February 9, 2023

Mr. Richard Blasen
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue, SW
Room 2C172
Washington, DC 20202

Submitted via email to www.regulations.gov

RE: Docket ID ED-2023-OPE-0004

Dear Mr. Blasen:

As the trade associations representing the majority of loan providers (guaranty agencies, lenders, and servicers) in the Federal Family Education Loan (FFEL) program, thank you for the opportunity to participate in the 2021-22 negotiated rulemaking activities covering student loans and affordability issues. We share the U.S. Department of Education's (ED) commitment to greater transparency and clarity, and support improvements to the administration of the federal student financial aid programs that assist and protect students, participating institutions, and taxpayers including the simplification and streamlining of student loan repayment plans.

Our attached comments focus on the provisions specific to the proposed Income-Driven Repayment (IDR) plan that would expand the benefits of the Direct Loan REPAYE plan.

Thank you for this opportunity to comment. On behalf of the borrowers and their families we serve, we remain committed to working with the Department on these proposed regulations and any future regulatory and operational efforts.

Sincerely,

Gail daMota	James Bergeron	Scott Buchanan
President	President	Executive Director
EFC	NCHER	SLSA

EFC-NCHER-SLSA Comments on Docket ID-ED-2023-OPE-0004

EFC, NCHER, and SLSA continue to support the streamlining of student loan repayment plans in the Direct Loan program by reducing the number of IDR plans available to borrowers. The proliferation of repayment plans confuses students and parents and creates unnecessary barriers to higher education for low- and moderate-income students who believe a postsecondary education is unaffordable.

Repayment plans must be designed with borrowers in mind. This means any IDR plan must have clear terms and conditions that are easily understood by everyone. To be effective, borrowers need confidence that ED's proposed repayment plan is above legal reproach. That means the specific terms and conditions of the proposed regulations must indisputably be supported by the Higher Education Act (HEA) of 1965 as amended. If ED fails this standard, then borrowers will not have reliable tools to successfully repay their obligations. Promises made need to be promises kept, and borrowers need to know they can trust that ED will be able to follow through on its commitments.

We are concerned that aspects of this proposed rule violates the statute in material and new ways, which puts the proposal at risk of legal challenges that could result in implementation delays and possibly its complete undoing. Without addressing the conflicts between statute and regulation in the final rule, the increased risk of legal challenges, regardless of the final determination of legality, would subject borrowers to additional confusion. This could potentially result in delinquency and default and delays in implementing an improved IDR program. For the sake of borrowers, we urge ED to address all potential conflicts between the HEA and the proposed rule and revise the final rule to ensure that it complies with the law.

Upon completion of its regulatory review and development of what will be the final regulations resulting from this Notice of Proposed Rulemaking (NPRM), it is imperative that ED coordinate implementation with its trusted partners including student loan servicers. We encourage ED to keep the best interest of borrowers in mind, consult with FSA partners throughout the implementation process, and provide formal guidance to these entities in writing before making sweeping public announcements. Servicers need this information, in advance of any such announcements, to train their call center employees and update their systems to ensure that they are able to provide borrowers with the most accurate information and guidance. The Department fails borrowers and their families when it releases regulatory guidance and policy changes via news stories that are not always complete or accurate. Policy made by press release catches everyone off-guard and does nothing but sow chaos, which scammers use to their advantage to prey on struggling borrowers we are all trying to help.

During the negotiated rulemaking sessions, we offered a simplified IDR plan for consideration (see References) that is borrower-friendly and supported by federal regulations and the HEA. Combining the best features of the existing IDR plans into a single plan for Direct Loan borrowers is the correct next step in resolving the complexity and improving borrower understanding of the new IDR option.

Based on the proposed REPAYE plan, we have the following specific comments and questions.

<u>Loan Forgiveness Conditions</u>

Page 1898 (column 3) of the proposed rule refers to section "455(d)(7)" with respect to periods that the Secretary must include in the calculation of the maximum repayment period under the ICR repayment plan. The HEA does not contain a citation for "455(d)(7)" which we assume was intended to be a

reference to 455(e)(7). Section 455(e)(7) states that "the Secretary shall include all time periods during which a borrower," while not in default, meets explicit conditions under economic hardship deferment, IBR plan payments (i.e., partial financial hardship payments, standard-standard payments, permanent-standard payments), Standard 10-year repayment plan payments, and ICR payments (i.e., income-driven payments). ED seems to be of the view that section 455(e)(7) does not limit the agency to regulating only these conditions or that ED is precluded from using additional periods. We want to point out that this view is inconsistent with how ED has viewed other sections of the HEA with the same language such as specific conditions for deferment entitlements under section 428(b)(1)(M) and IBR forgiveness under section 493C(b)(7). Never before in our longstanding experience working with ED on program regulations has ED suggested that it can impose additional deferment types or Income-Based Repayment (IBR) loan forgiveness conditions that were not expressly authorized by the HEA.

We also want to address the fact that ED's proposal to add new forgiveness conditions faces operational constraints and data limitations similar to concerns expressed on page 1906 concerning whether ED can operationalize including certain deferments before July 1, 1993. In addition to economic hardship deferment (expressly authorized by the HEA), the proposed regulations contemplate giving credit toward forgiveness by deferring or forbearing payments under five new deferment conditions (i.e., cancer treatment deferment, rehabilitation deferment, unemployment deferment, military deferment, post-active-duty deferment) and six new forbearance conditions (i.e., national service forbearance, national guard forbearance, student loan repayment plan forbearance, national military mobilization forbearance, national and local emergency forbearance and forbearance to collect and process certain types of documentation). The National Student Loan Data System (NSLDS) Guarantor Agency Data Provider Guide contains status codes to distinguish the various deferment status types; however, there is only one NSLDS status code type for a forbearance (FB), which means there is no means to distinguish the six new forbearance conditions from other forbearances.

<u>Proposed 10-Year Forgiveness Period</u>

The standard repayment period under the HEA is 10 years. Section 455(d)(1)(D) of the HEA authorizes the Income-Contingent Repayment (ICR) plan for an "extended period of time," which implies that ICR must be greater than 10 years not to exceed 25 years. ED's proposed loan forgiveness period of 10 years (i.e., for original loan balances at or below $12,000) conflicts with section 455(d)(1)(D) of the HEA.

<u>Proposed Subsidy</u>

Section 493C(b)(3) of the HEA for IBR explicitly provides for an interest subsidy up to three years for interest that is not covered by a partial financial hardship payment under an IBR plan. Section 455 does not authorize an interest subsidy. On the contrary, section 455(e)(5) requires the amount due under ICR to equal the unpaid principal amount of the loan, and any accrued interest.

<u>IRS Income Data</u>

Page 1906 (column 1) of the proposed rule indicates ED's plans to further the use of tax return information supplied by the Internal Revenue Service (IRS) to determine eligibility for recertifications for IDR plans and that it "will make it easier to automatically recertify a borrower's participation in IDR plans." We support efforts to streamline and automate the annual reapplication process for borrowers participating in IDR plans. Currently, FFELP borrowers have the ability to complete an IDR application online and concurrently request use of the Data Retrieval Tool (DRT) to have the IRS provide tax return

information. This process is efficient and an important component of the automated IBR application and renewal process, which reduces burdens for borrowers and expedites processing, thereby allowing servicers to more quickly place and maintain borrowers in an affordable IBR repayment plan.

Recently, ED notified the FFELP community that it plans to cease providing IRS income data and, in place, allow a borrower to upload alternative documentation of income, which ED will transmit to the servicers in a separate image file. We are very concerned that the change will negatively impact the FFELP borrower application experience and service levels because borrowers will unlikely have income documentation readily available during the application process. The change will certainly be confusing for borrowers, particularly those who completed an IDR application in the past, and will result in delays and unwanted customer confusion, frustration, and complaints.

We urge ED to retain the DRT for FFELP borrowers completing the electronic IDR plan request that is currently available on the StudentLoans.gov website.

Estimated Costs

EFC, NCHER, and SLSA question ED's underlying assumptions with respect to both the proposed plan's cost to taxpayers and net effect on college students. While ED acknowledges the price tag of the new plan will be massive, we fear the stated analysis significantly underestimates the bill thrust onto taxpayers.[1] Additionally, we are concerned the proposed plan will encourage excessive borrowing and the use of forbearances to avoid making payments, in anticipation that the loans will never have to be repaid.

The NPRM suggests a couple of key items that bear specific comment, which are quoted below:

> *The proposed regulations would also result in modest administrative costs to the Department to implement the changes to the plan, which would require modifications to contracts with servicers. We estimate that, based on comparable changes made in the past, those administrative costs would total approximately $10 million in systems and other changes. These are costs associated with activities, such as change requests to servicers to make alterations to their systems and servicing platforms. The Department is already in the process of developing data-sharing agreements to support the provision of tax information, pursuant to the FUTURE Act, and would seek to include the IDR provisions in these proposed regulations in those agreements.*
>
> *It is currently unclear whether the proposed regulations would represent a net cost or benefit to servicers. On the one hand, the provisions that keep more borrowers current and prevent borrowers from defaulting would increase servicer compensation because they are currently paid more each month when a borrower is current. Similarly, any effect of this regulation to increase borrowing would raise compensation for servicers. On the other hand, if the regulations resulted in a decrease in student loan borrowers due to forgiveness, then servicers would receive less compensation. It is likely that the factors that would increase compensation are greater than those that decrease it, but determining the exact amounts is not currently possible.*

[1] https://budgetmodel.wharton.upenn.edu/issues/2023/1/30/budgetary-cost-of-proposed-income-driven-repayment

Our members will be at the forefront of implementing the proposed REPAYE plan. We firmly believe the administrative costs will not be, as stated – "modest," and ED's estimate appears to materially underestimate the resources it takes to give borrowers the service they need and deserve. We are concerned FSA's underestimation is more about acknowledging its current financial position rather than a true expression of what it will take to implement the plan. The costs of systemic work will be extensive and the ongoing costs to guide borrowers on how this program works will exceed this estimate meaningfully. Borrowers need and deserve a high-quality servicing experience, and that requires ED to be willing to invest the necessary resources to pay for such a system. As it currently stands, we fail to see how the Department's extremely low administrative cost estimate sets itself, its partners, and, most importantly, its borrowers on a path to success.

In short, it is critical that FSA closely re-examine the cost assertions that it has provided in this NPRM because they do not align with the reality and scale of the costs of this new program and its implementation or ongoing management.

References

Higher Education Act of 1965 as Amended

HEA 455(d) REPAYMENT PLANS.— (1) DESIGN AND SELECTION.—Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—
(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);
(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);
(C) an extended repayment plan, consistent with section 428(b)(9)(A)(iv), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);
(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student; and
(E) beginning on July 1, 2009, an income-based repayment plan that enables borrowers who have a partial financial hardship to make a lower monthly payment in accordance with section 493C, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS Loan made on behalf of a dependent student or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on such Federal Direct PLUS Loan or a loan under section 428B made on behalf of a dependent student.

HEA 455(e)(5) CALCULATION OF BALANCE DUE.—The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

HEA 455(e)(7) - MAXIMUM REPAYMENT PERIOD.—In calculating the extended period of time for which an income contingent repayment plan under this subsection may be in effect for a borrower, the

Secretary shall include all time periods during which a borrower of loans under part B, part D, or part E—
(A) is not in default on any loan that is included in the income contingent repayment plan; and
(B)(i) is in deferment due to an economic hardship described in section 435(o);
(ii) makes monthly payments under paragraph (1) or (6) of section 493C(b);
(iii) makes monthly payments of not less than the monthly amount calculated under section 428(b)(9)(A)(i) or subsection (d)(1)(A), based on a 10-year repayment period, when the borrower first made the election described in section 493C(b)(1);
(iv) makes payments of not less than the payments required under a standard repayment plan under section 428(b)(9)(A)(i) or subsection (d)(1)(A) with a repayment period of 10 years; or
(v) makes payments under an income contingent repayment plan under subsection (d)(1)(D).

Proposed Simplified Direct Loan IDR Plan

Feature	**New Plan Requirement**
Eligible loans	Direct Loans, except Parent PLUS. Consolidated Parent PLUS that are subsequently re-consolidated may qualify.
Partial financial hardship (PFH)	No requirement to demonstrate a hardship.
Discretionary income	Amount by which income exceeds 150% of Poverty Guidelines. Includes spouse income if taxes filed jointly, unless separated, or cannot access spouse's income.
Family size	Includes spouse, unless spouse income is excluded (i.e., separated, or cannot access spouse's income).
IDR payment	10% of discretionary income.
Maximum payment cap for increased income	Payment may not exceed 10-year standard payment using balance at start of plan.
Untimely recertification	10-year standard payment using balance at start of plan.
Recertification frequency	Annual.
Leaving and changing of plans	May change plans any time. No catch-up payment when IDR resumes.
Interest capitalization during IDR and when leaving IDR	No capitalization for failure to recertify or change plans.
Interest capitalization at end of deferment or forbearance	No capitalization after forbearance. Capitalization after deferment (i.e., according to issue #3).
Interest capitalization limit	Not to exceed 10% of the loan balance when the loan enters the IDR plan.
Interest subsidy	Subsidized loans: 100% of unpaid interest for first consecutive 3 years when payment calculation is less than accrued interest. 50% thereafter.
Loan forgiveness	20 years of qualified Direct loan repayment.