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Ms. Wendy Macias
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U.S. Department of Education
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Via electronic mail: negreg09@ed.gov

Dear Ms. Macias:

Thank you for the opportunity to provide input on topics for negotiated rulemaking. These comments are in response to the May 26, 2009 *Federal Register* notice of negotiated rulemaking for programs authorized under Title IV of the Higher Education Act of 1965, as amended. We will summarize these comments in our testimony at the public hearing in Philadelphia on June 22, 2009.

The Institute for College Access & Success is a nonprofit, nonpartisan policy research organization working to make higher education more available and affordable for people of all backgrounds. We believe the program integrity issues proposed by the Department are important and would benefit from review. With students borrowing more to pay for college, including taking out risky and expensive private loans, program integrity is increasingly important not only to protect taxpayers but also to protect students' own investment in their education and training, and their ability to repay their loans.

We have limited our specific comments to areas in which we have particular expertise and the stakes for students and families are particularly high. Our recommendations therefore focus on the verification of student aid application information, and financial aid communication and process issues on which we have conducted research over the past several years. Specifically, we recommend the Department:

- **Examine verification policies and practices** to ensure students receive the aid for which they are eligible when they need it, and to reduce the burden of verification for both students and schools;
- **Review the financial aid information schools are required to provide** prospective and current students, with the goal of making the information much more useful for students and families while also reducing the burden for schools;
- **Revise the Student Aid Report (SAR)** to answer the most basic questions students and families have, such as how much aid they are eligible for, in a clear and consumer-friendly way;
- **Develop recommendations to improve financial aid award letters** so recipients can understand them and easily compare the cost of attending different colleges;

- **Use the certification process to ensure that students considering risky private loans make the most of their federal aid options first**; and
- **Improve and integrate the Income-Based Repayment and Public Service Loan Forgiveness regulations.**

Program Integrity

Verification of information included on student aid applications
CFR 668.51 - 668.61

The verification process is supposed to ensure that federal aid applicants have accurately submitted the information used to determine their eligibility for financial aid. Some students are selected for verification by the Department, and some are selected by their school. No school is required to verify more than 30% of its applicants (excluding school-selected verifications and those based on conflicting information). Still, some schools verify 100% of applications. While this practice may reflect genuine concerns about compliance and stewardship, requiring large numbers of students to go through an extensive verification process can reduce their odds of completing the process and receiving aid in a timely manner.[1]

We therefore urge the Department to consider the extent and processes of verification used by colleges, and examine ways to reduce the burden on both students and schools. For instance, pre-populating the Free Application for Federal Student Aid (FAFSA) with data that applicants have already provided through the tax system would dramatically simplify the verification process. The Higher Education Opportunity Act of 2008 (HEOA) authorizes the Secretary to pre-populate the FAFSA with tax data from the Internal Revenue Service (IRS) with the applicant's consent, and to use the tax data that are most likely to be available when students are making decisions about whether, where, and how to go to college. This practical solution would relieve applicants of the burden of reviewing, correcting and resubmitting much of the most error-prone information on the FAFSA, while reducing and simplifying the verification process for schools.[2]

Financial Aid Communication

The Department currently requires colleges to provide a wide range of financial aid information to current and prospective students. However, despite the large number of these requirements, too often the information provided is not especially helpful to students and families. We urge the Department to review these requirements with the

[1] Cochrane, Deborah. "Green Lights & Red Tape Improving Access to Financial Aid at California's Community Colleges." December 2007. The Institute for College Access & Success. http://www.ticas.org/files/pub/Green_Lights_Red_Tape.pdf.
[2] Asher, Lauren. "Going to the Source: A Practical Way to Simplify the FAFSA." March 2007. The Institute for College Access & Success. http://projectonstudentdebt.org/files/pub/FAFSA_FINAL.pdf.

goal of providing the information students and parents really need to make informed decisions, and doing so in a truly consumer-friendly way.

In general, we recommend that the Department:

- Develop a comprehensive list of common financial aid terminology and definitions;
- Test the terms and definitions with real students and parents, including those from populations least likely to attend or complete college, to ensure their usefulness and accessibility;
- Consistently use these terms and definitions in all of the Department's financial aid communications; and
- Encourage, or in certain instances require, institutions to use these same terms and definitions.

Below we provide specific recommendations for negotiated rulemaking on new statutory requirements as well as existing regulatory language related to financial aid communication. Our comments for the June 23, 2009 public forum address the issues that are non-regulatory.

Student Aid Report
34 C.F.R. § 690.2

The 2009-2010 Student Aid Report (SAR) available as of January 2009 fulfills the minimal requirements of reporting an applicant's Expected Family Contribution (EFC) and allowing the applicant to review and correct information on their FAFSA. However, it does not answer the most basic questions that students and families have at this stage of the financial aid process.

At this point in the process, students and families want to know:

- Was my FAFSA received and processed?
- Am I eligible for federal aid? How much?
- Do I need to do anything else to complete the application process?
- What are next steps in the process?

The form contains unnecessary jargon, confusing instructions, and vague references that do not convey where the student stands with regard to receiving financial aid. Students and families are not getting a clear message about their federal aid eligibility or the steps they must take to receive awards. Students who make the effort to submit a FAFSA deserve a consumer-focused SAR that prioritizes the most useful information and presents it as clearly and intuitively as possible. We understand that last month the Department began providing Pell Grant estimates and loan eligibility information to FAFSA applicants, which is an encouraging step in the right direction.[3]

[3] "We now provide people with an estimate of their Pell Grant and information about loans that they're eligible for after they complete the FASA form." Robert Shireman, Deputy Undersecretary, U.S. Department of Education speaking at the Future of Student Financial Aid, Brookings Institution,

Financial aid award letters
HEOA Title IV, Sec. 484

We urge the Department to develop recommendations to improve financial aid award letters. We have analyzed more than 100 award letters and believe that many students and families are not receiving the information they need to understand and compare their financial aid options. For example, some award letters provide an incomplete picture of the cost of attendance, making it difficult for students and families to understand the value of their aid package. Even when the complete cost of attendance is provided, some award letters fail to inform students and families about the types of aid in their award package, making it difficult to figure out the bottom-line cost they must pay. Students and families deserve award letters that make understanding and comparing offers of financial aid clear and straightforward.

We are particularly interested in encouraging the development of award letters that:

- Disclose the total estimated cost of attendance
- List gift aid separately from loans
- Clearly identify the cost after gift aid (i.e. net cost of attendance) that the student and family will have to cover
- List the types and amounts of financial aid available to meet the cost after gift aid
- Distinguish federal from nonfederal loans, and if nonfederal loans are listed, to make clear that they do not come with the same borrower protections as federal loans
- Avoid the use of acronyms and technical terms (e.g. COA, EFC, unmet need) when possible, and provide easily accessible and clear definitions of terms when they are used
- Provide clear instructions about next steps for accepting and receiving aid and information about where to turn with questions or for more information

Private student loan self-certification
HEOA Title X, Subtitle B, Sec. 1021

About one-quarter of private student loan borrowers do not receive federal Stafford loans, which are more affordable and have more repayment options and protections than private loans.[4] In implementing the self-certification provisions in HEOA, the Department has an opportunity to encourage colleges to engage students in counseling about private student loans to ensure they take our federal loans first. The HEAO requires colleges to provide a self-certification form to students seeking private student loans, and to provide, to the

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Washington, DC. May 26, 2009. Accessed June 20, 2009 at http://www.brookings.edu/~/media/Files/events/2009/0526_student_aid/20090526_student_aid.pdf.

[4] Project on Student Debt. "New Data Show Big Increases in Private Student Loan Borrowing. Press Release." April 21, 2009. The Institute for College Access & Success. http://projectonstudentdebt.org/files/pub/Private_loan_data_NR.pdf.

extent possible, the information needed to complete the form. Students must then submit the form to their lender before a private student loan may be consummated.

The certification process can and should serve as a teachable moment to ensure wise borrowing on behalf of students and their families. Anecdotal evidence suggests that counseling students who are considering private student loans is an effective way to ensure they use federal loans before turning to private loans. After Barnard College began requiring financial aid counseling for prospective private student loan borrowers, administrators documented a 73% decrease in private student loan utilization in one academic year.[5] At Colorado State University, financial aid officials began contacting students who sought private student loan certification and found that many had not completed a FAFSA or borrowed the maximum amount of federal loans available to them. Students were then counseled to utilize these lower-cost options, and school officials estimate that half of the students they contacted turned to federal loans before applying for private loans.[6]

While we strongly support legislation to further strengthen the certification process, the self-certification process mandated by HEOA has the potential to help reduce the use of risky private loans. We urge the Department to work closely with the Board of Governors of the Federal Reserve to develop the self-certification form for private loans, as specified by HEOA. The self-certification form informs students of their eligibility for, and encourages them to pursue, federal student aid in lieu of private student loans. The Department should ensure that this information is bold and prominently displayed to ensure maximum visibility for prospective private student loan borrowers.[7]

In addition, we believe that legislation to require the collection of more data on private loans would inform policymakers, institutions, and researchers about the choices students are making. All federal student loans are currently reported to a federal database, the National Student Loan Data System (NSLDS); private student loans should be too. The ability to track debt trends has proven extremely useful in developing new programs and policies to help borrowers. In order to fully understand and address rising student debt, information about private student loan borrowing should also be collected through this system.

Integrate information about Income-Based Repayment and Public Service Loan Forgiveness into existing regulations
CFR 682.604 and 682.205

The Department can assist borrowers with more information about two valuable new programs that can make loan repayment easier and more affordable. Current regulations

[5] Jaschik, Scott. "Bucking the Tide on Private Loans." July 16, 2007. Inside Higher Ed. http://www.insidehighered.com/layout/set/dialog/news/2007/07/16/barnard.
[6] Harnisch, Thomas. "The Public Realities of Private Student Loans. Policy Matters: A Higher Education Policy Brief." 2008. American Association of State Colleges and Universities. http://www.aascu.org/media/pm/pdf/pmapril08.pdf.
[7] Project on Student Debt , Comments to Federal Reserve Board on Private Student Loan Disclosures, May 2009. The Institute for College Access & Success. http://ticas.org/pub_view.php?idx=475

require disclosure of terms for any loan included in the financial aid package, including a sample repayment schedule. The required disclosures should be updated to include Income-Based Repayment and Public Service Loan Forgiveness.

In addition, the current rules governing entrance and exit counseling for federal loans, as well as disclosure requirements for lenders, must be reviewed in light of the availability of these new repayment and forgiveness options. Just one example is the requirement that entrance counseling include "sample monthly repayment amounts." Such samples should include income as well as indebtedness as factors in potential payment levels.

Entrance counseling is also an opportunity to warn students about the hazards of private student loans and the availability of Parent PLUS loans.

Financial Aid Processes

Protect borrowers in the Income-Based Repayment and Public Service Loan Forgiveness Programs

We appreciate the Department's efforts to ensure that the new Income-Based Repayment (IBR) and Public Service Loan Forgiveness (PSLF) programs function as Congress intended. However, there are still a few areas of the regulations that we believe need to be addressed in order to fulfill this objective, as outlined below.

Avoid penalizing borrowers who enroll in IBR and later decide to leave the program
CFR 685.215 and 685.221

During negotiated rulemaking hearings for the CCRAA, negotiators used the term "expedited standard" plan to refer to the repayment plan that borrowers who exit IBR are automatically placed in. It was labeled an "expedited" standard plan because, as specified in the Department's final regulations in Sec.682.215(d)(2)(i), for a borrower exiting IBR, the Secretary will recalculate the borrower's monthly payment based on "*the time remaining under the maximum 10-year repayment period* for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan." (Italics our emphasis.)

The regulation is of particular concern because it suggests that a borrower could pay down a portion of his or her loan debt in IBR over 10 years, and then be asked to pay the remainder of the loan debt *as a lump sum* upon choosing to exit the program, due to there being no "time remaining" under a 10-year repayment schedule. Most borrowers in IBR will pay less each month than they would under a 10-year standard monthly payment plan, so even borrowers who are in IBR for only a few years may find it difficult to pay off their loan in an abbreviated timeframe. Furthermore, the statute in 20 USC 1078-3 mandates that "no plan may require a borrower to repay a loan *in less than 5 years* unless the borrower, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over a shorter period."

And while a borrower leaving IBR would have the ability to change repayment plans *after* being transferred into the expedited standard repayment schedule, there is no reason to require borrowers to jump through this additional administrative hoop, particularly given that the legislative language in Sec. 493C of the CCRAA (20 USC 1098e) does not require it. (b)(6) of this section generally states that the maximum monthly payment a borrower can be required to pay upon ending the IBR election *shall not exceed the monthly payment the borrower would have paid under a 10-year repayment period at the time of entering IBR, and that the amount of time the borrower is permitted to repay such loans may exceed 10 years*." (Italics our emphasis.) Also, while (b)(8) of this section generally states that a borrower who exits IBR will instead begin paying the loan under "the standard repayment plan," it does not specify that the "standard plan" is intended to mean only the 10-year standard plan; borrowers who have consolidated their loans may be considered to have a "standard" repayment period of anywhere from 10 to 30 years, based on their total federal loan amount.[8]

Revisiting the regulatory language to ensure that no individual leaving IBR will pay more than what they would have paid under the standard 10-year plan or be forced to repay their loans in less than a five-year repayment period, as prohibited by statute, will remove an unfair penalty for borrowers who enrolled in the IBR program and later need to exit. It will also remove an unnecessary administrative burden by simplifying the process of enrolling in repayment plans upon exiting IBR. And permitting borrowers with consolidation loans to access the "standard" repayment plan for their debt level will ensure that borrowers are not penalized for enrolling in IBR, and that their payments remain affordable.

Therefore, we propose the following changes to the regulation. Section 682.215(d) currently states:

> (1) If a borrower no longer has a partial financial hardship or fails to provide the requisite documentation to verify his or her partial financial hardship, the borrower may continue to make payments under the income-based repayment plan but the loan holder must recalculate the borrower's monthly payment. As a result of the recalculation –
> (i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and
> (ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.
> (2) If a borrower no longer wishes to pay under the income-based repayment plan, the borrower must choose to pay under a <u>standard</u>

[8] http://loanconsolidation.ed.gov/help/faq.html#option

payment plan for which he or she is eligible, and the loan holder must recalculate the borrower's monthly payment. As a result of the recalculation –

(i) The maximum monthly amount that the loan holder may require the borrower to repay is the amount the borrower would have paid under the FFEL standard repayment plan based on a 10-year repayment period on the borrower's eligible loans that were outstanding at the time the borrower began repayment on the loans with that holder under the income-based repayment plan; and

(ii) The borrower's repayment period based on the recalculated payment amount may exceed 10 years.

Similar changes should be made to Section 685.221(d) which regulates IBR in the Direct Loan program.

Technical change to date reference in Income-Contingent Repayment regulations
CFR 685.209

We urge the Department to make a technical change to regulations for the Income-Contingent Repayment program. Currently, (c)(4)(ii) states:

> (F) Periods after October 1, 2007, in which the borrower makes monthly payments under any other repayment plan that are not less than the amount required under the standard repayment plan described in Sec. 685.208(b); or
>
> (G) Periods of economic hardship deferment after October 1, 2007.

The preceding section (E) applies only to "borrowers who entered repayment before October 1, 2007." Therefore, sections (F) and (G) should be amended to read, "Periods beginning on or after October 1, 2007," to be reflective of statute.

Simplify and remove inequity in the definition of full-time employment for Public Service Loan Forgiveness
CFR 685.219

Section 401 of the CCRAA defines a "public service job" specifically as a *full-time* job, but does not define "full-time." In its final regulations governing public service loan forgiveness (Sec. 685.219(b)), the Department has defined "full-time" as "working in qualifying employment in one or more jobs for the greater of –

> (i)(A) An annual average of at least 30 hours per week, or
>
> (B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or
>
> (ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time."

The second half of clause (ii) creates both unnecessary administrative complexity and inequity for individuals whose employers consider full-time to be more than 30 hours per week. Borrowers will have to submit proof of their employer's definition of full-time, and the Department will have to collect and verify this information for each borrower in the Public Service Loan Forgiveness program. There is no statutory language that requires this dual definition for full-time. Deleting section (ii), thereby defining full-time as 30 hours per week for all applicants, would greatly simplify the administration of the program and ensure that all borrowers are treated equitably with regard to how much they have to work to qualify for Public Service Loan Forgiveness.

Employment and loan payment eligibility for PSLF
CFR 685.219

The Public Service Loan Forgiveness program is supposed to encourage people to serve their country and community in government and nonprofit jobs. However, the final rules published by the Department do not provide a mechanism for borrowers to find out *upfront* if a particular job will count towards the required 10 years of public service. Instead, the rules require borrowers to fully document 10 or more years of employment and loan payment history and submit it to the Department *after the fact* (Sec.685.219(e)).

This is an unreasonable burden on borrowers and undermines the purpose of PSLF. Giving borrowers clear information upfront, and periodic confirmation of how many more years of eligible work and payments are required before they qualify for forgiveness, will provide an incentive to continue in public service and ultimately meet the forgiveness requirements. It will also reduce the number of borrowers applying to the Department for loan forgiveness before it is appropriate for them to do so.

In the preamble to the proposed regulations, the Department gives three reasons for declining to address this issue in the regulations or in practice: it is "operational rather than regulatory"; it will be hard to administer because not everyone who asks for certification will ultimately meet the requirements for forgiveness; and documentation is the borrower's responsibility. We believe this logic is wrong. First, it is no more operational than the need for a form to apply for forgiveness, which is not specified in statute but is directly addressed in the proposed regulations as cited below. Second, giving borrowers clear, periodic confirmation of how many more years of eligible work and payments are required before they qualify for forgiveness will reduce the number of borrowers who apply for forgiveness too soon or are otherwise unqualified. Third, while borrowers certainly have the primary responsibility for securing documentation of their eligibility, the Department is the only entity that can confirm eligibility.

We suggest that language be added as indicated below:

> (e) Application. (1) After making not fewer than 12 monthly payments, a borrower may request a confirmation of eligible payments and employment on a form provided by the Secretary.

(2) After making 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request loan forgiveness on a form provided by the Secretary.

Definition of "Standard Repayment Plan"

We have heard from borrowers, lenders, and other stakeholders that the multiple uses of the phrase "standard repayment plan" is confusing, particularly because it can have different meanings depending on the context.

There are many examples of how the term "standard repayment plan" is used differently. In the development of the regulations for IBR, CCRAA negotiators needed to develop several versions of "Standard" to differentiate between various meanings of the term in various parts of the regulations (including "Standard-Standard," "Permanent-Standard" and "Expedited-Standard") but the regulations themselves do not necessarily make these distinctions. In a recent conversation with an employee at the Department of Education, we were told that when the term "standard repayment plan" occurs in the statute and fails to specify a repayment period, it, by default, means the *10-year* Standard Repayment Plan. While the literal interpretation of the statute may indicate that only a fixed 10-year repayment plan is a "standard plan," both the Department and other lenders define it differently in some contexts. For example, the "Frequently Asked Questions"[9] section of the Direct Loan consolidation website explains payments under a "Standard Plan" as follows: "You will pay a fixed amount each month until your loan(s) are paid in full. Your monthly payments will be at least $50 for up to *10 to 30 years*[10], based on your total education indebtedness."[11] (Italics our emphasis.)

Here is another recent example of the confusion that arises from the multiple uses of the word "standard" in describing a repayment plan for federal loans. The spouse of an Institute employee was attempting to switch to the "Standard" 10-year Repayment Plan so that her loan payments would begin counting towards Public Service Loan Forgiveness as she waited for the IBR program to go into effect on July 1 of this year. She had previously consolidated her loans, and the default repayment plan for her federal loan balance was a "Standard" 25-year plan. When she inquired with the Department's customer service about how she could change to the 10-year "Standard" Repayment plan, the customer service representative did not understand the question of how the "Standard" plan would be different than the one she is currently paying under, and failed to provide her with this information. We've heard similar stories from other borrowers looking to change into a 10-year "Standard" Repayment plan, only to be told that the only "Standard" repayment plan for their loan amount is longer than 10 years. For example, a borrower named Samantha emailed our organization last year to say that a Direct Loan Origination Center (Consolidation) representative had told her that the only "Standard" plan available for her debt level was 25-30 years.

[9] http://loanconsolidation.ed.gov/help/faq.html#option;
[10] http://loanconsolidation.ed.gov/examples/repyperiod.html;
[11] http://loanconsolidation.ed.gov/help/glossary.html#indebtedness

Ensuring that the term "standard repayment plan" is defined clearly and used consistently will minimize confusion and questions by borrowers, and make the federal loan program run more smoothly.

Cohort default rates
CFR 668.181 - 668.198

Our research has revealed that many colleges do not participate in the federal student loan programs out of fear that their cohort default rate would be or appear to be high. In fact, almost a quarter of all community colleges—enrolling at least one million student—do not participate in the federal loan programs, thereby forcing needy students to resort to riskier, more expensive options such as private student loans and credit cards.[12] We understand the Department plans to change the way cohort default rates are displayed to address the fear of *appearing* to be subject to sanctions, beginning with the fiscal year 2007 cohort default rates.[13] This would encourage more schools to participate in the federal student loan program and would be a significant step towards ensuring all students have access to federal student loans.

We recommend that the Department provide technical assistance to schools that are close to the minimum sanction levels and working to lower their default rates, as well as to community colleges interested in learning more about the rules.

Clarify treatment of non-taxable income for economic hardship deferment eligibility
CFR 682.210(s)(6)(vii)[based on renumbering from July 1, 2008 Proposed Rule]

We recommend the Department clarify that the monthly income used for determining economic hardship deferment eligibility is one-twelfth of the borrower's AGI, limiting it only to taxable income.

Ensure that IBR is an avenue to rehabilitation
CFR 682.405(a)(2), 685.221(a)(2)

The same rights for borrowers in default that are available through ICR should also be available through IBR. The regulations should specify that borrowers in default who select ICR or IBR as their repayment plan are no longer in default as long as they agree to the terms of the program, including providing the Department with access to their tax information for income verification. For example, in order for borrowers in default to rehabilitate their loan, they must fulfill several obligations, one of which is making nine on-time "reasonable and affordable" payments within a 10-month period. The

[12] Project on Student Debt. "Denied: Community College Students Lack Access to Affordable Loans," April 17, 2008. The Institute on College Access & Success. http://www.ticas.org/pub_view.php?idx=328
[13] In the last negotiated rulemaking session, the federal negotiator for Team II informed negotiators that a cost and development time estimate from the Department's operations staff was completed and that the press package for the fiscal year 2007 official cohort cycle would indicate those institutions that would be eligible for a participation rate index appeal.

Department should clarify that IBR payments automatically qualify as "reasonable and affordable."

Thank you for this opportunity to provide input into the negotiated rulemaking process. Please do not hesitate to contact me or anyone at the Institute if you have questions regarding our recommendations.

Sincerely,

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