Arnold Ventures

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U.S. Department of Education
Office of Postsecondary Education
400 Maryland Ave., SW
Washington, DC 20202

Docket ID # ED-2023-OPE-0004

To Whom It May Concern:

Thank you for the opportunity to comment on the Department of Education's proposed regulations governing income-driven repayment (ID # ED-2023-OPE-0004.) Arnold Ventures is a philanthropy dedicated to tackling some of the most pressing problems in the United States. For the past six years, we have invested in research, policy development, litigation, and advocacy to end predatory behavior in higher education and increase the return on investment of higher education both for students — especially students who have been historically marginalized — and taxpayers. Should you have further questions regarding these comments, we welcome the opportunity to discuss them further.

For too many borrowers, the student loan system has been as much of a burden as a blessing. The federal student loan programs are simultaneously extraordinarily generous — providing access to thousands of dollars each year without requiring evidence of creditworthiness, dozens of options to defer or forbear or afford payments after entering repayment obligations, and statutory loan forgiveness options for borrowers who meet certain conditions; and unforgiving — with burdensome paperwork requirements to access those repayment options, aggressive debt collection mechanisms in place for borrowers who default, and potentially financially devastating consequences to longstanding failure to repay.[1]

The Biden-Harris Administration has taken admirable steps to improve the functioning of this system, including by improving the functioning of statutory student loan forgiveness options, providing defaulted borrowers with opportunities to get a fresh start on their loans, and making efforts to improve student loan servicing through new contracts that increase expectations and enhance accountability. Reforming income-driven repayment is an important step to ensuring longer-term reform of the student loan system.

However, it is critical that these reforms be considered not in a vacuum, but within the broad and interconnected context of the entire higher education system. Changes to a single income-driven

[1] Sattelmeyer, Sarah and Tia Caldwell, "In Default and Left Behind: How Higher Education and the Student Loan System Are Failing the Most Vulnerable Borrowers," New America, November 30, 2022, https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/.

repayment plan may have ramifications that echo far beyond the borrowers on that one plan. It is in that spirit that we submit these comments.

The Department's proposed IDR plan would provide significant additional benefits — not just to those who struggle to afford their loans, but to virtually every borrower. As the Department notes, "on average, borrowers in every quintile of the lifetime income distribution are projected to repay less (in present discounted terms) in the proposed REPAYE plan than in the existing REPAYE plan."[2] Borrowers earning more than $100,000 with undergraduate loans, for instance, are expected to save nearly $17,000 compared with today's repayment plans — more even than undergraduate borrowers earning less than $65,000 (savings of about $12,000), since many of those borrowers already owe a $0 payment.[3]

The implications of this could be significant. For borrowers and their families, the downsides of borrowing will be lower. The draw of taking on debt, and higher levels of debt, could be even greater — including for higher-income students who might otherwise cover some of the costs out-of-pocket, lower-income students who might otherwise seek to minimize their debt loads, and everyone in between. For some, this will have positive benefits; students who might have been forced to drop out of school might now be willing to take on the debt they need to graduate and see a return on their investment. For others, it could lead to astronomical debt loads and inappropriate debt-to-income ratios, furthering the student debt crisis that the Administration is seeking to solve. Undoubtedly, these changes will fuel an industry that has already begun to develop advising students not just on managing their debt, but on maximizing it to reap the benefits. The existing generosity of the IDR plans has already led to unexpected costs; the Government Accountability Office (GAO) recently found that the Department had underestimated the costs of student loans by more than $300 billion over the last quarter-century, with some of the most significant missing costs coming from exceeded expectations in the take-up rates for IDR.[4] The effects of this change on borrowing behavior should be carefully considered and analyzed for its potential system-wide effects.

For institutions, the temptation to encourage borrowing to further pad tuition revenue may be too strong for many to resist. Institutions facing massive enrollment declines,[5] losses of state funding,[6] and other financial difficulties[7] have already made changes that have reshaped the faces of their schools, sometimes in concerning ways. For instance, some institutions have reallocated

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[2] 88 Fed. Reg. 1915.
[3] Table 7, 88 Fed. Reg. 1921.
[4] "Education Has Increased Federal Cost Estimates of Direct Loans by Billions Due to Programmatic and Other Changes," Government Accountability Office, GAO-22-105365, July 28, 2022, https://www.gao.gov/products/gao-22-105365.
[5] "Spring 2022: Current Term Enrollment Estimates," National Student Clearinghouse Research Center, May 26, 2022, https://nscresearchcenter.org/current-term-enrollment-estimates/.
[6] "State Higher Education Finance (SHEF) Report: FY 2021," State Higher Education Executive Officers Association, 2022, https://shef.sheeo.org/.
[7] McCann, Clare, Sophie Nguyen, and Wesley Whistle, "College Finance Data Can Help Regulators Protect Students," New America, *EdCentral*, November 23, 2020, https://www.newamerica.org/education-policy/edcentral/college-finance-data-can-help-regulators-protect-students/.

their need-based financial aid to try to attract wealthier students with promises of merit-based aid;[8] public colleges created to serve the residents of a state are increasingly recruiting out-of-state students who will pay higher out-of-state tuition prices;[9] rather than keeping prices affordable for low-income students, some are loading up even their lowest-income students with tens of thousands of dollars each year in Parent PLUS loans their families will likely never be able to afford;[10] and some are establishing online programs, many run by for-profit companies, to replenish their coffers, sometimes sacrificing quality in the process.[11] There can be little doubt that a more generous repayment plan will increase the role that student loans play in helping many institutions balance their budgets going forward.

This is even more true in the graduate education space, where loans are effectively unlimited outside of the institution's own decisions in setting the cost of attendance. Already, there is evidence that institutions have taken generous IDR plans and other forgiveness programs as license to keep their tuition high. Research from experts in the field reveals that increases in graduate loan access through Grad PLUS led to "significantly increased program prices," without increasing access to graduate programs for underrepresented students.[12] Moreover, after the Public Service Loan Forgiveness (PSLF) program came into effect, Georgetown Law identified a pathway to offering a free legal education for those who commit to a decade of public service — with the balance paid by the taxpayers. Under the Loan Repayment Assistance Program (LRAP) that Georgetown Law set up, the school would charge students the high upfront cost of the law school, with students fronting those costs by taking on student loans; make borrowers' payments for them while they complete 10 years of qualifying public service; and then see the remainder forgiven. As one financial aid official at the institution explained to students, it's not really Georgetown covering the costs of the LRAP program, it's students; LRAP is funded through tuition costs that are covered by the loans.[13] With an even more generous IDR plan — one in which future borrowers are estimated to make total payments per dollar of 40 percent less than they

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[8] Burd, Stephen, "Undermining Pell: Volume IV: How the Privatization of Public Higher Education Is Hurting Low-Income Students," New America, October 2018, https://files.eric.ed.gov/fulltext/ED594673.pdf.

[9] Klein, Aaron, "The Great Student Swap," Brookings Institution, September 7, 2022, https://www.brookings.edu/research/the-great-student-swap/.

[10] Baum, Sandy, Kristin Blagg, and Rachel Fishman, "Reshaping Parent PLUS Loans: Recommendations for Reforming the Parent PLUS Program," Urban Institute, April 16, 2019, https://www.urban.org/research/publication/reshaping-parent-plus-loans-recommendations-reforming-parent-plus-program; Fishman, Rachel, "The Wealth Gap PLUS Debt: How Federal Loans Exacerbate Inequality for Black Families," New America, May 15, 2018, https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/; and Granville, Peter, "Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis," The Century Foundation, May 31, 2022, https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/.

[11] Hall, Stephanie and Taela Dudley, "Dear Colleges: Take Control of Your Online Courses," The Century Foundation, September 12, 2019, https://tcf.org/content/report/dear-colleges-take-control-online-courses/.

[12] Black, Sandra E., Lesley J. Turner, and Jeffrey T. Denning, "PLUS or Minus? The Effect of Graduate School Loans on Access, Attainment, and Prices," Preliminary Draft, February 2023, https://lesleyjturner.com/GradPLUS_Feb2023.pdf.

[13] Holt, Alexander and Jason Delisle, "Georgetown LRAP: In Their Own Words," New America, *EdCentral*, August 7, 2013, https://www.newamerica.org/education-policy/federal-education-budget-project/ed-money-watch/ georgetown-lrap-in-their-own-words/.

would today, and in which researchers project just one in 10 sub-baccalaureate borrowers and one in five borrowers with a bachelor's degree would fully repay their loans before qualifying for forgiveness if enrolled in IDR — the institutional responses and reaction could be wide-ranging.[14]

Even beyond these income-driven repayment regulations, the Department should take seriously its role of ensuring students receive a reasonable return on investment for their postsecondary education experiences. A strong gainful employment rule, finalized prior to November 1, 2023, and accompanying strong regulations governing institutions' financial responsibility, administrative capability, and obligations under their Program Participation Agreements, will be critical to ensuring students and taxpayers find value in higher education.

We urge the Department to take these possible unintended consequences seriously. Our comments that follow include specific recommendations about the appropriate design for these IDR modifications to ensure that the borrowers who need support in their repayment years have clear and straightforward access to that help – without writing a blank check, signed on behalf of taxpayers, to the institutions that enroll these students. Should you have any questions regarding these comments, please contact us at kmcmanus@arnoldventures.org and cmccann@arnoldventures.org.

Sincerely,

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[14] U.S. Department of Education, "New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation," Press Release, January 10, 2023, https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation; and Chingos, Matthew, Jason D. Delisle, and Jason Cohn, "Few College Students Will Repay Loans Under the Biden Administration's Proposal," Urban Institute, January 19, 2023, https://www.urban.org/research/publication/few-college-students-will-repay-student-loans-under-biden-administrations.

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Retain Key Provisions of the Proposed Income-Driven Repayment Regulations Designed to Support Low-Income Borrowers

As noted in our letter to the Department above, the student loan repayment system is too unforgiving for too many borrowers. The income-driven repayment system, in particular, has proved challenging for many of the lowest-income and highest-need borrowers to access, and is not always well designed to provide benefits to the borrowers who need it before they wind up behind on their loan payments. The Biden-Harris Administration is to be commended for seeking to address these challenges both through executive actions on the part of the Department (for example, through implementation of the FUTURE Act, which will enable borrowers to more seamlessly access IDR) and through regulation. We particularly wish to point out support for several provisions of the proposed regulations.

More Affordable Payments for the Lowest-Income Borrowers

The Department has proposed in these draft regulations to increase the discretionary income threshold for borrowers enrolled in IDR. In effect, this change will protect more of borrowers' incomes from being used to calculate payments, and preserve additional household income to use for living costs. While a threshold of 225 percent of the Federal poverty level will provide extensive benefits even to high-income borrowers, it will also ensure payments are substantially more affordable for low-income borrowers.

Shorter Time to Forgiveness for Low-Balance Borrowers

For borrowers who took out only $10,000 or less — and who often dropped out of college after just a semester or two without earning a credential to help them repay their balances — the promise of loan forgiveness on IDR after 20 years may feel too distant. By ensuring low-balance borrowers who enroll in, and repay on, this IDR plan are able to access forgiveness sooner, it is likely that more will find the benefits of the IDR plan attractive and enroll, helping them to avoid delinquency and default.

We do note, however, that the exceptional complexities of the student loan repayment system warrant additional consideration to borrowers' ability to understand changes to the plan. In particular, the provision of early forgiveness at 10 years for borrowers with balances of $12,000 or less — with an additional phase-out that means, for instance, borrowers with original balances between $12,001 and $13,000, receive forgiveness at 11 years — will be challenging for borrowers to navigate. A more straightforward alignment between the original balance and the number of years in the repayment period — like $10,000 in original balance for forgiveness at 10 years — would allow borrowers to more intuitively understand the implications of both their borrowing and their subsequent enrollment in IDR. The benefits of this straightforward message outweigh the downsides the Department identified in the proposed rule that the income level at which borrowers would not benefit from the early forgiveness is too low.[15] The Department's priority should be to ensure that monthly payments are affordable, and that those benefits are accessible

[15] 88 Fed. Reg. 1909.

and understandable, particularly given the relatively small gap in the Department's estimated starting salaries of those who would still benefit from early forgiveness with $10,000 in debt as those with $12,000.[16]

Moreover, the Department sought comment on whether the level at which early forgiveness is provided should be altered or inflation-adjusted. Since the rationale for using $10,000 as the threshold is that it is approximately the one-year loan limit for an independent undergraduate student — targeting benefits to those most likely to need them — and the rationale for $12,000 is that it is the maximum amount that a dependent undergraduate can borrow in their first two years, we do not believe an annual change is warranted. Doing so would only add to the complexity and make it more challenging for borrowers to understand the terms of the REPAYE plan. It would also be complex in timing: An inflation adjustment of these levels would presumably affect not only new borrowers, but also existing borrowers, whose eligibility for early forgiveness would then shift from year to year, adding significantly to the costs of the plan and creating substantial complexity that would likely carry operational challenges as well. Should Congress revisit the loan limits through legislative change, the Department can reconsider the terms of this IDR plan at that time to determine whether a change is needed for future borrowers.

A Stronger Safety Net for Borrowers Who Fall Behind on Payments

Too often, the exact borrowers who fall behind on their loans and ultimately often default are the same borrowers who are least likely to enroll in an IDR plan where they might owe nothing, or only a small monthly payment.[17] These borrowers are often the highest-need borrowers — those who left college before earning a credential, for instance, or who are making low incomes.[18] The Department has proposed a critical change to ensure the student loan safety net is available and accessible to those who need it most by proposing that borrowers who fall 75 or more days behind on their loans and who have provided the requisite consent can be automatically enrolled into an IDR plan. This will help millions of borrowers, like the more than 3 million borrowers who were behind on their loans in the quarter prior to the pandemic payment pause and especially the 440,000 who were severely delinquent on their loans, access a more affordable repayment plan — which research shows helps them to avoid delinquency, default, and the attendant consequences.[19]

To support the implementation of this provision, the Department should ensure it begins to gather from students the necessary consent for automatic placement on IDR should they fall delinquent on their payments. As Sarah Sattelmeyer of New America has previously proposed, the

[16] 88 Fed. Reg. 1909; the Department notes that the starting salary required to benefit from early forgiveness with $12,000 in student debt at 5 percent interest is $59,000, compared with $54,000 for a borrower who has $10,000 in student debt.
[17] Herbst, Daniel, "The Impact of Income-Driven Repayment on Student Borrower Outcomes," American Economic Journal 15: No. 1, January 2023, https://www.aeaweb.org/articles?id=10.1257/app.20200362.
[18] "Investing in Higher Education: Benefits, Challenges, and the State of Student Debt," Council of Economic Advisors, July 2016, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160718_cea_student_debt.pdf.
[19] "Federally Managed Portfolio by Delinquency Status," FSA Data Center, Q1 2020, available at https://studentaid.gov/data-center/student/portfolio.

Department should ensure borrowers are presented the opportunity to "opt into data-sharing early (and often) in a borrower's interactions with the Department," including through the FAFSA, signing of the Master Promissory Note, upon entering repayment, in electing repayment plans, and in other communications with the Department.[20] The Department should begin to implement these changes as soon as possible, including through any subsequent communications with borrowers on debt cancellation, the payment pause, or income-driven repayment, to maximize the benefits of this change for the borrowers who need it most.

Additionally, to further improve outcomes for borrowers who struggle to repay, the Department should consider allowing borrowers who default and who have provided consent to be automatically enrolled in Income-Based Repayment; for borrowers whose payments are $0 or a low amount, this will enable them to make progress toward forgiveness despite their defaulted status. To ensure borrowers who are leaving default are able to remain in good standing after exiting, the Department should also ensure they can be automatically enrolled in the IDR plan that will offer them the lowest payment, as well, similar to how the Department plans to treat delinquent borrowers.

Access to IDR for Defaulted Loan Borrowers

The Department has proposed to include defaulted loan borrowers as eligible to enroll in IBR, during which time the statute permits payments to count toward forgiveness. This change would be significant. Defaulted borrowers, once off-track in repaying their loans, often find themselves mired in complex requirements about how they may rehabilitate or consolidate their loans and owe costly collection fees that set them even further back.[21] However, by proposing that defaulted loan borrowers be included as eligible for IBR, those borrowers will be able to immediately qualify for, and begin making payments toward forgiveness on, this IDR plan. These steps will support the Administration's decision to end the Department's contracts with private collection agencies,[22] further connecting the student loan systems for defaulted and non-defaulted borrowers to avoid jarring gaps in service and differing eligibility for student loan benefits.

Maintain Different IDR Conditions for Student and Parent Borrowers

Through these proposed regulations, the Department proposes to maintain the current provision that permits parent borrowers who have consolidated their parent PLUS loans to access the Income-Contingent Repayment plan, but not to permit parent borrowers to access IDR more

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[20] Sarah Sattelmeyer, "3 ways the Biden administration can help families and student loan borrowers affected by the pandemic," Brookings Institution, April 22, 2021, https://www.brookings.edu/research/three-ways-the-biden-administration-can-help-families-and-student-loan-borrowers-affected-by-the-pandemic/.

[21] Sattelmeyer, Sarah and Tia Caldwell, "In Default and Left Behind," New America, November 30, 2022, https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/.

[22] According to the FSA Private Collection Agency Contracts page available at https://studentaid.gov/data-center/business-info/contracts/collection-agency, "prior to Nov. 8, 2021, the U.S. Department of Education's (ED) office of Federal Student Aid contracted with private collection agencies to manage ED-held defaulted loans.... These contractors no longer manage any student loans for ED."

widely. This is an important distinction that we recommend the Department maintain in the final regulations.

Without question, the Parent PLUS program has led some low-income parents to take on unmanageable debt loads. Like graduate PLUS loans, Parent PLUS loans are virtually unlimited except by the cost of attendance established by the institution; and borrowing excludes only those with a certain, limited type of adverse credit history, making it all too easy for colleges to load up parent borrowers with untenable amounts of debt. While parents in families from middle- and high-income households are far more likely to take on Parent PLUS loans — 30 percent of those with incomes over $100,000 borrowed parent loans — a not-insignificant share of low-income households (16 percent of those with incomes below $20,000) also borrow.[23] Moreover, some parent borrowers are more likely to struggle to repay their debts than others; 20 percent of Black borrowers had defaulted on their loans, compared with 5 percent for white students, and parents with greater wealth had a lower default rate than parents with less wealth.[24]

Yet parent loans differ fundamentally from student loans. Student borrowers are able to borrow because they are expected to benefit from the higher education they receive — an investment in the future that will pay dividends for years to come. On the other hand, parent loans were intended to solve a liquidity problem — ensuring that parents, whose finances might otherwise be tied up in, say, a mortgage, can find the funds to help pay their children's tuition. Payments on Parent PLUS loans start immediately (unless the borrower seeks a deferment), whereas payments on student loans are paused until students exit the institution, allowing time for them to enter the full-time workforce.

Furthermore, parents' income trajectories are fundamentally different from the income span of student borrowers. Whereas the typical borrower graduating at, for example, 25 will have an approximately 40-year career over which to reap the benefits of their credential (and generally between 10 and 30 years, depending on the borrower's repayment plan and debt level, to repay their debt), the typical parent borrower cannot expect to receive any bump in earnings from earning a credential, and in fact is much closer to retirement at the time they take on the loans. Today, roughly one in four parent borrowers[25] receives income through Social Security and/or a pension; 61 percent are ages 45-59, and another 25 percent are 60 or older.[26]

Rather than making parent borrowers broadly eligible for IDR, the Department should instead ensure that they may remain eligible to access the old ICR plan by consolidating, as is permitted

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[23] Baum, Sandy, Kristin Blagg, and Rachel Fishman, "Reshaping Parent PLUS Loans: Recommendations for Reforming the Parent PLUS Program," Urban Institute, April 16, 2019, https://www.urban.org/research/publication/reshaping-parent-plus-loans-recommendations-reforming-parent-plus-program.
[24] Ibid.
[25] Ibid. These data are based on a survey of debt owed by parents or grandparents for a child's or grandchild's education, and may include federal and nonfederal loans.
[26] Baum, Sandy, Kristin Blagg, and Rachel Fishman, "Reshaping Parent PLUS Loans: Recommendations for Reforming the Parent PLUS Program," Urban Institute, April 16, 2019, https://www.urban.org/research/publication/reshaping-parent-plus-loans-recommendations-reforming-parent-plus-program.

under current rules. Old-ICR would ensure a faster rate of repayment than the new plan, better matching the relatively shorter timeframe for repayment prior to retirement. It also removes the significant incentives that eligibility for the new plan could create for institutions to further push parent debt onto the parents of their students.

This also appears more consistent with Congress's original intent for Parent PLUS loans. Under the HEA, for instance, parent borrowers are explicitly excluded from eligibility for the Income-Based Repayment (IBR) plan.[27] While a loophole has effectively been established allowing parent borrowers to access ICR, the Department wrote in 2015 that it would limit eligibility "to maintain consistency" with the statutory Income-Based Repayment plan, which does not allow eligibility for Direct Consolidation loans that have repaid parent PLUS loans.[28] Establishing eligibility only for student borrowers to join the Department's proposed plan would be a reasonable step to take in order to preserve the Department's proposed IDR plan for the long-term and to further maintain alignment with the statute.

Consider Modifications to the Share of Income Owed for Graduate Borrowers

Under the Department's proposal, borrowers with undergraduate loans only will owe 5 percent of their discretionary income each month, while borrowers with graduate loans will continue to owe 10 percent, as on current IDR plans. Those with both types of loans would pay a weighted average between 5 and 10 percent, based on the share of the original loan balances for any outstanding undergraduate and graduate loans. The change to 5 percent of income for undergraduate borrowers is a significant driver of the costs of the proposed rules; keeping all borrowers at 10 percent of income owed would save nearly $60 billion, according to the Department's estimates.[29] Instead, we propose that borrowers with any graduate debt continue to repay at 10 percent of their income, while borrowers with only undergraduate debt would owe only 5 percent.

This change would avoid certain potential unforeseen incentives created by the weighted average repayment share in the proposed plan. For instance, under the proposed plan, borrowers who intend to go to graduate school several years after their undergraduate education may have an incentive not to repay their undergraduate loans, because undergraduate loans held at the time of entering IDR will reduce their overall payment obligation. In fact, any borrowers who intend to enroll in graduate school have an incentive to maximize their undergraduate borrowing because it will help to drive up the share of their debt from undergraduate loans and drive down their overall payment obligations. That is, all else being equal, students can effectively lock in a lower repayment amount on future obligations by taking out more loans for their undergraduate education.[30]

The weighted average repayment amount also creates inequities where some borrowers will owe less in monthly payments, even if they borrow as much or more than another borrower. For

[27] See Sec. 455(d)(1)(D) of the Higher Education Act.
[28] ED-2014-OPE-0161-2932, available at https://www.regulations.gov/document/ED-2014-OPE-0161-2932.
[29] Table 6, 88 Fed. Reg. 1920.
[30] Table 8, 88 Fed. Reg. 1921.

instance, consider four borrowers, all of whom go to graduate school and each of whom takes on $40,000 in loans across undergraduate and graduate years. (All four have the same incomes.)

- Borrower A, from an example provided by the Department, takes out $30,000 in undergraduate loans and $10,000 in graduate loans. They repay at 6.25 percent of discretionary income.
- Borrower B takes out $10,000 in undergraduate loans and $30,000 in graduate loans. They repay 8.75 percent of discretionary income. If Borrower B knows during undergraduate that they plan to go to graduate school, they have an incentive to borrow more – at $30,000 in undergraduate debt, they would have repaid at 7.5 percent of income.
- Borrower C takes on $30,000 in undergraduate debt, but repays it in full before entering graduate school, and then takes out $10,000 in graduate debt. That borrower repaid at 10 percent of income, despite having had the same undergraduate and graduate debt as Borrower A. In other words, Borrower C is penalized for having repaid their undergraduate debt, and will now owe a higher rate on their graduate debt.
- Finally, take Borrower D, who borrows at a higher level (but who has the same income as Borrowers A, B, and C): They take on $30,000 in undergraduate loans, but $20,000 in graduate loans – $10,000 more in graduate debt than Borrower A. That borrower will repay at 7 percent of income, compared with Borrower A's 6.25 percent, despite having the same undergraduate debt. They will also repay at a lower rate than either Borrower B or Borrower C, despite having more debt, and more graduate debt, than either one.

While the Department asserts that it does not believe borrowers would increase their undergraduate borrowing to reduce future loan payments,[31] in large part because of undergraduate loan limits, data show that more than half (55 percent) of students completing their degree at a public four-year institution in 2015-16 borrowed less than they were eligible for that year, and 44 percent of those completing at a private nonprofit four-year did.[32]

This change would help to ensure the benefits of the Administration's proposed REPAYE reforms are focused on the needs of undergraduate-only borrowers — a stated goal of the Department's proposed rule.[33] As the Department acknowledges throughout its proposed rule, borrowers with graduate loans tend to be far better off.[34] As a rule, they have at least earned a bachelor's degree (and, typically, the commensurate earnings potential); among adults at least aged 25, fewer than one in four have reached that level, and just 14 percent have completed a graduate-level degree.[35]

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[31] 88 Fed. Reg. 1905

[32] Data are from the National Postsecondary Student Aid Study, National Center for Education Statistics, available via Powerstats at Table # vzohgx.

[33] The Department writes that it "is consciously emphasizing greater benefits for borrowers who have undergraduate debt."

[34] For instance, the Department notes that "90 percent of borrowers who are in default on their Federal student loans had only borrowed for their undergraduate education. By contrast, just 1 percent of borrowers who are in default had loans only for graduate students."

[35] Census Table 2, https://www.census.gov/data/tables/2021/demo/educational-attainment/cps-detailed-tables.html

Those with a bachelor's degree or above earn much higher wages and are unemployed at significantly lower rates than those with lower levels of educational attainment.[36] Additionally, graduate borrowers are far less likely to fall behind on their loans or default; and they are better able to repay their debts. On the other hand, undergraduate borrowers often left school without earning any credential, or earned only a low-value certificate or other program that carries little value in the labor market. They may require additional assistance to be able to afford their loan payments, and may be less likely to identify programs and repayment options that benefit them.

This change would also be consistent with the Department's proposed treatment of graduate borrowers in other aspects of the plan and much simpler for students to understand. In particular, the proposed repayment period before forgiveness is higher (25 years) for borrowers with any graduate loans relative to borrowers with undergraduate debt only (20 years). A change to a flat 10 percent repayment share for any graduate borrowing would be in keeping these higher-stakes terms for graduate borrowers and will help students to better understand the plan, forecast their payments, and assess the consequences of their educational choices.

Adopt Suggested Limitations on Prevention of Negative Amortization

Under the Department's proposed rules, borrowers whose IDR payments are too low to cover the amount of interest due will not be charged the remainder of the interest. In essence, this will ensure that borrowers do not experience negative amortization, in which making very low or no payment on IDR causes balances to continue to grow. To be sure, focus groups and other research with borrowers have found that this balance growth can be demoralizing, particularly where borrowers continue to make payments.[37] However, the Department must consider the broader implications of its changes to interest accumulation, and target those changes carefully, particularly to avoid incentives for colleges to charge more.

Background on Undergraduate and Graduate Borrowing

The implications of these proposed changes will be different for the typical undergraduate borrower than for the typical graduate borrower.[38] Whereas undergraduate borrowers graduate school with, on average, $25,000 in student loan debt,[39] and are limited to a maximum of $57,500 in loans (less for dependent undergraduate students), graduate borrowers can — and do — take on much higher debt loads for their education. On average, a graduate borrower leaves school with $75,000 in loans just from their graduate education[40] (often more from their undergraduate

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[36] https://www.bls.gov/emp/chart-unemployment-earnings-education.htm
[37] "Borrowers Discuss the Challenges of Student Loan Repayment," The Pew Charitable Trusts, May 2020, https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf.
[38] Looney, Adam, "Biden's Income-Driven Repayment plan would turn student loans into untargeted grants," Brookings Institution, September 15, 2022, https://www.brookings.edu/opinions/bidens-income-driven-repayment-plan-would-turn-student-loans-into-untargeted-grants/.
[39] U.S. Department of Education, National Center for Education Statistics, National Postsecondary Student Aid Study: 2016 Undergraduates (NPSAS:UG), table # ypphfs. Average debt for borrowers who leave school before graduating is lower.
[40] U.S. Department of Education, National Center for Education Statistics, National Postsecondary Student Aid Study: 2016 Graduate Students (NPSAS:GR), table # ikrvix.

education), and graduate loans are limited only to the cost of attendance established by the school. Even in lower-wage fields where graduate degrees are preferred or required (and thus where graduate borrowers will stand to benefit significantly from the proposed IDR plan), tuition charges, and debt loads, often reach six figures.[41] For instance, the typical borrower graduating from a master's of social work program takes on $60,000 in debt;[42] at one school that enrolls a large number of graduate students in MSW programs, tuition for that program totals $115,000.[43]

Where pricing and borrowing are virtually unconstrained, the Department must consider the potential future implications of providing for significantly lower IDR payments while constraining balance growth. For instance, researchers at the Federal Reserve Bank of New York noted in response to one-time debt cancellation that "if borrowers expect future debt cancellation events, they may borrow even more if there is some chance it will be forgiven in the future. In that case, balances could grow even more sharply…. Amid rising tuition costs, student loan balances will resume their upward climb, leaving the challenge of financing higher education to the younger generations."[44] When graduate programs can be assured — and can assure their students — that taking on more loans will not result in higher payments over the life of the loan than taking on more moderate debt levels, it will be in many programs' best interests to charge more, and in many borrowers' best interests to borrow more, especially for living costs.[45]

Already, data demonstrate that graduate borrowers — typically among the highest-information and savviest borrowers in the federal student loan program–are taking advantage of IDR and Public Service Loan Forgiveness more heavily than undergraduate borrowers. According to data from the Department of Education, the average balance for IDR borrowers on the Pay As You Earn plan is $74,000,[46] and the average balance for borrowers with qualifying employment for Public Service Loan Forgiveness (nearly 1.6 million participants) is more than $95,000,[47] both pulled up by the participation of high-debt graduate borrowers, though only 8 percent of borrowers in the federal student loan portfolio have original debt balances of $100,000 or more.[48]

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[41] Korn, Melissa and Andrea Fuller, "'Financially Hobbled for Life': The Elite Master's Degrees That Don't Pay Off," The Wall Street Journal, July 8, 2021, https://www.wsj.com/articles/financially-hobbled-for-life-the-elite-masters-degrees-that-dont-pay-off-11625752773.

[42] U.S. Department of Education, National Center for Education Statistics, National Postsecondary Student Aid Study: 2016 Graduate Students (NPSAS:GR), table # xsqeev.

[43] Bannon, Lisa and Andrea Fuller, "USC Pushed a $115,000 Online Degree. Graduates Got Low Salaries, Huge Debts," The Wall Street Journal, November 9, 2021, https://www.wsj.com/articles/usc-online-social-work-masters-11636435900.

[44] Goss, Jacob, Daniel Mangrum, and Joelle Scally, "Assessing the Relative Progressivity of the Biden Administration's Federal Student Loan Forgiveness Proposal," No. 1046, Federal Reserve Bank of New York, January 2023, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1046.pdf.

[45] Delisle, Jason and Alexander Holt, "Zero Marginal Cost: Measuring Subsidies for Graduate Education in the Public Service Loan Forgiveness Program," New America, August 6, 2014, https://www.newamerica.org/education-policy/policy-papers/zero-marginal-cost/.

[46] "Federally Managed Portfolio by Repayment Plan" FSA Data Center, Q3 2022, available at https://studentaid.gov/data-center/student/portfolio.

[47] "PSLF Portfolio Reporting Through 10/31/2022," FSA Data Center, October 2022, available at https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data.

[48] "Federal Student Loan Portfolio by Borrower Debt Size," FSA Data Center, Q3 2022, available at https://studentaid.gov/data-center/student/portfolio.

Moreover, as described in the introduction to these comments, there is already some evidence that institutions have responded accordingly to the generosity of benefits through the existing IDR and Public Service Loan Forgiveness programs — for instance, in the case of Georgetown Law's Loan Repayment Assistance Program that finances the entirety of students' PSLF payments through tuition revenue.[49] Georgetown Law's tuition for AY 2022-2023 was $71,996; its full cost of attendance was $103,400.[50] Should graduate borrowers qualify for both lower payments and less interest under this new plan, the Department should reasonably expect many other institutions to follow suit, leading to more lending and lower repayments.

Adopt Limitations on the Prevention of Negative Amortization

As the Department moves forward with finalizing these regulations, we recommend that — like the lower payment level of 5 percent of discretionary income — the provision preventing negative amortization be applied only to undergraduate loans and not also to graduate loans. This will preserve the benefit for the borrowers more likely to struggle financially, and help protect the integrity of the loan program for all students and taxpayers.

Address Operational Considerations Related to Deferment and Forbearance "Hold-Harmless" Periods

The Department proposed to enable borrowers to count certain types of forbearances and deferments as qualifying monthly payments for the purposes of 20- and 25-year loan forgiveness. This change will help to address significant confusion borrowers have about their loans; many have enrolled in a military service deferment, for instance, and in taking advantage of one benefit on their loans, didn't realize they were foregoing another, potentially larger benefit in the form of progress toward income-driven repayment forgiveness. These proposed changes are reasonable, appropriate, and provide benefits to borrowers who most need it, including those undergoing cancer treatments, those who are unemployed (and would thus likely have a $0 IDR payment anyway), military service members, and others. Including administrative forbearances related to military mobilization or local/national emergencies will help to ensure borrowers whose lives have undergone significant disruption are able to more easily access the benefits of income-driven repayment later. And by adding administrative forbearances that reflect the time required for loan servicers to process paperwork ensures borrowers aren't affected by the behind-the-scenes work that goes on.

However, the Department goes on to propose that borrowers who were in other types of forbearances or deferments, those not qualifying as monthly payments, may qualify them by making "catch-up payments" later. Those payments would need to be at least as much as the borrower would have owed at the time on an income-driven repayment plan. This proposed catch-

[49] Holt, Alexander and Jason Delisle, "Georgetown LRAP: In Their Own Words," New America, *EdCentral*, August 7, 2013, https://www.newamerica.org/education-policy/federal-education-budget-project/ed-money-watch/georgetown-lrap-in-their-own-words/.
[50] "Tuition & Cost of Attendance," Georgetown Law, available at https://www.law.georgetown.edu/admissions-aid/financial-aid/tuition-cost-of-attendance/.

up period would be virtually unworkable for the Department, and sets both these borrowers and the Office of Federal Student Aid up for failure. We recommend eliminating or otherwise restricting it.

We are particularly concerned that the paperwork review associated with this catch-up period — one that would require borrowers to gather information on their forbearances and income over a time period that could go back decades, and would require the Department to confirm the months the borrower was in forbearance, confirm the borrower's income at the time, and confirm the catch-up payments are adequate to the penny to qualify those months, and then to apply those newly qualifying months to the borrower's loans — would be lengthy, burdensome for both the borrower and the Department, and would inevitably result in frustration for borrowers confused by the requirements and the process. This process might look similar to the Public Service Loan Forgiveness application one: a highly manual, deeply maddening, extremely time-consuming process that has yielded relatively little benefit to many borrowers who learned they didn't yet qualify and added a great deal of burden and pressure to the Department's already overloaded plate, especially in a time of inadequate funding to support student aid administration work.[51]

At the same time, the benefit to borrowers is likely to be just a few additional months of qualifying payments. That's particularly true because the Department instituted its IDR account adjustment, which provided for qualification of long-term forbearance use (12 consecutive months and 36 cumulative months) toward IDR and PSLF forgiveness. Those changes will be instituted automatically, and will help millions of borrowers who may have been confused by or unaware of the terms of IDR plans early on. Indeed, if the Department were to qualify other types of deferments and forbearances, a similar one-time, automatic adjustment would have been the appropriate way to make that change.[52]

Going forward, the issue of borrowers enrolling in forbearances and deferments when they would prefer to enroll in IDR is likely to be a substantially smaller one. The Department has taken steps to clean up old records, to minimize potential forbearance-steering by institutions and student loan servicers through servicing improvements and increased oversight by both the Education Department and the Consumer Financial Protection Bureau, to broaden the IDR and PSLF regulations in other ways to accommodate borrowers who may wish to qualify for both types of benefits, and to improve tracking of progress toward IDR forgiveness so both the Department and

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[51] Turner, Cory, "Exclusive: New Biden Student Loan Plan Unveiled Amid Agency Funding Crisis," NPR, January 10, 2023, https://www.npr.org/2023/01/10/1147758692/exclusive-new-biden-student-loan-plan-unveiled-amid-agency-funding-crisis.

[52] Notably, the Department included a similar application process for borrowers who don't see an automatic adjustment they think they qualify for through the IDR account adjustment, saying that "borrowers who were steered into shorter-term forbearances will be able to seek account review by filing a complaint with the FSA Ombudsman." This application process will undoubtedly be as unworkable as the proposed regulatory one that we address here. The Department would certainly have eased implementation concerns by instead accounting for these forbearances solely through automatic application of payments to the borrower's account, without an onerous individual review process.

borrowers can more easily measure the number of qualifying monthly payments without error.[53] In the near future, borrowers will be able to enroll in income-driven repayment without significant paperwork burden — more akin to the process of requesting a forbearance — through automatic data-sharing with the IRS enabled by the FUTURE Act.[54] We therefore recommend that the catch-up period be eliminated or otherwise restricted, while the other provisions allowing certain deferments and forbearances should be retained. This IDR plan should be one that borrowers can use much more easily than they do now; the catch-up period will prevent the ease of access the Department has said it hopes to provide.

Incorporate a Proposed Additional Provision to Ensure Future Institutional Accountability

As the Department notes in its proposed regulations, one potential cost of these rules could be "costs resulting from reduced accountability for student loan outcomes at institutions of higher education," largely due to the elements of the proposed rules that would vastly increase the numbers of borrowers with a $0 monthly payment and automatically enroll many delinquent borrowers into the REPAYE plan. While the Department suggests that the cohort default rate (CDR) measure's already-limited utility means there is little increased risk, it cannot be ignored that these regulations would create incentives to increase tuition (paid for by taxpayer-financed borrowing and repaid at very low rates, particularly among undergraduate borrowers), with no countervailing incentives to constrain costs or increase quality and value of higher education programs.[55]

Background on Accountability Measures

Already, the cohort default rate measure (CDR) designed to ensure accountability for institutions where students have poor loan repayment outcomes is of limited utility. Institutions have identified strategies to avoid the consequences of the CDR measure by helping borrowers exercise deferment and forbearance opportunities that prevent them from defaulting during the three-year accountability window — but not necessarily in the long-term. Often, institutions employ these delay tactics with the assistance of default management companies, which the Government Accountability Office has found in some cases "provided inaccurate or incomplete information to borrowers about their repayment options," ultimately driving up the costs to those borrowers over the lives of their loans.[56] Data that examine longer-term windows show that the number of institutions with high default rates after three years (the statutory timeframe for the CDR

[53] "Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs," Press Release, U.S. Department of Education, April 19, 2022, https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.
[54] Sattelmeyer, Sarah and Spencer Orenstein, "Congress Finalizes Bill to Help Millions Pay Back Student Loans," Pew Charitable Trusts, December 12, 2019, https://www.pewtrusts.org/en/research-and-analysis/articles/2019/12/12/congress-finalizes-bill-to-help-millions-pay-back-student-loans.
[55] 88 Fed. Reg. 1916.
[56] "Actions Needed to Improve Oversight of Schools' Default Rates," Government Accountability Office, GAO-18-163, April 2018, https://www.gao.gov/assets/700/691520.pdf.

measure) was just 93; within the next two years, as consequences for the CDR measure fell off the table, that number jumped to 636 colleges.[57]

A similar issue of institutions' successful evasion of consequences led to a statutory change bumping the CDR window from two years to three years in the *Higher Education Opportunity Act* in 2008. Congress wrote at the time that "unfortunately, current cohort default rates may not provide an accurate picture of the number of students who are defaulting. According to a 2003 report by the Department of Education's Inspector General, some schools use various strategies to keep defaults from being counted. These strategies include working to keep borrowers from defaulting during the maximum two-year period, the time in which cohort default rates are calculated. Such actions may mask actual default rates which tend to increase over time."[58] Congress responded by extending the window, and encouraged the Department to track long-term default trends.

The Department's proposed changes to income-driven repayment will, hopefully, have the result of reducing student loan defaults, which can have devastating consequences on borrowers' financial circumstances. Research from the Consumer Financial Protection Bureau found that, at least when delinquent borrowers experienced a lower payment by moving to an IDR plan than they owed before, delinquencies decreased by 19 to 26 percent within one year of enrolling in IDR relative to the quarter before; borrowers with a $0 payment saw no delinquencies, of course.[59] Overall, research from Pew Charitable Trusts has identified that borrowers enrolled in IDR plans have much lower rates of delinquency and default than those who remain on the standard repayment plan.[60] Furthermore, under the Department's proposed regulations, borrowers who fall at least 75 days delinquent on their loans will be automatically enrolled in an income-driven repayment plan, provided they have agreed to income data-sharing. Indeed, the Department predicts that this change "should reduce rates of delinquency and default."[61]

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[57] Miller, Ben, "The Student Debt Problem Is Worse Than We Imagined," *The New York Times*, August 25, 2018, https://www.nytimes.com/interactive/2018/08/25/opinion/sunday/student-debt-loan-default-college.html.

[58] H. Rept. 110-500, College Opportunity and Affordability Act of 2007, U.S. House of Representatives, Committee on Education and Labor, December 19, 2007, https://www.congress.gov/congressional-report/110th-congress/house-report/500/1?q=%7B%22search%22%3A%5B%22higher+education+opportunity+act%22%2C%22higher%22%2C%22education%22%2C%22opportunity%22%2C%22act%22%5D%7D&r=1&overview=closed.

[59] Conkling, Thomas and Christa Gibbs, "New Report Shows How Student Loan Borrowers Fare on Income-Driven Repayment Plans," Consumer Financial Protection Bureau, November 22, 2019, https://www.consumerfinance.gov/about-us/blog/new-report-shows-how-student-loan-borrowers-fare-income-driven-repayment-plans/. While the CFPB report found recertification of income the following year presented a significant hurdle, recent legislative changes through the FUTURE Act, and their forthcoming implementation, will vastly ease these administrative burdens.

[60] "Redesigned Income-Driven Repayment Plans Could Help Struggling Student Loan Borrowers," The Pew Charitable Trusts, Student Borrower Success Project, February 2022, https://www.pewtrusts.org/en/research-and-analysis/reports/2022/02/redesigned-income-driven-repayment-plans-could-help-struggling-student-loan-borrowers.

[61] 88 Fed. Reg. 1916.

But the proposed IDR changes would also have the effect of further limiting the utility of the cohort default rate measure going forward.[62] Borrowers, including those most likely to default, would find a much more generous IDR plan available to them. Those making less than about $30,000 (225% of the federal poverty level, as provided for in the proposed regulations, represented here for an individual using 2022 numbers) would owe nothing at all on the IDR plan; and even borrowers above that income level would see their payment amounts cut significantly. Borrowers who might otherwise fall behind on their loans and eventually default would, where permissible, be automatically provided these benefits. Though defaults surely won't be entirely eliminated, the likelihood of finding a rate of 30 or 40 percent defaults at a single institution would undoubtedly become an extreme rarity — rendering the CDR measure effectively worthless in the long-term for the purposes of measuring institutional quality.

To accommodate this change to repayment behavior, which will be driven by a regulatory change, the Department should also incorporate an accountability measure into the regulations that will be able to serve as a relevant measure of loan performance alongside the IDR regulations.

Proposed Non-Payment Rate to Establish in Regulation

We propose that the Department establish a measure of loan distress — and hold institutions accountable when too many of their borrowers are struggling to repay their loans. This would ensure that, while borrowers are protected from educational programs that don't pay off and granted access to a generous safety net program to help them avoid default and other severe financial consequences, the interests of both taxpayers and of future students who might attend the program are also protected.

Establishing a measure of loan distress would be an important marker of an institution's administrative capability to provide students with programs of adequate quality, complementing requirements that institutions provide adequate career services and financial aid counseling.[63] The Department has established default prevention under the same auspices previously, noting that high default rates would be "an additional indicator of the institution's inability to administer properly the Title IV student assistance programs," in accordance with the provision of the Higher Education Act that "authorizes the Secretary to prescribe reasonable standards of appropriate institutional capability for the administration of the" loan programs.[64] Additionally, this measure

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[62] The payment pause in effect from March 2020 through December 2022 in response to the national emergency will also have significant effects on the cohort default rate measure; none of the covered borrowers defaulted during that time, rendering the CDR an ineffective measure of institutional quality during those years.

[63] Institutions are already required to demonstrate that they provide adequate financial aid counseling to applicants for Title IV funding in order to demonstrate administrative capability (34 CFR 668.16(h)), and the Department has proposed that institutions also be required to demonstrate the provision of adequate career services (proposed 34 CFR 668.16(i), as seen here: https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/isspap2admincap.pdf). This proposal is complementary to those additional requirements.

[64] For instance, the Department published a proposed regulation on cohort default rates in 1988, 53 Fed. Reg. 36216, https://www.govinfo.gov/content/pkg/FR-1988-09-16/pdf/FR-1988-09-16.pdf; and finalized the regulations in 1989, 54 Fed. Reg. 24114, https://www.govinfo.gov/content/pkg/FR-1989-06-

would hopefully be complementary to the Department's proposal for a strong gainful employment rule.[65]

Specifically, we propose that the Department measure the rate of borrowers in financial distress or earning below a living wage: those with a $0 IDR payment, in certain deferments and forbearances (an unemployment deferment in 34 CFR 685.204(f) or economic hardship deferment in 34 CFR 685.204(g), or a discretionary forbearance as described under 34 CFR 685.205(a)), or who are delinquent or in default on their loans. This measure should include all borrowers who entered repayment in a particular year, measured at three years after exiting the institution and entering repayment, and should be calculated separately for borrowers enrolled in a graduate program and those enrolled in an undergraduate program. These data should be calculated and published annually, with the necessary privacy protections in place, for all institutions participating in the student loan programs.

When an institution has at least two-thirds of borrowers in either that undergraduate or graduate cohort not making payments — in other words, two in three IDR borrowers who are earning so little they are not expected to repay even a single dollar on their loans that year, or borrowers in other forms of non-payment identified above — the institution should be considered to have failed the metric. (Institutions with fewer than 30 borrowers in the cohort should not be subject to the consequences identified here.)

A failure in a single year should ensure the institution is, as appropriate:

- Placed on provisional certification status (subjecting it to additional oversight by the Office of Federal Student Aid)
- Required to submit an improvement plan to the institution's accreditor and to the Department that identifies mechanisms by which the institution will reduce student loan debt burden and/or increase completion rates and post-college outcomes to ensure borrowers are better able to afford their loans
- Required to submit a teach-out plan to the institution and/or accreditor to account for the possibility that the institution may be subject to additional accountability measures later

A failure in two out of any three years should warrant the inclusion of additional conditions to the

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05/pdf/FR-1989-06-05.pdf. A letter from the Department to college presidents following publication of those final regulations noted that increasing default rates "erode public support for student aid programs and divert valuable public resources away from needy students," and encouraged "all participating postsecondary institutions to take an active role in student loan default prevention." (The letter may be found in Appendix II, "Defaulted Student Loans: Analysis of Defaulted Borrowers at Schools Accredited by Seven Agencies," United States General Accounting Office, Fact Sheet for Congressional Requesters, September 1990, https://www.gao.gov/assets/hrd-90-178fs.pdf.)

[65] For instance, the Department proposed to establish an earnings threshold measure to be applied programmatically to low-performing non-degree and for-profit programs, which would also help to identify programs systematically leaving students unable to afford their loans under the proposed IDR plan. See: "Issue Paper 3: Gainful Employment," U.S. Department of Education, Negotiating Proposal, Session 3: March 14-18, 2022, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/isspap3gainempl.pdf.

institution's provisional program participation agreement, which may include preventing the institution from either growing its Title IV enrollment or from enrolling additional Title IV students, as appropriate, or even the initiation of a limitation, suspension, or termination action.

Institutions should be afforded the standard opportunities to provide additional information to the Department through this process, to include providing evidence related to the use of erroneous data akin to those in 34 CFR 668.211, or due to low participation in the Direct Loan program among all students at the institution akin to the participation rate index in 34 CFR 668.214. Given the high bar for failure, economic hardship appeals should not be sufficient on their own to warrant the relaxing of such conditions; but as with other administrative capability actions, the Department may take into account a range of factors in determining the appropriate action for the institution.

Support and Analysis for Non-Payment Rate Measure

It is difficult to precisely model this proposal based on publicly available data. However, based on data from the College Scorecard, there are nearly 250 institutions at which the 75th percentile of earnings is at or below 225% of the Federal Poverty level, indicating that at least three in four borrowers at the school would have a $0 payment on the proposed repayment plan ("failing," for the purposes of this analysis).[66] This is an imperfect proxy for a 67% non-payment rate measure like the one proposed here – some schools on the margins are not captured by the measure because the 67th percentile of earnings is not published on the College Scorecard. For instance, some schools with a more significant share of borrowers in forbearance might be pushed toward failing to meet the standard by those borrowers, even if their payment on an IDR plan would have exceeded $0.

However, analysis shows that these outcomes are closely related to another existing accountability metric: the cohort default rate. Comparing cohort default rates within each predominant degree level (certificate, associate, and bachelor's), the vast majority of programs with 75th percentile earnings below 225% FPL *also* have default rates below the typical default rate in their sector. Among the more than 200 failing institutions classified as predominantly granting certificates, for instance, more than half of those with a reported cohort default rate have default rates worse than the median for that credential level. Among associate and bachelor's degree programs with a reported CDR, every single program failing the non-payment proxy is in the worst three-quarters of institutions on default rate; most at each level are also in the bottom half on cohort

[66] Based on median earnings of those working and not enrolled six years after entry. In total, the dataset includes 6,682 institutions, of which 5,411 have data reported. These data, which are the most recently available, measure students who were enrolled in award years 2011-12 and 2012-13 as of calendar years 2018 and 2019, inflation-adjusted to 2020 earnings. The Federal Poverty Level for 2020 is $12,760 for an individual; 225% of that amount would be $28,710. In reality, these numbers underestimate the prevalence of would-be $0 payments in some ways, since the College Scorecard earnings figures may overstate the impact in some ways (e.g., because not all Title IV recipients at an institution have loans, so some included in the cohort would not be borrowers in the financial distress measure; and because not all borrowers will enroll on an IDR plan or utilize the deferments/forbearances noted, even where they might not owe a payment on the amount). These data also exclude the earnings (and therefore likely payments) of Parent PLUS borrowers.

default rate. As the cohort default rate becomes a less valid measure of institutional performance under the new IDR regulations, these data suggest that the non-payment rate proposed here could help to fill those gaps.

Clearly, the Department has a compelling interest in protecting the borrowers whose return on higher education investment is inadequate to afford to repay their loans; accordingly, the Department has proposed to protect that income from student loan payments through the IDR proposal. However, the Department also has a compelling interest in protecting both taxpayers who financed those upfront investments as well as future students who might otherwise invest their time and money in such low-value programs. No existing accountability metric is available to measure the financial distress of borrowers or prevent the institutions that left large concentrations of them worse off from continuing to rake in Title IV revenue or enroll more and more borrowers. The Department should adopt this measure, or a similar measure, in the interest of protecting future cohorts of borrowers from unaffordable student loan debt.

Adjust the Regulatory Impact Estimates of the Proposed IDR Plan

The Department estimates the costs of the proposed IDR plan as $137.9 billion, including $76.8 billion for existing loan cohorts and $61.1 billion for future cohorts over the next 10 years. These costs are accounted for after the PSLF waiver, IDR waiver, payment pause to December 2022, and student loan debt cancellation announcements by the Department, even though these costs have not yet been realized. (It does not account for the further extension of the payment pause, because costs were estimated prior to that change being incorporated into the baseline.) These costs are primarily driven by the increase in the discretionary income threshold, the change in payment calculations from 10 percent of discretionary income to 5 percent, and the elimination of negative amortization under the proposal.[67] However, it seems clear that the analysis likely understates the actual costs of the plan. As the Department acknowledges, its budget impact estimates do not include either "the extent to which there could be increases in loan volumes or Pell Grants from potential new students" or "the impact of borrowers switching into IDR plans from non-IDR plans."[68]

Incorporate Estimates of Growth in Overall IDR Enrollment, Not Just Within-IDR Costs

The apparent generosity of this plan makes growth in IDR enrollment a near certainty. In addition to existing IDR borrowers who are likely to move to this plan as the most generous for virtually all, there will be many additional borrowers currently enrolled in standard, consolidation, graduated, or other repayment plans who will find the new plan more attractive. For instance, Penn Wharton's Budget Model team recently estimated the take-up rates for income-driven repayment will increase from one-third of outstanding loans to between 70 and 75 percent of total loan volume, citing research that a more straightforward application and income recertification process (like the one that will be enabled by automatic data-sharing with the IRS, plans to change the default option for repayment from standard to IDR for certain borrowers who slip into

[67] 88 Fed. Reg. 1920.
[68] 88 Fed. Reg. 1920.

delinquency, and the attractiveness of the generous interest subsidy the Department has proposed) will all contribute to vastly greater take-up rates.[69]

In total, there are more than 16 million borrowers currently enrolled in those plans; it would be reasonable and appropriate for the Department to provide scenarios indicating the costs if 5, 10, or even 25 percent of those borrowers enrolled in an IDR plan instead.[70] The Department notes that the total amount repaid per $10,000 borrowed for future cohorts (assuming full take-up and using present discounted value) would be $11,880 on the standard 10-year plan and $11,844 on the current REPAYE plan — but just $7,069, far less even than the face-value borrowed, under the proposed REPAYE plan. To assume no shift between standard repayment and REPAYE enrollment will vastly understate the costs of the proposed regulations.

Given that the most concerning impacts of the plan are how institutions and borrowers will behave differently — by increasing tuition and therefore debt loads for graduate borrowers, for instance; by leading borrowers to take on more debt; and by encouraging borrowers to rely more heavily on IDR plans than non-IDR plans — the Department should seek to include predictions of those outcomes in its final estimates.

Incorporate Estimates of Increases in Borrowing

In addition to shifts within the student loan portfolio toward the income-driven repayment plan, the Department has not estimated any changes in student loan borrowing — whether due to additional students enrolling in college in response to the more generous income-driven repayment plan, colleges raising tuition knowing that students won't be obligated to repay or at risk of default (threatening the institution's Title IV aid eligibility), or both. This undoubtedly understates the costs of the regulations. Recent research finds that the availability of Grad PLUS loans led institutions to increase prices by more than 50 cents per $1 increase in federal borrowing.[71] It is reasonable to assume that a vast expansion in the generosity of the repayment plans available will also have a large impact on borrowers' loan decisions, albeit perhaps not as large an impact as the increased loan availability itself. In addition to other sensitivity analyses, the Department should run estimates that account for an increase in Title IV volume.

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69 Chen, Junlei, "Budgetary Cost of Newly Proposed Income-Driven Repayment Plan," Penn Wharton, University of Pennsylvania, January 30, 2023, https://budgetmodel.wharton.upenn.edu/issues/2023/1/30/budgetary-cost-of-proposed-income-driven-repayment.

70 The Department does not have income information on borrowers outside of the current IDR plans, and notes that it is "concerned that building in a sensitivity analysis that includes adjustments for increased take up could present inaccurate estimates." (88 Fed. Reg. 1920.) For the purposes of providing reasonable estimates, however, the Department could consider assuming similar demographics between IDR and non-IDR borrowers, particularly if it is able to create estimates for the share of graduate and undergraduate borrowers transferring from non-IDR to IDR plans and narrow the demographic assumptions accordingly. It seems clear that the current estimates are necessarily inaccurate due to the significant omission.

71 Black, Sandra E., Lesley J. Turner, and Jeffrey T. Denning, "PLUS or Minus? The Effect of Graduate School Loans on Access, Attainment, and Prices," Preliminary Draft, February 2023, https://lesleyjturner.com/GradPLUS_Feb2023.pdf.

Provide Estimates Under Both the Updated and Original Baselines

Additionally, for both these proposed regulations and the final student loan regulations issued in October 2022, the Department has updated its baseline estimates to first subtract out balances that will be canceled under broad-based debt cancellation, the PSLF and IDR waivers, the payment pause extension, and the *Sweet* settlement of borrower defense claims. However, given that broad-based debt cancellation remains tied up in the courts, and those costs have not yet been realized, the Department should consider providing additional information for public information and transparency purposes. Specifically, the Department should provide versions of these cost estimates that both include the changes to the baseline for these debt relief initiatives and that exclude broad-based cancellation, given the uncertainty that currently exists.