STUDENT BORROWER PROTECTION CENTER

February 10, 2023

U.S. Department of Education
Office of the Secretary
400 Maryland Avenue SW
Washington, D.C. 20202
VIA ELECTRONIC SUBMISSION

Re: Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program (Docket ID ED-2023-OPE-0004)

Dear Secretary Cardona,

The undersigned 59 organizations representing students, student loan borrowers, teachers, workers, civil rights, veterans, people of faith, and consumers**,** submit this comment in response to the U.S. Department of Education's (the Department) Notice of Proposed Rulemaking (NPRM) on Income-Driven Repayment (IDR) plans, published to the Federal Register on January 11, 2023.

We applaud the Department for the significant positive impact these proposed changes to the IDR rules and lives of millions of borrowers, as they will see substantial reductions in monthly and lifetime payments. Raising the threshold for protected non-discretionary income, lowering the share of discretionary income borrowers have to pay, waiving unpaid interest, and decreasing time to cancellation are all valuable changes. However, these actions, although a step in the right direction, are inaccessible to vulnerable populations like Parent PLUS borrowers. We urge the Department not to squander this opportunity to create a truly affordable and accessible IDR plan.

Introduction

The historic problems surrounding IDR can be seen as emblematic of the issue befalling the student loan system—intentions of reducing the economic burden of student debt and promoting economic security are stunted by policies that exclude vulnerable populations, fail to do enough to protect borrowers, and by shoddy implementation/enforcement efforts. Many borrowers currently face material hardship, like food and medical care insecurity, while being obligated to make student loan payments. The runaway debt of negative amortization causes psychological anguish, debt traps, and stunted microeconomic and macroeconomic benefits. Many vulnerable segments of borrowers, like women of color and those with disabilities, have struggles not fully accounted for, or, in the case of Parent PLUS borrowers, are unnecessarily excluded from better plans. And many, through servicer malfeasance, do not even reap the benefits of accessing IDR.

The Department's proposed IDR rule will make significant strides to address a number of these issues. Sunsetting ICR, IBR, and PAYE plans for the federal Direct loans and keeping REPAYE—a generally better IDR plan (other than increasing years to cancellation for graduate borrowers to 25)—allows for clarity for borrowers and more streamlined implementation, reducing administrative burden.

Raising the threshold of protected non-discretionary income is a welcome change in the correct direction, which will alleviate material hardships felt by many by allowing borrowers to maintain more of their

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discretionary income. Furthermore, lowering the time to cancellation will allow many to access cancellation after 20 years instead of 25 years, and borrowers with original balances of $12,000 or less only have to wait 10 years.

We further commend the Department for addressing the issue of ballooning loan balances by no longer charging borrowers any unpaid interest each month. Eliminating negative amortization will reduce psychological debilitation and missed economic opportunities from thousands of more dollars being due that was originally due and prolonged repayment timespans. We are pleased that the Department proposed changes fully solve this problem by not charging unpaid interest.

Recommendations

While we appreciate many of the changes the Department has proposed, more changes are necessary.

Increasing the discretionary income threshold is a welcome change, but the Department must raise it above 225 percent. Even the Department acknowledged that 225 percent is insufficient itself, saying, "For some borrowers, particularly low-income borrowers, the payments on an IDR plan may still not be affordable."[1] Whatsmore, the Department's rationale for arriving at this decision is flawed, as it used regression analysis, with a 1 percent level of significance, to show that borrowers with discretionary incomes at the 225 percent threshold exhibit an amount of material hardship that is statistically distinguishable from borrowers at or below the poverty line. However, the Department did not comment on the magnitude of this difference—if it did, it would have to concede the difference in hardship, while distinguishable, is merely fractional.

The 20 year time to cancellation for most undergraduate borrowers, and 25 for graduate loans is too long. While we appreciate that some borrowers will see cancellation sooner, for too many, their loan balances will still negatively impact their financial lives. As borrowers seek to buy homes, start businesses, save for retirement, and become small business owners, having student debt can be a major hurdle for these impactful stages in a borrowers' economic life—and are accomplishments that greatly benefit the economy as a whole. Periods of 20 and 25 years to cancellation are much too long, and many of those aforementioned economic stages typically fall within that range after taking out those loans.

The IDR plan unfairly excludes Parent PLUS borrowers. The Department historically, and still at present, has glaringly excluded Parent PLUS borrowers from IDR benefits beyond what is statutorily required. Although Parent PLUS borrowers are explicitly statutorily excluded from IBR, ICR statute clearly permits those who consolidate their loan access to ICR-based plans. Parent PLUS borrowers are increasingly lower income, Black and Latino/a parents, who have to contend with arbitrary, total exclusion from REPAYE while also being subjected to ICR, the worst and most onerous IDR plan. The Department needs to finally desist from unnecessarily excluding all Parent PLUS borrowers from better IDR benefits.

The Department's proposed changes also leave out graduate borrowers and fail to appropriately account for their unique situations. People of color, and particularly women, require more degrees to earn the same income as white men which is why many need to seek advanced degrees to achieve economic security.[2] People with disabilities, especially those who are people of color or women, also face

[1] https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprmidr.pdf
[2] https://blog.dol.gov/2021/08/03/5-facts-about-black-women-in-the-labor-force

lifelong earnings and employment disparities even with higher educational attainment, as well as higher costs of living because of disability-specific expenses.[3] Under the Department's proposed rule, these already marginalized groups will end up paying more for the same amount of debt on the same income—and for longer before cancellation. The rationale the Department used is faulty, as it claimed it cannot offer the same relief to graduate borrowers because if an undergraduate borrower and graduate borrower have the same income, the latter will have significantly larger reductions in payments than the former if both loans are treated the same.[4] Justifying this decision using the starting point of equal incomes is puzzling, as graduate degrees are supposed to increase one's earning potential, and if a graduate borrower is making the same as an undergraduate, they would clearly be in need of more protections. Graduate borrowers have increased debt burdens and if, for instance, a graduate borrower's earnings are relatively low because they work in public service as a Black woman, why should the Department punish them individually for broader social failures? Lastly, a weighted average approach to repayment would decrease clarity and increase operational/administrative complexity. We urge the Department to allow all borrowers, regardless of loan or degree type to have access to the more affordable repayment plan.

New IDR regulations will provide little benefit to borrowers if federal student loan servicers do not provide quality service. The Department must improve oversight and enforcement and provide borrowers with basic rights to ensure borrowers receive quality service, and fully implement the FUTURE Act in order to automate as much of the IDR process as possible.

This lack of oversight leaves borrowers powerless against harmful and common practices. As a result, too many borrowers who could benefit from IDR have not enrolled, especially Black and Latino/a borrowers—and the lack of borrower outreach and assistance must be addressed. For instance, Black borrowers in particular are more likely to fall into default without ever even accessing IDR.[5] With policy design failures and student loan servicer misconduct keeping borrowers from accessing IDR at all and remaining in these plans over the long-term, much more can be done by the Department to account for this reality.[6]

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3 https://www.air.org/sites/default/files/Lack%20of%20Equal%20Pay%20for%20People%20with%20Disabilities_Dec%2014.pdf; https://www.nationaldisabilityinstitute.org/reports/extra-costs-living-with-disability/

4 https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nprmidr.pdf

5 Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, Student Borrower Prot. Ctr. (Nov. 2, 2020), https://protectborrowers.org/new-data-showborrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/.

6 For details on how shoddy and deceptive student loan servicing has consistently blocked borrowers from accessing and remaining IDR plans, *see 39 State Attorneys General Announce $1.85 Billion Settlement with Student Loan Servicer Navient,* Navient AG Settlement, https://navientagsettlement.com/Home/portalid/0?portalid=0?portalid=0?portalid=0 (last updated June 22, 2022) (settlement with Navient and dozens of Attorneys General resolving allegations that, in part, Navient steered borrowers towards forbearances and deferments rather than income-based plans);Consumer Fin. Prot .Bureau, S*tudent Loan Servicing: Analysis of Public Input and Recommendations for Reform* (Sep. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (shoddy student loan servicing may have prevented as many as three-in-five borrowers who managed to enroll in IDR from staying on track year-over-year; *see generally Driving into a Dead End,* the Student Borrower Prot. Ctr. (2021), https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf.

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The Department must expand defaulted borrowers' access to affordable IDR plans. While the Department's proposal to make defaulted borrowers eligible to access IDR is a welcome first step, limiting low-income borrowers to cancellation through IBR unnecessarily exposes them to higher monthly payment amounts. The IBR statute is flexible enough to allow defaulted borrowers to earn credit towards cancellation for payments made under more affordable ICR plans and the Department should not impose regulatory restrictions that the statute does not require.[7] We are also pleased to see the proposal that some involuntary payments count towards cancellation. However, this change should not be limited to payments in which the amounts were more than the 10-year standard repayment plan amount. Given that involuntary payments are nearly always greater than what a borrower would pay under an IDR plan, the Department should count all involuntary payments as a qualifying payment towards IDR cancellation.

Thank you for your consideration of these comments. Please contact Persis Yu at persis@protectborrowers.org for additional information.

Sincerely,

Student Borrower Protection Center
AFT Washington
American Association of Colleges of Osteopathic Medicine
American Association of University Women
Americans for Financial Reform Education Fund
ARISE
Autistic People of Color Fund
Autistic Women & Nonbinary Network
Californians Together
Center for Economic Integrity
Center for Responsible Lending
Chicago Foundation for Women
Church Women United in New York State
Community Legal Aid Society, Inc
Community Service Society of NY
Consumer Federation of California
Consumer Reports
Demand Progress Education Fund
Equal Justice Works
Fosterus

[7] Persis Yu, *Relief for Borrowers in Income-Driven Repayment* (Nov. 2020) 82-83, https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf#page=74 (noting that since there is no statutory requirement that borrowers be enrolled in IBR *while* making payments toward IDR cancellation, default borrowers may earn credit towards cancellation for payments made under ICR payment plans as long as the borrower enrolls in IBR at some point during their repayment period.)

Freedom BLOC
Fresno Building Healthy Communities
Higher Education Consortium for Special Education (HECSE)
Hispanic Federation
Housing Opportunities Program for Equity (HOPE) at The Foundation for Delaware County
Jain Family Institute
Louisiana Budget Project
Maine Center for Economic Policy
Missouri Faith Voices
National Association for College Admission Counseling
National Association of Social Workers
National Association of Social Workers - Indiana Chapter
National Association of Social Workers - NJ Chapter
National Association of Social Workers - West Virginia Chapter
National Consumers League
National Disability Institute
National Nurses United
New Era Colorado
New York Legal Assistance Group (NYLAG)
NextGen California
Nonprofit Professional Employees Union - IFPTE Local 70
Ohio Student Association
OneJustice
Pennsylvania Stands Up
Public Justice Center
SEIU Local 500
Service Employees International Union (SEIU)
Social Work Helper, PBC
Student Debt Crisis Center
Student Loan Fund
Students United
Teacher Education Division of the Council for Exceptional Children (TED)
The Hope Center for College, Community, and Justice
The Institute for College Access & Success (TICAS)
The Young Invincibles
UC-AFT
United Food and Commercial Workers Union Local 400
United University Professions
Zero Debt Massachusetts