaba Addo, *Racial Disparities in Student Debt and the Reproduction of the Fragile Black Middle Class*, Vol. 5 Iss. 4 SOC. OF RACE AND ETHNICITY 562, 564-65 (2019); *Research Roundup: Student Debt Adds Rocket Fuel to the Fire of American Economic Inequalities*, STUDENT BORROWER PROT. CTR. (Apr. 6, 2021), <https://protectborrowers.org/inequality-research-blog/>.

⁴ Am. Compl., 3:7-3:8, *Barber v. DeVos*, No. 1:20-cv-01137, ECF No. 9 (D.D.C. May 7, 2020), available at <https://protectborrowers.org/wp-content/uploads/2020/05/Barber-v.-DeVos-Amended-Complaint.pdf>.

⁵ *Id.*; Press Release, Democracy Forward, Trump Administration Sued for Illegally Seizing Millions of Dollars in Tax Refunds from Thousands of Student Borrowers in Violation of CARES Act (May 29, 2020), <https://democracy-forward.org/press/mnuchin-devos-sued-for-seizing-tax-refunds-from-student-borrowers-in-violation-of-cares-act-treasury-offset/>.

⁶ U.S. DEP'T OF EDUC. OFF. OF INSPECTOR GEN., FEDERAL STUDENT AID'S SUSPENSION OF INVOLUNTARY COLLECTION IN RESPONSE TO THE CORONAVIRUS PANDEMIC

(June 15, 2021), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2021/i20ny0010.pdf>; <https://protectborrowers.org/advocates-highlight-evidence-that-guaranty-agencies-harmed-borrowers-and-violated-department-of-education-orders-during-covid/> [hereinafter “Federal Student Aid’s Suspension of Involuntary Collection in Response to the Coronavirus Pandemic”].

⁷ The White House, Statement by President Biden Extending the Pause on Student Loan Repayment Through August 31st, 2022 (Apr. 6, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/statement-by-president-biden-extending-the-pause-on-student-loan-repayment-through-august-31st-2022/#>.

⁸ See, e.g., Ben Kaufman, *Millions of Borrowers Had a Special Chance to Exit Default During COVID. The Biden Administration Must Fix the System Failure That Led Almost None of Them to Access It*, STUDENT BORROWER PROT. CTR. (Nov. 16, 2021), <https://protectborrowers.org/millions-of-student-loan-borrowers-had-a-special-chance-to-exit-default-during-covid-the-biden-administration-must-fix-the-system-failure-that-led-almost-no-borrowers-to-access-it/>.

⁹ 34 C.F.R. §§ 682.200(b) (FFEL definition of default), 685.102(b) (Direct Loan). In practice, ED does not transfer borrowers to its default loan servicer until the borrower is 360 days behind. See *Student Loan Delinquency and Default*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/default> (last visited Nov. 10, 2022).

¹⁰ Adam Looney, David Wessel, and Kadija Yilla, *Who Owes All that Student Debt? And Who’d Benefit if It Were Forgiven?*, BROOKINGS (Jan. 28, 2020), <https://www.brookings.edu/policy2020/votervital/who-owes-all-that-student-debt-and-whod-benefit-if-it-were-forgiven/>; Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, CTR. FOR AM. PROGRESS (Dec. 2, 2019), <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/>.

¹¹ Marte, *supra* note 2.

¹² Christine DiGangi, *Can You Be Denied an Apartment Because of Bad Credit?*, YAHOO! FIN. (Dec. 13, 2014), <https://finance.yahoo.com/news/denied-apartment-because-bad-credit-130049897.html>; Jessica Silver-Greenberg, Stacy Cowley, and Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, N.Y. TIMES (Nov. 18, 2017), <https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html>.

- ¹³ Danielle Douglas-Gabriel, *The Disturbing Trend of People Losing Social Security Benefits to Student Debt*, WASH. POST (Dec. 20, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/12/20/the-disturbing-trend-of-people-losing-social-security-benefits-to-student-debt/>.
- ¹⁴ U.S. GOV'T ACCOUNTABILITY OFF., SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF 67 tbl. 17 (Dec. 2016), <https://www.gao.gov/assets/gao-17-45.pdf>.
- ¹⁵ *Id.*
- ¹⁶ 20 U.S.C. § 1095(a); 31 U.S.C. § 3720(D).
- ¹⁷ 34 C.F.R. § 34.4.
- ¹⁸ 34 C.F.R. § 34.18.
- ¹⁹ 34 C.F.R. § 34.19; 34 C.F.R. § 34.26.
- ²⁰ Deanne Loonin, *Illusory Due Process: The Broken Student Loan Hearing System*, 11 U.C. IRVINE L. REV. 173,180-81 (2020).
- ²¹ *Id.*
- ²² Maximus has been accused of illegally seizing low-income borrowers' tax refunds, improperly garnishing wages, and providing inaccurate information about student loan relief options. See *Customer Disservice: Examining Maximus, the Federal Contractor that Just Became the Largest Student Loan Company in the World*, STUDENT BORROWER PROT. CTR. (Mar. 2022), <https://protectborrowers.org/customer-disservice-examining-maximus-the-federal-contractor-that-just-became-the-largest-student-loan-company-in-the-world/>.
- ²³ *Contract to Maximus Education, LLC*, No. 91003120F0314, USASPENDING.GOV (beginning De. 14, 2019), available at https://www.usaspending.gov/award/CONT_AWD_91003120F0314_9100_EDFSA09D0015_9100.

- ²⁴ Portfolio by Loan Status, NAT'L STUDENT LOAN DATA SYS., available at *Federal Student Loan Portfolio*, FED. STUDENT AID, <https://studentaid.gov/data-center/student/portfolio> (last visited Nov. 12, 2022) [hereinafter "Portfolio by Loan Status"].
- ²⁵ Ben Kaufman, *New Data Show Student Loan Defaults Spiked in 2019 – A Warning to Industry and DeVos Amid Economic Fallout*, STUDENT BORROWER PROT. CTR. (Mar. 13, 2020), <https://protectborrowers.org/every-26-seconds/>.
- ²⁶ See, e.g., Adam S. Minsky, *The Department of Ed Must Fix Its Broken Default System*, L. OFF. OF ADAM S. MINSKY (June 7, 2021), <https://bostonstudentloanlawyer.com/the-department-of-ed-must-fix-its-broken-default-system/>.
- ²⁷ Press Release, Project on Predatory Student Lending, Former Corinthian Students Claim Victory at the Department of Education's Debt Cancellation Announcement (June 2, 2022), <https://www.ppsl.org/news/news/press-releases/former-corinthian-students-claim-victory-at-the-department-of-educations-debt-cancellation-announcement-press-release>.
- ²⁸ *Borrower Defense Loan Discharge*, FED. STUDENT AID, <https://studentaid.gov/borrower-defense> (last visited Nov. 12, 2022).
- ²⁹ Press Release, National Consumer Law Center, Defrauded Borrowers Sue U.S. Department of Education Contractor for Seizing Funds While They Wait in Limbo for Borrower Defense Relief (Feb. 12, 2020), <https://www.nclc.org/media-center/defrauded-borrowers-sue-u-s-department-of-education-contractor-for-seizing-funds-while-they-wait-in-limbo-for-borrower-defense-relief.html>.
- ³⁰ Elissa Nadworny, *DeVos Held in Contempt of Court for Enforcing Loans on Defrauded College Students*, NPR (Oct. 25, 2019), <https://www.npr.org/2019/10/25/773334681/devos-held-in-contempt-of-court-ed-department-fined-100-000-in-student-loan-case>.
- ³¹ Portfolio by Loan Status, *supra* note 24.
- ³² *Student Debt Repayment During COVID-19 Frequently Asked Questions*, STUDENT BORROWER PROT. CTR., https://protectborrowers.org/wp-content/uploads/2020/04/Repayment-FAQs_Covid-Update_4.2.2020-vF-2.pdf (last

visited Nov. 12, 2022). Note that not all federal student loan borrowers received these benefits, including those owing on privately held loans made under the now-defunct FFELP. Borrowers with these loans have generally been required to continue repayment during COVID, though beginning in March 2021 borrowers in default on privately held FFELP loans were offered the same respite from collections efforts already enjoyed by borrowers in default on student loans owned by ED. *Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies*, FED. STUDENT AID (May 12, 2021), <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021>.

³³ Federal Student Aid's Suspension of Involuntary Collection in Response to the Coronavirus Pandemic, *supra* note 6, at 17-18.

³⁴ *Id.* at 15.

³⁵ Am. Compl., ECF No. 9.

³⁶ *Id.* 14:48-17:63.

³⁷ *Id.* 16:61.

³⁸ *Id.* 17:63.

³⁹ Ben Kaufman and Amber Saddler, *New Evidence Reveals Guaranty Agencies Violated ED Orders to Stop Preying on Student Loan Borrowers During COVID*, STUDENT BORROWER PROT. CTR. (Sep. 2, 2021), <https://protectborrowers.org/new-evidence-reveals-guaranty-agencies-violated-ed-orders-to-stop-preying-on-student-loan-borrowers-during-covid/>. Note that borrowers owing on commercially held FFELP loans were offered protection from collections in default in March 2021. Press Release, U.S. Department of Education, Department of Education Announces Expansion of COVID-19 Emergency Flexibilities to Additional Federal Student Loans in Default (Mar. 30, 2021), <https://www.ed.gov/news/press-releases/departement-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default>.

⁴⁰ Kaufman and Saddler, *New Evidence Reveals Guaranty Agencies Violated ED Orders to Stop Preying on Student Loan Borrowers During COVID*, *supra* note 39.

⁴¹ See Letter to Freedom of Information Act Public Liaison from Abigail Moats, National Student Legal Defense Network, Re: Freedom of Information Act Request (July 8, 2021), available at <https://www.defendstudents.org/news/body/2021.07.08-AWG-Refunds.pdf> [hereinafter “FOIA Letter from National Student Legal Defense Network”]

⁴² See *Collections Catastrophe: Appendices*, STUDENT BORROWER PROT. CTR., <https://protectborrowers.org/collections-catastrophe-appendices/>.

⁴³ Federal Student Aid’s Suspension of Involuntary Collection in Response to the Coronavirus Pandemic, *supra* note 6, at 5.

⁴⁴ See Exhibit A, *infra* note 45.

⁴⁵ Appendix 1 at 31, 58.

⁴⁶ See *infra* Exhibit B.

⁴⁷ See *infra* Exhibit B.

⁴⁸ See, e.g., Appendix 5 at 238; Appendix 1 at 31.

⁴⁹ See *infra* Exhibit D.

⁵⁰ Appendix 2 at 155-56.

⁵¹ Appendix 4 at 201. It is not known whether employers ever actually restored these funds to their employees after ED returned the unopened mail.

52 Appendix 5 at 46.

53 Appendix 2 at 151.

54 Appendix 1 at 103.

55 *Id.* at 191.

56 *Id.* at 192.

57 *Id.* at 194.

58 Appendix 2 at 196.

59 *Ibid* (highlight added).

60 Appendix 5 at 225, 238-39.

61 *Id.* at 238.

62 Appendix 7 at 33.

63 *Ibid* (highlight added).

64 *Ibid.* Note that as late as January 2021, ED appears to have been under the impression that it would not need to reopen the lockbox. In particular, on January 21, 2021 ED emailed Treasury to request that the lockbox remain closed through September 31, 2021. See Appendix 6 at 82.

65 Appendix 6 at 180. Note that ED staff specified in late May regarding the AWG lockbox closure that “this action is being taken in response to the OIG Draft Report . . . in which OIG recommended that FSA determine if any wage garnishments continue unlawfully.” See Appendix 3 at 1.

⁶⁶ SBPC calculations based on Appendix 1 at 58.

⁶⁷ Appendix 1 at 73. ED's records include a full list of the employers implementing these garnishments. See Appendix 1 at 33-35. These employers range from small local firms to multinational corporations and state government agencies.

⁶⁸ Appendix 1 at 31.

⁶⁹ Appendix 9 at 126.

⁷⁰ *Ibid* (highlight added).

⁷¹ Appendix 2 at 188.

⁷² *Ibid*.

⁷³ Appendix 6 at 206.

⁷⁴ Appendix 1 at 18 (emphasis added).

⁷⁵ *Ibid* (emphasis added).

⁷⁶ Appendix 5 at 153.

⁷⁷ Appendix 7 at 49.

⁷⁸ *Id.* at 1.

⁷⁹ Appendix 1 at 31.

⁸⁰ *Ibid*.

⁸¹ *Ibid.*

⁸² See *Barber v. Devos*, No. 20-cv-01137 (D.D.C. June 22, 2022) (CJN), Min. Order.

⁸³ Comparison across the Barber reports and the FOIA Release has various limitations, including that ED indicated in its status report for June 2, 2020 that it “cannot directly determine when an employer has canceled garnishment for its employees with federally-held student loans,” and therefore that it cannot determine a precise number of borrowers still facing garnishment at a given time. Def’s Status Report 2:3, ECF No. 23 (June 8, 2020).

⁸⁴ Appendix 2 at 155.

⁸⁵ Def’s Status Report 2, ECF No. 43 (Oct. 19, 2020).

⁸⁶ Def’s Status Report 2:6, ECF No. 23 (June 8, 2020).

⁸⁷ Appendix 1 at 193.

⁸⁸ Def’s Status Report 2, ECF No. 43; Appendix 2 at 155.

⁸⁹ Def’s Status Report 1:2, ECF No. 23.

⁹⁰ See Appendix 1 at 191.

⁹¹ See *ibid.*

⁹² *Id.* at 194.

⁹³ Appendix 5 at 238.

⁹⁴ Appendix 1 at 31.

⁹⁵ Def.'s Status Report 1:2, ECF No. 23; Appendix 1 at 191, 194.

⁹⁶ Federal Student Aid's Suspension of Involuntary Collection in Response to the Coronavirus Pandemic, *supra* note 6, at 5.

⁹⁷ See FOIA Letter from National Student Legal Defense Network, *supra* note 41.

⁹⁸ Appendix 2 at 39-133.

⁹⁹ Appendix 2 at 87 ("They keep calling my job and are still trying to garnish my check. I can barely feed my family and we are about to be homeless. Please make it stop!"), 90 ("She stated that they took so much that she can't even pay her rent this month.").

¹⁰⁰ *Id.* at 93 ("As you know, I'm completely disabled and will die from my disability. I'm no longer capable of working so that money would really help with food and bills at the moment. I would never ask for anything back unless I thought it was unfair and desperately nee[ded.]").

¹⁰¹ *Id.* at 79 ("Customer called in stating that her wages are still being garnished but she is the only one working in her household right now. She states that she has two kids and would like to have this garnishment removed.").

¹⁰² *Id.* at 77 ("I am trying to stop the loan money coming out of my pay. I work at Chavez High School Who do I need to speak to so that they can stop pulling the money during this time of Covid 19?").

¹⁰³ *Id.* at 74 ("She said that she is being garnished for her loans being in Default she said that she is disabled and lives off of Social [Security] that it is being garnished she said that she [can't] afford to live she said that she does not have any money to get food and its a bad time to be garnishing her loans . . . this is hurting her being able to pay for food and other necessities especially with all this going on.").

¹⁰⁴ *Id.* at 54, 70, 73-74, 87, 93.

¹⁰⁵ For more information on Maximus, see *Customer Disservice: Examining Maximus, the Federal Contractor that Just Became the Largest Student Loan Company in the World*, *supra* note 22.

¹⁰⁶ Appendix 2 at 88.

¹⁰⁷ *Ibid* (highlight and emphasis added).

¹⁰⁸ *Id.* at 73. Note that ED did not include the borrower's loan type or holder. Throughout this report we have attempted to determine based on context and the substance of consumers' narratives whether they were likely to have been eligible based on their loan type for the payment pause and the halt to collections.

¹⁰⁹ *Id.* at 54 ("Customer called and stated that she had paid off her defaulted loans and they still are taking out wage garnishments even after she paid them. I verified the customer advised that the system did show that she was paid in full . . .").

¹¹⁰ *Id.* at 70 ("I am told that I should have a reimbursement for the last 3 garnishment amounts due to the COVID19. I only bring home \$2000 a month after the garnishment and my rent [is] \$1055. I need the money back please so I [don't] get evicted from my home.").

¹¹¹ *Id.* at 56 ("I got an eviction notice from the apartment complex I resided at. I was unable to catch up on bills and rent. . . I am a single mother of two and to receive an eviction notice is very frustrating. . . . Also change in job, which cause my income to decrease also was an issue and [I] was attempting to get back on track.").

¹¹² *Id.* at 71 ("[ED] said we do not need anymore you are getting your refund back. We just don't know when. By this time we were close to losing the house completely as the 6,099\$ was to help us in arrangements to keep the [house.] So we wait. We lost the house.").

¹¹³ *Id.* at 110 ("They stated that funds were being taken out of his retirement fund for the garnishment"); Document 2 page 73 ("I have depleted my 401K savings to provide for my family. This garnishment is a hardship for my family, even before the pandemic . . . If the wage garnishment continues at this time I will not be able to support my family.").

114 *Id.* at 73.

115 *See, e.g., id.* at 118 ("My student loan garnishments have restarted this week even though the president has extended the relief until September 30, 2021").

116 *See, e.g., id.* at 117 ("on 1/20 President Biden extended the freeze on collections. As of the start of February my payroll has once more been garnished. My employer [received] notice on 1/21 to against resume garnishment. As the loans had been 0% interest and no collections under the Trump administration that would make them federal loans Biden policy should also apply here. The illegal seizure of funds should be reversed. The predatory practice of loan servicers needs to be controlled.").

117 *Id.* at 107.

118 *Id.* at 128.

119 *Id.* at 102.

120 *See, e.g., id.* at 82 ("Customer stated that they have been garnishing her wages for the last month. . . . She spoke with her employer and said that they cannot stop the garnishments until they [recieved] a letter saying they can stop. She stated that she received a letter from DOE stating that the garnishments should stop. . . . I advised her that [s]he can request that they send confirmation of the halt of garnishments through email or postal mail if not already sent.").

121 *See, e.g., id.* at 97 ("She said due to the CARES Act they were supposed to refund her AWG payment She was never refunded She has called DRG numerous times and escalated to supervisor.").

122 *Id.* at 99 ("Customer was upset that his wages were garnished during a time period where they should not have been. He immediately asked to speak with a supervisor, and I advised that none were available, that I could assist. He stated he received a notification that his wages were garnished during the CARES Act He stated that he tried to call the number to the Debt Resolution Group and they kept saying they would provide a refund, but have not. I verified his loans are eligible for the CARES Act, and his wages should not have been taken during

this time. I advised I could have his case escalated to provide a resolution. I told him he would be contacted within 15 business days, and to allow 60 days for a resolution. He was very dissatisfied with the time frames, and he asked to speak with a supervisor.”).

¹²³ *Id.* at 115.

¹²⁴ *Id.* at 154.

¹²⁵ *Income-Driven Repayment Plans*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/repayment/plans/income-driven> (last visited Nov. 12, 2022).

¹²⁶ *Driving Down Distress? The Principles and Incomplete History of Income-Driven Repayment*, STUDENT BORROWER PROT. CTR. (Sep. 2021), <https://protectborrowers.org/wp-content/uploads/2021/09/Driving-Down-Distress.pdf> [hereinafter “Driving Down Distress”].

¹²⁷ Appendix 2 at 154.

¹²⁸ Press Release, U.S. Department of Education, Secretary DeVos Extends Student Loan Forbearance Period Through January 31, 2021, in Response to COVID-19 National Emergency (Dec. 4, 2020), <https://content.govdelivery.com/accounts/USED/bulletins/2afbc4b>.

¹²⁹ Appendix 2 at 154.

¹³⁰ *Ibid.*

¹³¹ *Id.* at 155 (emphasis in original).

¹³² Jacob Goss, Daniel Mangrum, and Joelle Scally, *Student Loan Repayment During the Pandemic Forbearance*, FED. RESRV. BANK OF N.Y. (Mar. 22, 2022), <https://libertystreeteconomics.newyorkfed.org/2022/03/student-loan-repayment-during-the-pandemic-forbearance/>.

¹³³ SBPC calculation based on Portfolio by Loan Status, *supra* note 24.

¹³⁴ Driving Down Distress, *supra* note 126.

¹³⁵ See 31 U.S.C. § 3711(a) (mandating that agencies “shall try to collect claims”); *Id.* § 3720D (an executive branch agency “may” use wage garnishment procedures); *Cf. id.* § 3711(d) (noting that when acting to collect claims pursuant to the DCIA, an agency is acting under “regulations prescribed by the head of the agency” and “standards that the Attorney General, the Secretary of the Treasury, may prescribe”).

¹³⁶ 20 U.S.C. § 1095a(a) (establishing that ED “may garnish”).