August 16, 2012

Jessica Finkel
U.S. Department of Education
1990 K Street, NW, Room 8031
Washington, DC 20006-8502

Re: Docket ID ED-2012-OPE-0010

Dear Ms. Finkel:

We are pleased to have the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on July 17, 2012. The proposed rules take several important steps towards making the Income-Based Repayment (IBR) and Income-Contingent Repayment (ICR) programs more accessible and helpful to borrowers and simplifying the process of discharging loans in cases of total and permanent disability (TPD).

The Institute for College Access & Success (TICAS) is an independent, non-profit organization that works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society. The Project on Student Debt, a TICAS initiative, developed the policy proposal that served as the model for IBR.

The economic downturn has left many student loan borrowers – at all stages of life – struggling to manage their bills and start and/or support a family. Half of recent college graduates are either unemployed or underemployed—the highest share in more than a decade.[1] The proposed changes are, therefore, particularly timely. We write to express our strong support for the proposed regulations and to recommend important improvements.

We applaud the proposed regulations implementing the "Pay As You Earn" repayment plan, also called ICR-A. This plan is expected to help more than 1.6 million recent borrowers qualify for lower monthly payments and earlier loan forgiveness than IBR currently provides.[2] Under the proposed rules, ICR-A has several additional important features, including capping the amount of interest that can be capitalized and allowing borrowers to change repayment plans without penalty.

All borrowers in IBR and ICR plans will benefit from proposed regulations ensuring borrowers are notified about when they need to submit their income information and when they may qualify for loan forgiveness, eliminating high-stakes guesswork. We are also pleased that the current form of ICR, now called ICR-B, will remain available to all Direct Loan borrowers.

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[1] Yen, Hope. "Half of New Grads are Jobless or Underemployed." *NBC News.* http://www.msnbc.msn.com/id/47141463/ns/business-stocks_and_economy/#.UBhkWrSe52B.
[2] U.S. Department of Education. "Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule." 77 Federal Register 42086-42148. July 17, 2012. http://www.gpo.gov/fdsys/pkg/FR-2012-07-17/pdf/2012-15888.pdf.

Additionally, we are pleased that beginning next month, Direct Loan borrowers *applying* for IBR will be able to provide their income information electronically, using a process similar to the one already in use for the FAFSA.[3] We understand that Direct Loan borrowers *already repaying in* IBR will soon be able to use this same simple process to provide their annual income documentation. We urge the Department to make this process available to *all* borrowers in IBR and ICR to help ensure that their loan payments remain at levels they can afford.

We also encourage the Department to consider developing more consumer-friendly names for the ICR-A and ICR-B programs as it moves forward with finalizing and implementing these regulations. Given the large amount of publicity around the "Pay As You Earn" program, it may be helpful to make it clear to borrowers that ICR-A *is* the "Pay As You Earn" program.

We joined a coalition of advocates for students, consumers, higher education, civil rights and college access to submit comments strongly supporting the proposed regulations and recommending four important improvements to provide more protections for struggling borrowers:

1. Reduce the extreme and disproportionate penalty for late paperwork
2. Count qualifying payments made before and after consolidation towards forgiveness
3. Ensure borrowers can exit IBR to enter a different repayment plan without prohibitive penalty
4. Accept Social Security Administration (SSA) disability determinations for loan discharges

We expand on these recommendations and provide additional detailed comments below. Our comments are organized by section of the NPRM (separating the preamble and proposed regulations) and by issue. Where our comments are identical for both the FFEL and Direct Loan programs, we have listed them once and cross-reference the other regulations to which they apply. Double-underlined text and strike-outs indicate our proposed changes to the regulations as currently written. All page numbers in parentheses are to the page numbers in the July 17, 2012 Federal Register.

Preamble

Income-Contingent Repayment Plans, p. 42098-42099, and Current ICR Plan (ICR-B Plan), p. 42100-42102

The discussion of the ICR plans should explicitly state that qualifying payments for forgiveness need not be consecutive. We are pleased to see this language in the discussion of the forgiveness provisions for the IBR program (p. 42104). To make it clear that this extends to the ICR program, we recommend adding language to the preamble discussions of ICR as well.

Annual IBR Partial Financial Hardship Assessment, p. 42104-42110

[3] See http://www.fafsa.ed.gov/help/irshlp9.htm.

1. The preamble should clearly state that the Secretary is *required* to grant forbearance for overdue payments of certain borrowers whose annual income documentation is received more than 10 days after the deadline (p. 42106). The current preamble language states that FFEL loan holders "may grant" forbearance under proposed 682.215(e)(9) and that "Proposed §685.221(e)(9)(i) would establish the same requirements in the Direct Loan (DL) Program." However, the proposed regulations on which negotiators reached consensus are not the same for both programs. As we discuss more on page 12 of our comments, the proposed regulations give FFEL lenders the option to grant forbearance while the Secretary is required to grant it. We recommend making the FFEL regulatory language match the DL language.

2. The preamble should state that payments made at the previously calculated payment amount-- after the end of the prior annual payment period and before the new monthly payment amount is calculated -- will count as qualifying payments for forgiveness under the ICR program, as well as under Public Service Loan Forgiveness and the IBR program (p. 42106).

> In addition, proposed § 685.221(e)(9)(ii) would specify that any payments a borrower continued to make at the previously calculated monthly PFH payment amount after the end of the prior annual payment period and before the new monthly PFH payment amount is calculated are considered to be qualifying payments for purposes of the public service loan forgiveness program under § 685.219, provided that the payments otherwise meet the eligibility requirements of that program. These payments would also count for purposes of IBR and ICR loan forgiveness.

   We discuss on pages 12-13 a proposal to make this explicit in the regulations themselves.

The Need for Regulatory Action, p. 42112-42116

A sentence in the "Need for Regulatory Action" speculates that income-based repayment plans may encourage higher borrowing; however, we know of no evidence to support this and none is provided. We therefore urge the Department to remove the sentence (p. 42112).

> In order to achieve the goals of the President's Pay As You Earn initiative and provide maximum benefit to borrowers, the Secretary is proposing to make improvements to the ICR repayment plan while implementing the statutory IBR changes. The proposed revisions would offer eligible borrowers lower payments and loan forgiveness after 20 years of qualifying payments. ~~As discussed earlier in this section, income-based repayment options may encourage higher borrowing and potentially introduce an unintended moral hazard, especially for borrowers enrolled at schools with high tuitions and with low expected income streams, but the proposed changes should not substantially increase the potential moral hazard when compared to existing IBR or ICR plans.~~

We have not been able to find an earlier discussion of this issue in the NPRM and are not aware of any evidence that the availability of ICR led to higher borrowing through the DL program than through the FFEL program, before IBR became available in 2009.

Text of Proposed Regulations

Exiting IBR

Ensure borrowers can exit IBR to enter a different repayment plan without prohibitive penalty. [682.215(d)(3), p. 42131 and 685.221(d)(2)(ii), p. 42146-42147]

While IBR payments are intended to be manageable, they may become unmanageable for some borrowers due to private student loan debt, high medical bills, or other financial circumstances that are not factored into the payment formula. Such borrowers might want to leave IBR to enter an extended repayment plan that would allow for even lower monthly payments.

Currently, such borrowers would be required to make one potentially massive "exit payment" under the standard repayment plan before they could leave IBR and enter a different repayment plan. That exit payment would be based on the monthly cost of paying down the borrower's current debt (including any unpaid accrued interest) in the time remaining on a standard repayment plan *minus* their time in IBR.

For example, if the borrower had been in IBR for seven years, the exit payment would be based on what it would cost to pay off their remaining balance plus any unpaid accrued interest in just three years. Borrowers with non-consolidation loans who were in IBR for 10 years or more would automatically face a required, one-time exit payment of their *entire loan balance* (including unpaid accrued interest), because they had used up all the time on the standard repayment clock. Borrowers who could not afford such high exit payments would not be able to leave IBR. For borrowers who also could not afford to remain in IBR, such an exit penalty raises the risk of delinquency and default.

To enable borrowers to leave IBR, the proposed regulations allow for a reduced exit payment under forbearance. While this is a step in the right direction, the proposed regulations give lenders total discretion over whether to grant this forbearance and what the reduced payment amount will be. The final regulations need to set clear guidelines for granting forbearances for this purpose, to ensure borrowers are always able to exit IBR if needed to keep their payments manageable. We recommend the following changes to this process:

1. Require loan holders to offer and grant this forbearance to ensure that all borrowers have the opportunity to leave IBR if they need to.

2. Set clear guidelines around the upper limit of the "smaller payments" under this forbearance to ensure that the exit payment is manageable for borrowers. For example, the upper limit could be the amount the borrower would currently pay in IBR.

3. Clearly state that this forbearance can be for a period as short as one month. Under the proposed regulations, as written, it is not clear how quickly borrowers can leave forbearance and enter another repayment plan.

4. Add language stating, "Interest that accrues during this forbearance period is not capitalized."

Annual Income Documentation Requirements

Notification of Income Documentation Requirements

All borrowers in IBR and ICR will benefit from being notified about when they need to submit their income information. Currently, lenders are not under any obligation to notify or remind borrowers of when borrowers are required to provide updated income documentation and confirm their family size. However, borrowers who do not submit this information annually may unexpectedly face large and unaffordable payments that are no longer based on their income.

Under the proposed regulations, borrowers will be notified each year about which information they need to submit to their lenders. Borrowers with a partial financial hardship (PFH) in IBR and ICR-A, and all borrowers in ICR-B, will be required to submit documentation of their income and certify their family size on an annual basis, and will receive a reminder no later than 60 days and no earlier than 90 days before the deadline for submitting that information. Borrowers in IBR and ICR-A who no longer have a partial financial hardship will receive an annual notification about their option to provide updated income information to their lender, if their financial situation has changed.

We recommend the following changes to strengthen this notification process and ensure that borrowers receive all the information they need to keep their payments affordable in IBR and ICR.

1. For each year the borrower is determined to have a partial financial hardship in IBR and ICR-A, the written notification should include the annual deadline for submitting the required information on income and family size [682.215(e)(2), p. 42132; 685.209(a)(5)(ii), p. 42140; and 685.221(e)(2), p. 42147]. In the proposed regulations, as written, the annual deadline is only included in the reminder notification that goes out in the months before the deadline [682.215(e)(3)(i), p. 42132; 685.209(a)(5)(iii)(A), p. 42140; and 685.221(e)(3)(i), p. 42147]. Providing the annual deadline earlier would help borrowers plan for submitting their information in a timely fashion.

2. Throughout this section of the regulations, replace “within 10 days” of the specified annual deadline with “before or within 10 days” of the specified annual deadline. Income documentation received more than 10 days before the annual deadline should be treated as being on time. [682.215(e), p. 42131-42133; 685.209(a)(5), p. 42140-42141; 685.209(b)(3)(vi), p. 42143-42144; 685.221(e), p. 42147-42148]

3. Clearly define “promptly” to set guidelines for how quickly lenders are required to calculate borrowers’ new monthly payment amount after the required documentation has been received. The proposed FFEL regulation for IBR [682.215(e)(8)(i), p. 42132] states that loan holders “must promptly determine the borrower’s new monthly payment amount” if borrowers submit their required information on time. Further guidance would help ensure that borrowers’ payments more quickly take into account their changes in income.

4. Clarify in the Direct Loan regulations for ICR and IBR that the Secretary will promptly determine the borrower’s new monthly payment amount if the borrower’s required

information is received before or within 10 days of the deadline. As described above, the FFEL regulation for IBR states that "the loan holder must promptly determine the borrower's new monthly payment amount" [682.215(e)(8)(i), p. 42132]. The preamble states that "The Secretary would apply the same requirement in the Direct Loan program" (p. 42107), but this requirement is not clear in the regulations themselves.

5. Add language to ICR-A [685.209(a)(5)(iii)(B), p. 42140] stating that, for borrowers whose income documentation is received more than 10 days late, unpaid accrued interest does not capitalize until the end of the borrowers' current annual payment period. This would make the language consistent with the regulations for IBR [682.215(e)(3)(ii), p. 42132 and 685.221(e)(3)(ii), p. 42147].

> (B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, including the borrower's new monthly payment amount as determined under paragraph (a)(4)(i) of this section, the effective date for the recalculated monthly payment amount, and the fact that unpaid accrued interest will be capitalized <u>at the end of the borrower's current annual payment period</u> in accordance with paragraph (a)(2)(iv) of this section.

6. Clarify that borrowers in ICR-B can request an adjustment to their repayment obligations at any time during the current annual payment period [685.209(b)(3)(v)(C), p. 42143]. This would make the language more consistent with the regulations for ICR-A and IBR [682.215(e)(2)(v), p. 42132; 685.209(a)(5)(ii)(D), p. 42140; and 685.221(e)(2)(v), p. 42147].

> (C) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in paragraph (b)(3)(iii) of this section, the borrower may contact the Secretary <u>at any time during the borrower's current annual payment period</u> and obtain the Secretary's determination as to whether an adjustment is appropriate; and

7. For each year they remain in ICR-B, borrowers should be informed that they need to certify their family size in addition to providing documentation of income. The proposed regulations for IBR and ICR-A make it clear that borrowers must annually certify their family size, or their loan holder will assume a family size of one [682.215(e)(1)(iv), p. 42132; 685.209(a)(5)(i)(C), p. 42140; 685.221(e)(1)(iii), p. 42147]. To ensure that borrowers' calculated payment accurately reflects their current family size, the written notifications for ICR-B should also include information about certifying family size each year. [685.209(b)(3)(vi)(A), p. 42143]

> (vi) Documentation of income. (A) For the initial year that a borrower selects the ICR–B plan and for each subsequent year that the borrower remains on the plan, the borrower must provide acceptable documentation, as determined by the Secretary, of the borrower's AGI to the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the plan. <u>The borrower must also annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for the year.</u>

We also recommend the following minor technical corrections:

1. Replace the reference to (a)(5)(v) with (a)(5)(vii) in 685.209(a)(5)(ii)(C), p. 42140. The reference to (a)(5)(v) is incorrect. This section describes the notification to be sent out each year to borrowers who are determined to have a PFH in ICR-A.

   (C) An explanation of the consequences, as described in paragraphs (a)(5)(i)(C) and ~~(a)(5)(v)~~ (a)(5)(vii) of this section, if the borrower does not provide the required information; and

2. Replace the reference to (e)(5) with (e)(7) in 685.221(e)(2)(iii), p. 42147. The reference to (e)(5) is incorrect. This section describes the notification to be sent out each year to borrowers who are determined to have a PFH in IBR (Direct Loan borrowers).

   (iii) An explanation of the consequences, as described in paragraphs (e)(1)(iii) and ~~(e)(5)~~ (e)(7) of this section, if the borrower does not provide the required information;

3. Replace "repayment" with "payment" in 685.221(e)(2)(v), p. 42147, to make this language consistent with 682.215(e)(2)(v), p. 42132 and 685.209(a)(5)(ii)(D), p. 42140.

   (v) Information about the borrower's option to request, at any time during the borrower's current annual ~~repayment~~ payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income.

Hold Harmless Provision

Borrowers who submit their income documentation by the deadline should not be penalized if their lender is unable to process that information before the end of the current annual payment period. We are pleased to see provisions in the proposed regulations allowing borrowers to continue making their previous payment amount until their new payment amount is calculated. We recommend the following changes to strengthen protections for borrowers who submit their documentation on time:

1. Add language stating that payments made at the previous level after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for Public Service Loan Forgiveness and forgiveness under the IBR and ICR programs, provided that the payments otherwise meet the requirements of those programs [682.215(e)(8), p. 42132; 685.209(a)(5)(viii), p. 42140-42141; 685.209(b)(3)(vi)(E), p. 42143; 685.221(e)(8), p. 42147-42148].

   The proposed regulations already state that payments made by borrowers whose lenders receive their income documentation more than 10 days after the deadline would be considered as qualifying payments for Public Service Loan Forgiveness, provided that the payments otherwise meet the requirements of those programs [685.209(a)(5)(ix)(B), p. 42141; 685.209(b)(3)(vi)(F)(2), p. 42143; and 685.221(e)(9)(ii), p. 42148], and the preamble states that those payments would also qualify for IBR forgiveness (p. 42106). Payments made by borrowers who submitted their documentation on time should also count toward forgiveness.

Add the following language as 682.215(e)(8)(iv):

> (iv) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 682.215(f), § 685.209(a)(6), § 685.209(b)(iii), and § 685.221(f), provided that the payments otherwise meet the requirements in those sections.

Add the following language to the sections 685.209(a)(5)(viii), 685.209(b)(3)(vi)(E), and 685.221(e)(8):

> Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 682.215(f), § 685.209(a)(6), § 685.209(b)(iii), § 685.219, and § 685.221(f), provided that the payments otherwise meet the requirements in those sections.

2. Add language to the Direct Loan regulations for ICR and IBR specifying that no adjustment is made to the borrower's account if the new payment amount is equal to or greater than the previous payment amount. This language already appears in the FFEL regulations for IBR [682.215(e)(8)(iii), p. 42133].

   We recommend adding the following sentence to the end of 685.209(a)(5)(viii), p. 42140-42141; 685.209(b)(3)(vi)(E), p. 42143; and 685.221(e)(8), p. 42147-42148:

   > If the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

3. Make the following technical corrections to ensure that adjustments due to excess payments do not advance the due date of the next payment. Under the proposed regulations, lenders make an "appropriate adjustment" to the borrower's account if the borrower continues making payments at the previous payment amount and their new monthly payment is calculated to be lower than their previous payment amount. The preamble explains (p. 42108):

   > The proposed regulations also provide that if the new calculated monthly PFH payment amount is less than the borrower's previously calculated monthly PFH payment amount, the loan holder must apply any excess payment amount resulting from payments that the borrower continued to make at the higher monthly PFH payment amount in accordance with the normal IBR payment application rules, unless the borrower requests that the excess amount be applied to future payments. This requirement would ensure that any excess payment is not applied as a prepayment to advance the next monthly payment due date (unless that is what the borrower requests), as that would lengthen the period before the borrower becomes eligible for public service loan forgiveness under § 685.219.

Borrowers who submit their documentation on time and continue making responsible payments at their previous payment amount should not face unexpected changes in their payment schedule, which may cause them to inadvertently miss payments. To ensure that excess payments in this situation do not advance the due date of the next monthly payment, we recommend the following changes:

a) In the Direct Loan regulations for IBR and ICR-A, change the reference from 685.211(b)(3) to 685.211(a)(3). The current citation of 685.211(b)(3) does not exist. [685.209(a)(5)(viii), p. 42140-42141 and 685.221(e)(8), p. 42147-42148]

b) Add the following language to ICR-B to be consistent with IBR and ICR-A and to ensure that excess payments are not applied as prepayments that advance the due date of the next payment. [685.209(b)(3)(vi)(E), p. 42143]

> (E) If the Secretary receives the documentation described in paragraph (b)(3)(vi)(A) of this section within 10 days of the specified annual deadline, the Secretary maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined. If the new calculated monthly payment amount is less than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of ~~§~~ § 685.211(a)(3), the ~~The~~ Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of § 685.211(a)(1), unless the borrower requests otherwise.

Borrowers Who Miss Their Income Documentation Deadline

In order to continue making payments based on their income, borrowers in IBR and ICR are required to provide documentation of their income and confirm their family size every year. The improved notifications in the proposed regulations will help ensure that borrowers are aware of this requirement, and the addition of a 10-day "grace period" for paperwork to be received appropriately acknowledges that there are a number of reasons why borrowers' information may not be received on time. For example, borrowers may underestimate the time it takes for their documentation to reach their lender by mail. However, under the proposed regulations, students who miss the deadline by more than 10 days would still be subject to harsh penalties—even if they missed the deadline by just one additional day or if they or a close family member had been hospitalized.

Under the proposed rules, borrowers whose documentation is received more than 10 days after the deadline will have their payments recalculated to the "permanent standard" amount (the amount they would have paid had they entered a 10-year standard repayment plan when they entered IBR or ICR), which may be substantially higher than their previously calculated payment amount. Additionally, all of their unpaid accrued interest would capitalize and be added to their principal loan balance at the end of the annual payment period.

This penalty is unduly harsh and highest for borrowers with the lowest incomes. Credit card late fees are based on a combination of the size of the balance and the lateness of the payment. In

contrast, this penalty is based on how long the borrower has had a very low income, penalizes late paperwork rather than a late payment, and does not distinguish between paperwork that is 11 or 99 days late.

Take, for example, a single borrower who enters IBR with $50,000 in debt and is unable to find a job for three years during the economic downturn. Because she has no income, her monthly IBR payment amount is $0. Right before her fourth year in IBR, she finds a job paying $45,000, but misses her lender's deadline for submitting her income documentation. As a result, under the proposed regulations, her scheduled monthly payment would skyrocket from zero to $575 (the "permanent standard" amount) and over $10,000 of unpaid accrued interest would capitalize.[4] Interest now begins accruing on her new principal balance of $60,200, rather than her original balance of $50,000, and she will end up paying $25,000 more over 25 years than if her unpaid interest had not capitalized. Some borrowers will never be able to pay off their loan balances after their interest capitalizes.

No one should be subjected to such a harsh and disproportionate penalty for late paperwork. We recommend the following changes to ensure that borrowers who miss their documentation deadlines are not forced to face disproportionately harsh penalties:

1. Make the penalty for late paperwork proportionate to the lateness of the paperwork. We propose capitalizing unpaid interest that accrues only during the period the borrower's paperwork is late. If borrowers are able to make the "permanent standard" payment, no unpaid interest would accrue and be capitalized. However, as illustrated in the example above, some borrowers may not be able to afford the "permanent standard" amount. Borrowers who are only able to make smaller payments, which do not cover accruing interest, would have the unpaid interest that accrued while their paperwork was late capitalized when their income documentation is eventually received and processed. Other options for mitigating this penalty include adding an interest capitalization cap to IBR (like the one for ICR) and giving lenders discretion to reduce the interest capitalization penalty under exceptional circumstances.

   The preamble explicitly invites comments on this issue (p. 42108) and notes that the Department was concerned that changing this penalty might have budgetary implications but was continuing to examine this issue. We believe changing this penalty would have little or no budgetary score because the budget baseline for IBR and ICR almost certainly does not assume significant revenue from large numbers of borrowers missing the income documentation deadline and having their unpaid accrued interest capitalize. This is because, until recently, an IRS consent process allowed ICR and IBR borrowers to provide multi-year consent to check their income, effectively preventing them from missing the annual income documentation deadline. If the budget baseline never assumed revenue from large numbers of borrowers submitting late paperwork and having their accrued interest capitalized, then limiting the capitalization of interest for late paperwork should have little or no budgetary

[4] Calculations are based on a 6.8% interest rate, a 2% annual increase in the borrower's salary, the 2012 poverty level, and the current IBR formula, which caps monthly loan payments at 15% of discretionary income and forgives any remaining debt after 25 years of qualifying payments.

score.

2. Add language stating that the "permanent standard" payment amount only applies until the borrower's new payment amount is calculated. Borrowers should not be subjected to higher payments for an entire year if they submit their documentation before the end of the next annual payment period.

   We recommend adding the following sentence to the end of 682.215(e)(7), p. 42132; 685.209(a)(5)(vii), p. 42140; 685.209(b)(vi)(D), p. 42143; and 685.221(e)(7), p. 42147:

   > The loan holder [or The Secretary, as applicable] maintains that monthly payment amount until the borrower submits the required information and the new monthly payment amount can be calculated.

3. Add language stating that borrowers will not have their payments recalculated and unpaid interest capitalized if they miss the lender's deadline for providing income documentation, but still submit that information in time to have their new payment amount calculated before the end of the annual payment period. Under the proposed regulations, the lender's deadline for providing income and family size information can be set up to 35 days before the end of the borrower's annual payment period. Penalties for late documentation are not imposed until at the end of the annual payment period, leaving up to a month when borrowers could submit their documentation and have their new payment amount calculated.

   The preamble states that borrowers should not be required to pay the "permanent standard" amount if their lender is able to determine the new monthly payment amount before the end of the annual payment period (p. 42105):

   > Under proposed § 685.221(e)(7) and § 682.215(e)(7), the Secretary or the loan holder would require a borrower to pay the permanent standard amount if a borrower currently repaying a monthly PFH payment amount remains on the plan for a subsequent year, but the Secretary or the loan holder does not receive the information required for the annual partial financial hardship assessment within 10 days of the annual deadline previously provided to the borrower, unless the Secretary or the loan holder is able to determine the borrower's new monthly PFH payment amount before the end of the annual payment period.

   This protection should be reflected in the regulations. Borrowers should not be required to make a potentially large and unaffordable monthly payment and have all of their unpaid interest capitalize if their new monthly payment amount is calculated before the beginning of their new annual payment period.

   We recommend adding language clarifying that the loan holder recalculates the monthly payment for borrowers whose information is received more than 10 days after the deadline, "unless the loan holder [or The Secretary, as applicable] is able to determine the borrower's new monthly payment before the end of the current annual payment period." [682.215(e)(7), p. 42132; 685.209(a)(5)(vii), p. 42140; 685.209(b)(3)(vi)(D), p. 42143; 685.221(e)(7), p. 42147]

4. Under the proposed regulations, some borrowers who turn in their information late can receive forbearance for payments that are overdue or would be due at the time the new payment amount is calculated. This forbearance is only available to borrowers whose new monthly payment amounts are calculated to be $0 or lower than their previously calculated monthly payment amount. Although it will help some borrowers, this forbearance is too limited in scope. We recommend the following changes:

   a) Require all lenders to offer and grant this forbearance. Under the proposed regulations, the Secretary is required to grant this forbearance in IBR and ICR, but FFEL lenders have the *option* of granting this forbearance in IBR. Requiring that lenders offer and grant this forbearance will help ensure that all borrowers in IBR and ICR have access to it.

      The proposed Direct Loan regulations for ICR and IBR state that "the Secretary grants forbearance..." in this scenario [685.209(a)(5)(ix)(A), p. 42141; 685.209(b)(3)(vi)(F)(1), p. 42143, and 685.211(e)(9)(i), p. 42148], while the proposed FFEL regulation for IBR states that "the loan holder may grant forbearance" [682.215(e)(9), p. 42133]. To make this language consistent, we recommend changing "may grant" to "grants" in the FFEL regulation for IBR [682.215(e)(9), p. 42133].

   b) Expand the qualifications for this forbearance to include borrowers whose new monthly payment amount is *equal to* their previously calculated monthly payment amount. This would provide this forbearance to borrowers whose new monthly payment amount is $0 or less than *or equal to* their previously calculated monthly payment amount. Any borrower with a PFH whose financial situation has not improved would struggle to pay the "permanent standard" amount, as it is not tied to their income.

      We therefore recommend adding the language "or equal to" to the relevant portion of 682.215(e)(9), p. 42133; 685.209(a)(5)(ix)(A), p. 42141; 685.209(b)(3)(vi)(F)(1), p. 42143, and 685.211(e)(9)(i), p. 42148:

      > …the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than <u>or equal to</u> the borrower's previously calculated income-based monthly payment amount.

   c) Provide lenders with discretion to grant this forbearance to borrowers with exceptional circumstances, such as those who experienced personal or family health emergencies that prevented on-time submission of paperwork.

   d) Add language stating that payments made at the previously calculated payment amount -- after the end of the prior annual payment period and before the new payment amount is calculated -- will count toward forgiveness under IBR, ICR, and Public Service Loan Forgiveness (PSLF). The proposed Direct Loan regulations for ICR and IBR already state that these payments would be considered qualifying payments for PSLF [685.209(a)(5)(ix)(B), p. 42141; 685.209(b)(3)(vi)(F)(2), p. 42143; 685.221(e)(9)(ii), p. 42148]. There is no reason to count them toward PSLF and not towards IBR and ICR

forgiveness, and the preamble already notes that these payments would count for purposes of IBR forgiveness as well (p. 42106):

> In addition, proposed § 685.221(e)(9)(ii) would specify that any payments a borrower continued to make at the previously calculated monthly PFH payment amount after the end of the prior annual payment period and before the new monthly PFH payment amount is calculated are considered to be qualifying payments for purposes of the public service loan forgiveness program under § 685.219, provided that the payments otherwise meet the eligibility requirements of that program. These payments would also count for purposes of IBR loan forgiveness.

Adding this language to the regulations would encourage borrowers to continue making payments, even if they miss their lender's deadline for submitting documentation.

IBR, 682.215(e)(9), p. 42133.

> (9) If the loan holder receives the documentation described in paragraphs (e)(1)(i) through (e)(1)(iii) of this section more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated in accordance with paragraph (d)(1) of this section, the loan holder may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined, if the new monthly payment amount is $0.00 or is less than the borrower's previously calculated income-based monthly payment amount. Interest that accrues during the portion of this forbearance period that covers payments that are overdue after the end of the prior annual payment period is not capitalized. Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 682.215(f), § 685.209(a)(6), § 685.209(b)(iii), and § 685.221(f), provided that the payments otherwise meet the requirements described in those sections.

It may be helpful to separate out this section into subsections, as is done in 685.221(e)(9).

ICR-A, 685.209(a)(5)(ix)(B), p. 42141 and ICR-B, 685.209(b)(3)(vi)(F)(2), p. 42143

> Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 682.215(f), § 685.209(a)(6), § 685.209(b)(iii), § 685.219, and § 685.221(f), provided that the payments otherwise meet the requirements described in ~~§ 685.219(c)(1)~~ those sections.

IBR, 685.221(e)(9)(ii), p. 42148

> (ii) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 682.215(f), § 685.209(a)(6), § 685.209(b)(iii), § 685.219, and § 685.221(f), provided that the payments ~~were made within 15 days of the scheduled due date for the full previously calculated payment amount~~ otherwise meet the requirements described in those sections.

Spousal Consent

The proposed FFEL regulation for IBR adds language about spousal consent to make it clear that certain married borrowers must provide information about their spouse's eligible loans, in addition to their own. [682.215(e)(1)(iii), p. 42132]

> (iii) If the spouse of a married borrower who files a joint Federal tax return has eligible loans and the loan holder does not hold at least one of the spouse's eligible loans—
> (A) Provide consent for the loan holder to access the National Student Loan Data System to obtain information about the spouse's eligible loans; or
> (B) Provide other documentation, acceptable to the loan holder, of the spouse's eligible loan information; and

For consistency, this language should also be added to the DL regulations for IBR and ICR [685.209(a)(5), p. 42140-42141; 685.209(b)(2), p. 42142; and 685.221(e)(1), p. 42147].

Prepayment

The proposed DL regulations for ICR-A and IBR add language about prepayment, making it clear that borrowers can prepay any part of their loan without penalty [685.209(a)(3)(ii-iv), p. 42139 and 685.211(c)(2-4), p. 42146]. These proposed changes are based on the language in the existing FFEL regulation for IBR [682.215(c)(2-4)]. To ensure that borrowers can make larger payments than their calculated monthly payment amount without being penalized, we recommend the following changes to the prepayment language:

1. Add the same prepayment language, including the proposed changes below, to the ICR-B regulations, for consistency with the ICR-A and IBR regulations.

2. Prevent excess payments from advancing the due date of the borrower's next monthly payment. Under the general DL and FFEL prepayment regulations, prepayments that equal to or exceed the monthly payment amount advance the due date of the borrower's next monthly payment.[5]

   Under the hold harmless provision, excess payments are not treated as prepayments that advance the next monthly payment due date. The preamble explains that, otherwise, this "would lengthen the period before the borrower becomes eligible for public service loan forgiveness under § 685.219" (p. 42108). We believe that excess payments made at other times of year (not just under the hold harmless clause) should also not advance the due date of the next monthly payment. Unexpected changes in their payment schedule may create confusion and cause borrowers to inadvertently miss payments.

   We propose deleting the paragraph in the proposed IBR and ICR regulations that references 685.211(a)(3) or 682.209(b)(2)(ii), the clause in the existing DL and FFEL regulations that leads certain prepayment amounts to automatically advance the due date of the next payment. This provision is not appropriate for IBR and ICR, where required payments are based on

[5] 34 CFR 682.209(b)(2)(ii) and 34 CFR 685.211(a)(3).

income and family size. In fact, other parts of the general prepayment regulations for FFEL and DL acknowledge an exception for IBR [682.209(b)(1) and 685.211(a)(1)]. This change would encourage borrowers to make larger payments if they are able to, ultimately helping them pay their loan balances off faster. [682.215(c)(3); 685.209(a)(3)(iii), p. 42139; 685.221(c)(3), p. 42146]

> ~~If the prepayment amount equals or exceeds a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).~~

3. Allow borrowers to specifically request that their excess payments be counted toward principal first, rather than going first to accrued interest, collection costs, and late charges.

4. Change the language around the recalculation of payments to ensure that borrowers who choose to make larger payments than their required payment amounts are not treated as if they no longer have a partial financial hardship (PFH) and forced to make the "permanent standard" payment amount. **[**682.215(d)(1), p. 42131; 685.209(a)(4)(i), p. 42139-42140; and 685.211(d)(1), p. 42146]

Loan Forgiveness

After borrowers make 20 or 25 years of qualifying payments in IBR or ICR (depending on the version of the program), any outstanding loan balance and accrued interest will be forgiven. The proposed regulations substantially improve the notification requirements for borrowers who are approaching eligibility for loan forgiveness and require lenders to return any payments received after forgiveness has been granted.

To further improve the forgiveness process, we recommend the following changes:

1. Count qualifying payments made before and after consolidation towards forgiveness. Under the proposed regulations, qualifying payments are not counted toward forgiveness if the loans are later consolidated. Borrowers who consolidate their loans should get the appropriate credit for what may be years of qualifying payments. There is a precedent for tracking payments made on loans before consolidation: the Department and FFEL lenders already track pre-consolidation payments on subsidized loans in order to provide a three-year period of interest subsidy.[6]

2. Count ICR-A payments toward forgiveness in ICR-B. Under the proposed regulations, payments made in ICR-B count as qualifying payments toward forgiveness in ICR-A [685.209(a)(6)(i)(E), p. 42141]. For consistency, ICR-A payments should also count toward forgiveness in ICR-B. We recommend adding paragraph (b)(3)(iii)(B)(3) and renumbering the subsequent paragraphs in 685.209(b)(3)(iii)(B), p. 42142.

[6] 34 CFR 682.215(b)(4) and 34 CFR 685.221(b)(3).

(3) Periods in which the borrower makes monthly payments under the ICR-A plan described in paragraph (a) of this section.

3. To be consistent with the IBR statute and FFEL regulations for IBR, revise the Direct Loan regulatory language defining qualifying payments for loan forgiveness for IBR and ICR-A.

   The IBR statute [USC 1098e(b)(7)(B)(ii)] describes one of the qualifying payments for loan forgiveness:

   > (ii) has made monthly payments of not less than the monthly amount calculated under section 1078(b)(9)(A)(i) or 1087e(d)(1)(A) of this title, based on a 10-year repayment period, when the borrower first made the election described in this subsection;

   The existing FFEL regulation for IBR [682.215(f)(1)(iv)] states:

   > (iv) Made monthly payments under the FFEL standard repayment plan described in §682.209(a)(6)(vi) based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower first selected the income-based repayment plan; or

   To be consistent with statute and the FFEL regulation for IBR, we recommend the following changes to the Direct Loan regulation for IBR: [685.221(f)(1)(iii), p. 42148]:

   > (iii) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time ~~the loans initially entered repayment~~ the borrower first selected the income-based repayment plan.

   Because the ICR-A regulation is largely modeled after IBR, we recommend making the corresponding change to ICR-A: [685.209(a)(6)(i)(C), p. 42141]:

   > (C) Made monthly payments under any repayment plan, that were not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b) for the amount of the borrower's loans that were outstanding at the time ~~the loans initially entered repayment~~ the borrower first selected the income-based repayment plan.

Total and Permanent Disability

Accept Social Security Administration (SSA) Disability Determinations for Loan Discharges. The proposed regulations help to streamline the burdensome and byzantine process of discharging federal student loans for borrowers who become permanently disabled. Under the proposed rules, borrowers would be able to submit just one application to the Department of Education rather than having to submit separate discharge applications to each of their lenders.

To further streamline this process, we strongly urge the Department to accept certain Social Security Administration (SSA) determinations of disability as presumptive proof for Department of Education discharges. The Department already accepts disability determinations from the

Department of Veteran Affairs (VA).[7] At a minimum, borrowers who meet the SSA definition of "Medical Improvement Not Expected" or of "Medical Improvement Possible" after a period of at least 60 months should be considered eligible for a loan discharge, consistent with HEA statutory requirements.[8] Accepting at least some SSA determinations of disability would prevent those borrowers from having to go through the entire application process twice and reduce the administrative burden on the Department and lenders.

Thank you for the opportunity to comment on these proposed regulations. If you have any questions about our comments, please feel free to contact me at (510) 318-7900 or lasher@ticas.org.

Sincerely,

Lauren Asher
President

[7] See http://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/disability-discharge
[8] 20 CFR 404.1505 and 20 USC 1087.