

**Comments on Topics for Negotiated Rulemaking**

Docket ID ED–2014–OPE–0124

Submitted October 22, 2014

The Institute for College Access & Success (TICAS) is an independent, nonprofit 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.

These comments are in response to the September 3, 2014 Federal Register notice soliciting input on topics to be included in the U.S. Department of Education’s upcoming negotiated rulemaking.<sup>1</sup> The Federal Register notice specifically requests comments on the Department’s plans to convene a committee to develop proposed regulations to expand the Pay As You Earn (PAYE) plan to more Direct Loan Borrowers and target the program to borrowers who would otherwise struggle to repay their loans, in accordance with the Presidential Memorandum issued on June 9, 2014.<sup>2</sup>

We address these issues below and recommend other modifications to PAYE to increase access, simplicity, and fairness. We also strongly urge the Department to add several issues for negotiated rulemaking, including preventing cohort default rate (CDR) and 90/10 rule manipulation, increasing the efficacy of Participation Rate Index appeals by colleges with low borrowing rates, and ensuring that loans are discharged for defrauded students.

See our full list of recommendations in the table of contents on the following page.

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<sup>1</sup> U.S. Department of Education. September 3, 2014. Federal Register Notice, Docket Number ED–2014–OPE–0124. “Negotiated Rulemaking Committee; Public Hearings.” <http://www.gpo.gov/fdsys/pkg/FR-2014-09-03/pdf/2014-20977.pdf>.

<sup>2</sup> Obama, Barack. President of the United States. June 9, 2014. “Presidential Memorandum – Federal Student Loan Repayments.” <http://1.usa.gov/1my5nP1>.

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## Pay As You Earn (PAYE): Increase access, targeting, simplicity, and fairness

The Secretary has the authority to make all of the regulatory changes proposed below for Pay As You Earn (PAYE).<sup>3</sup> While many of these recommendations also apply to Income-Based Repayment (IBR) and/or Income-Contingent Repayment (ICR), legislative changes would be required to implement them for IBR unless otherwise noted.

### Expand eligibility for PAYE

#### **Eliminate time limitations for when borrowers must have taken out loans**

We support the Administration's goal to expand access to PAYE and **recommend eliminating the complex "new borrower" requirement for PAYE or widening the timeframe as much as possible.** Currently, Direct Loan borrowers are only eligible for PAYE if they took out their first federal loans on or after October 1, 2007 and also received a loan disbursement on or after October 1, 2011. This timing restriction adds complexity to the plan in terms of communication and administration, and confusion for borrowers about their eligibility for PAYE and income-driven repayment (IDR) plans generally. Although all borrowers with Direct and/or FFEL loans already have access to Income-Based Repayment (IBR), many are unaware of the option; and for those with Direct Loans who borrowed before July 1, 2014,<sup>4</sup> PAYE would provide lower monthly payments and a shorter repayment period than IBR. Making all Direct Loan borrowers eligible for a plan that caps payments at 10% of income and discharges remaining debt, if any, after 20 years of payments would be a major step towards improving and simplifying repayment options, outreach, and enrollment.

#### **Eliminate "partial financial hardship" (PFH) requirement for enrollment**

In addition to eliminating eligibility restrictions based on *when* students borrowed, **we recommend allowing all Direct Loan borrowers to enroll in PAYE if they choose, regardless of their debt-to-income level.** This will make it possible for borrowers who want the assurance of having their loan payments fluctuate with their income to enroll whenever it makes sense for them, whether it is before they make their first payment, after they have hit a rough patch, or when they are concerned about what the future will bring. It will greatly simplify PAYE for borrowers *and* for program administration and communication, and help prevent defaults.

Currently, borrowers must have a "partial financial hardship" (PFH) to enroll in PAYE. That is, 10% of their discretionary income must be *less* than the amount they would repay under a 10-year standard repayment plan, based on the greater of their loan amount when they entered repayment or their loan amount when they enrolled in PAYE. Eliminating the PFH enrollment requirement would *dramatically simplify the program*, both in terms of process and communication. It would simplify repayment plan selection by allowing borrowers to choose PAYE whenever it makes sense for them, simplify calculations for servicers by eliminating the need to determine PFH, and simplify communication and outreach efforts by removing the need to explain the PFH requirement. Additionally, this change would align

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<sup>3</sup> 20 USC 1087e(e)

<sup>4</sup> Students who took out their first federal loan on or after July 1, 2014 also have access to a new version of Income-Based Repayment (IBR), where monthly payments are capped at 10% of discretionary income (rather than 15%) and any remaining balance is forgiven after 20 years of qualifying payments (rather than 25 years).

*enrollment* policy in PAYE with current *participation* policy. Borrowers who no longer have a PFH because of changes in income or family size are not required to exit PAYE. Borrowers should not need a PFH to enter, either.

Borrowers without a PFH are no better or worse off in the current PAYE plan than the 10-year standard repayment plan if their incomes stay effectively the same or rise over time, but in PAYE they have the assurance of manageable monthly payments if their incomes drop unexpectedly. Under the current monthly payment calculation in PAYE, a borrower entering PAYE with no PFH would be required to make the equivalent of a 10-year payment based on her debt when she enrolled, so she would repay in 10 years (receiving no forgiveness) if her income stays effectively the same or rises over time. However, if her income unexpectedly drops, she can be assured that her monthly student loan payment will fluctuate with her income. See Appendix A for examples illustrating this, as well as how the targeting changes we propose below would lead to borrowers without a PFH paying off their loans even faster.

### **Better target the benefits of PAYE**

The current design of PAYE can substantially reduce monthly payment amounts for low-income borrowers, helping them stay on top of their payments and avoid default, even in an uncertain economy.<sup>5</sup> However, it can also allow some high-debt, high-income borrowers to pay a smaller share of their incomes than other borrowers and receive substantial loan forgiveness when they could have afforded to pay more.

To better target the benefits of PAYE to borrowers who need them most, we propose gradually phasing out the income exclusion for borrowers with high incomes and capping all monthly payments at 10% of income.<sup>6</sup> For all borrowers, monthly payments would never be greater than 10% of their total income.

Currently, the monthly payment for PAYE is calculated as 10% of the borrower’s “discretionary income,” up to but not exceeding the 10-year standard payment (also known as the “permanent standard”) amount.

- Discretionary income is defined as the borrower’s adjusted gross income (AGI) minus an “income exclusion.” Under current regulations, the income exclusion is 150% of the poverty level for the borrower’s household size and state.
- The permanent standard amount is the monthly amount the borrower would have had to repay had she entered a 10-year standard repayment plan for what she owed when she entered PAYE. The permanent standard currently functions as a cap on monthly payment amounts in PAYE.

### **Gradually phase out income exclusion for high-income borrowers**

Borrowers with high incomes can spend a larger share of their total income on loan payments and still have sufficient funds to cover basic necessities, such as food and housing. Therefore, **we propose gradually phasing out the income exclusion for borrowers with AGIs over \$100,000.** The AGI level at which the income exclusion phase-out begins would be indexed to inflation, so it does not decline in real value over time.

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<sup>5</sup> TICAS. November 2, 2012. Blog post. “New Pay-As-You-Earn Plan Will Make Loan Payments More Affordable for Borrowers with Modest Incomes.” <http://views.ticas.org/?p=937>.

<sup>6</sup> TICAS. 2014. *Should All Student Loan Payments be Income-Driven? Trade-offs and Challenges*. [http://www.ticas.org/files/pub/TICAS\\_IDR\\_White\\_Paper.pdf](http://www.ticas.org/files/pub/TICAS_IDR_White_Paper.pdf). Pp. 25-28.

The income exclusion would remain 150% of poverty up to an AGI of \$100,000. As one example of a phase-out rate, the percentage of poverty used to calculate the income exclusion could decrease by one percentage point for each \$1,000 of AGI above \$100,000, until completely phased out at \$250,000 AGI. At an AGI of \$101,000, the income exclusion would be 149% of poverty; at an AGI of \$102,000, the income exclusion would be 148% of poverty; and so forth until it reaches 0% at an AGI of \$250,000. The rate could be adjusted to make the income exclusion phase out more quickly and within a smaller income range (e.g., two percentage points per \$1,000 above \$100,000 AGI, zeroing out at \$175,000 AGI).

### Cap all monthly payments at 10% of income

The way monthly payments are capped in PAYE results in some high-income borrowers paying a smaller share of their income than lower income borrowers. This is because borrowers whose incomes rise above the point where they must start paying the permanent standard amount are, by definition, paying a smaller share of their discretionary income than borrowers making income-based payments (i.e., less than 10% of their discretionary income).

**We recommend removing the standard payment cap in PAYE so that all monthly payments are 10% of discretionary income** (calculated with the income exclusion phase-out described above). The Administration, Republicans and Democrats in Congress, and others have also proposed eliminating the standard payment cap so that borrowers in IDR plans are always paying based on their income.<sup>7</sup> Having borrowers with high incomes make larger monthly payments would better target benefits and prevent high-debt, high-income borrowers from receiving substantial loan forgiveness when they could have afforded to pay more.

Removing the standard payment cap necessitates additional regulatory changes to the required payment amount for borrowers who do not submit their annual income documentation on time. Currently in PAYE, borrowers with a PFH<sup>8</sup> who do not update their income documentation on time are required to pay the permanent standard amount, which will be higher than their prior income-driven payment amount. However, once the standard payment cap is removed, the permanent standard amount may be *lower* than borrowers' income-driven payment amount. To avoid rewarding borrowers who fail to submit updated income documentation, **borrowers who do not submit their annual income documentation on time should be required to pay the *greater of* the permanent standard amount or their previous income-driven payment amount** (based on the last set of income documentation they provided).

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<sup>7</sup> For example, see U.S. Department of Education. 2014. *Student Loans Overview: Fiscal Year 2015 Budget Proposal*. <http://www2.ed.gov/about/overview/budget/budget15/justifications/s-loansoverview.pdf>. Legislation proposing this change include the Higher Education Affordability Act (discussion draft), <http://1.usa.gov/XAS9vQ>; Dynamic Student Loan Repayment Act (S. 2612), introduced July 16, 2014, <http://1.usa.gov/1pfrM6h>; and Repay Act of 2014 (S. 2812), introduced September 16, 2014, <http://1.usa.gov/1EFdjKw>. See also HCM Strategists, IHEP, NASFAA, New America Foundation, and Young Invincibles. 2014. *Automatic for the Borrower: How Repayment Based on Income Can Reduce Loan Defaults and Manage Risk*. <http://bit.ly/1fLBIOK>.

<sup>8</sup> Currently in PAYE, borrowers who no longer have a PFH are not required to submit annual income documentation because their monthly payment amount is already the permanent standard amount, which is not based on their income. These borrowers are, however, annually notified of the option to ask their servicer to recalculate their payments if their financial circumstances have changed. 34 CFR 685.209(a)(5)(iv).

Additionally, **we recommend that the Administration support legislative changes so that payments made without income documentation no longer count toward forgiveness.** If they do not submit their documentation on time, borrowers' payments would only qualify for forgiveness once they update their information. Even with the regulatory change above, borrowers who fail to submit updated income information may end up paying less than if they had documented their income as required. Therefore, allowing payments made in the absence of income documentation to count toward forgiveness could lead to some borrowers receiving forgiveness under PAYE or Public Service Loan Forgiveness (PSLF) sooner than they should. Counting only those payments made *with* income documentation toward forgiveness would require statutory changes to 20 USC 1087e(e) and 20 USC 1087e(m), and we urge the Administration to support legislation to implement this proposal.

### **Keep the maximum repayment period at 20 years**

Currently in PAYE, any debt remaining after 20 years of qualifying payments is discharged, though many borrowers will end up paying their loans in full before the 20-year period is over. **We recommend retaining this 20-year maximum repayment period for all borrowers in PAYE.** It provides a light at the end of the tunnel and helps responsible borrowers avoid the negative consequences of carrying student debt for too long.

Research has shown that carrying outstanding student debt may affect borrowers' ability and willingness to make other financial commitments, such as buying a home or a car, enrolling in graduate school, opening a small business, saving for their children's education, or saving for their own retirement.<sup>9</sup> For example, one recent survey found that nearly one-third of parents with student debt say that paying their debt has prevented them from saving for their children's higher education (31%) or their own retirement (32%).<sup>10</sup> Student debt can affect borrowers' access to other credit, and the need to set aside money for student loan payments ties up funds that could have been used in other ways.<sup>11</sup> Capping loan repayment periods at 20 years would help borrowers focus on saving for retirement and their children's education before the next generation is in college. A recent GAO report found that the number of older Americans owing student debt has significantly increased in the last four years alone, and that their debt is more likely to be in default.<sup>12</sup> Removing or delaying forgiveness in PAYE would make this problem even worse.

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<sup>9</sup> Consumer Financial Protection Bureau (CFPB). 2013. *Student Loan Affordability: Analysis of Public Input on Impact and Solutions*. [http://files.consumerfinance.gov/f/201305\\_cfpb\\_rfi-report\\_student-loans.pdf](http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf). Federal Reserve Bank of New York. April 17, 2013. "Young Student Loan Borrowers Retreat from Housing and Auto Markets." <http://bit.ly/1izd1Jw>.

Kim, Dongbin and Therese S. Eyerhmann. 2006. "Undergraduate Borrowing and Its Effects on Plans to Attend Graduate School Prior to and After the 1992 Higher Education Act Amendments," *Journal of Student Financial Aid* 36(2): Article 1. <http://publications.nasfaa.org/jsfa/vol36/iss2/1>.

<sup>10</sup> Certified Financial Planner Board of Standards, Inc. September 17, 2014. Press Release. "American Parents Struggle to Save for Higher Education, Manage Living Expenses." <http://bit.ly/1sJti5A>.

<sup>11</sup> Raskin, Sarah Bloom. Deputy Secretary of the U.S. Treasury. September 29, 2014. Remarks at the Annual Meeting of the National Association of Business Economics (NABE). <http://www.treasury.gov/press-center/press-releases/Pages/jl2652.aspx>. Lee, Donghoo. Federal Reserve Bank of New York. 2013. Presentation for Press Briefing. "Household Debt and Credit: Student Debt." <http://www.newyorkfed.org/newsevents/mediadvisory/2013/Lee022813.pdf>.

National Association of Realtors. June 18, 2012. Blog post. "Impact of Student Debt on Future Housing Demand." <http://bit.ly/1uGUD4S>. Young Invincibles. 2012. *Denied? The Impact of Student Debt on the Ability to Buy a House*. <http://bit.ly/KhNurg>.

<sup>12</sup> Jeszeck, Charles, U.S. Government Accountability Office (GAO). "Older Americans: Inability to Repay Student Loans May Affect Financial Security for a Small Percentage of Retirees." Testimony before the U.S. Senate Special Committee on Aging. Delivered September 10, 2014. <http://www.gao.gov/assets/670/665709.pdf>.

Proposals to extend the repayment period in PAYE to 25 years for borrowers with debt above a certain threshold<sup>13</sup> would introduce more complexity into the program and create abrupt “cliffs” where borrowers in very similar financial situations get very different benefits. Having different repayment periods based on debt levels complicates both the communication and implementation of PAYE. Additionally, using a debt threshold to determine repayment period length means that a borrower with debt \$1 above the threshold would be subject to a substantially longer repayment period than a borrower with debt \$1 below the threshold. A less abrupt way to target the benefits of PAYE is to gradually phase out the income exclusion for high-income borrowers and set all monthly payments at 10% of income, as we propose above. These changes would better target the forgiveness available after 20 years, because higher income borrowers will be more likely to pay off all or most of their debt within that period.

### [Remove interest capitalization within PAYE](#)

Currently, interest capitalizes when a borrower enrolled in PAYE no longer has a partial financial hardship (PFH) and when they choose to exit PAYE to enroll in another repayment plan. Borrowers no longer have a PFH when 10% of their discretionary income becomes greater than or equal to the permanent standard payment amount due to changes in their income and/or family size, and when borrowers fail to submit their annual income documentation on time.

**We recommend eliminating the capitalization of interest while a borrower remains in PAYE** for the following reasons:

- The elimination of the standard payment cap in our targeting proposal means that PFH is no longer a relevant benchmark. Since borrowers’ monthly payments will always be based on income, there is no need to capitalize interest when their debt-to-income ratio falls below a particular threshold.
- Capitalizing interest when borrowers lose their PFH status and stay in PAYE may increase costs for borrowers whose incomes are low for extended periods of time, as well as the size of any discharged amount at the end of the repayment period. This is because borrowers with low incomes relative to their debt are more likely to have monthly payment amounts that do not cover accrued interest.
- Removing interest capitalization within PAYE simplifies implementation of the program because loan servicers would no longer need to treat interest differently under specific scenarios or implement the current 10% interest capitalization cap in PAYE, because no interest would capitalize at all within the plan.

### [Provide equitable interest relief for subsidized Stafford loans in PAYE](#)

A borrower’s monthly payment in PAYE may not cover all the interest that accrues on his loans each month (negative amortization). In this situation, the government currently pays any remaining unpaid, accrued interest on his subsidized loans for up to three consecutive years from the date he begins repaying loans under PAYE. This benefit applies only to subsidized loans, which are only available to

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<sup>13</sup> For example, U.S. Department of Education, 2014, *Student Loans Overview: Fiscal Year 2015 Budget Proposal*, <http://www2.ed.gov/about/overview/budget/budget15/justifications/s-loansoverview.pdf>; Dynamic Student Loan Repayment Act (S. 2612), introduced July 16, 2014, <http://1.usa.gov/1pfrM6h>; and Repay Act of 2014 (S. 2812), introduced September 16, 2014, <http://1.usa.gov/1EFdjKw>.

borrowers with financial need. However, the arbitrary restriction to the first three years in PAYE means that borrowers who are able to cover their interest early on but struggle later in repayment have less or no access to interest relief, while those who struggle in all of their first three years get the most.

**We recommend amending the regulations for PAYE so that the government will pay any remaining unpaid, accrued interest on subsidized loans for up to three *total* years in PAYE, regardless of when those years fall within the borrower’s repayment period.** This change will provide equitable relief to borrowers with low incomes relative to their debt, by lowering their total payments and time to repay.

### **Treat married borrowers more consistently, regardless of how they file federal taxes**

Currently, married borrowers may get lower monthly payments under PAYE if they file their taxes separately than if they file jointly. Married borrowers who file their federal taxes jointly have their PAYE eligibility and payment amounts based on their combined income and combined federal debt, with their PAYE payment amount divided proportionally based on each spouse’s share of the total debt.<sup>14</sup> However, existing regulations allow married borrowers who file taxes separately to *exclude* their spouse’s income from PAYE calculations, but still *include* their spouse in their family size (for the calculation of the income exclusion). A married borrower who earns a low income and files separately could have very low or even \$0 monthly payments, even if his spouse is a high earner, with the payment lowered even further by being able to count the spouse in his family size.

To address this inequity, **the Department should change the definition of “family size” in PAYE so that borrowers cannot count their spouses in their family size if they file taxes separately.**<sup>15</sup> It does not make sense to allow borrowers to exclude their spouse’s income from the monthly payment calculation but still include them in their family size. Family size is not defined in statute for either IBR or PAYE, so this regulatory change could be made to both programs.

**We also recommend that the Administration support legislative changes to use the combined income and combined federal debt of married borrowers for PAYE and IBR.** This is already how married borrowers are treated if they file federal taxes jointly, and we propose treating married borrowers who file taxes separately the same way. That means for all married borrowers, adjusted gross income (AGI) will include the total of the borrower’s and the spouse’s incomes. Monthly payments will be based on their combined AGI and total eligible federal debt, with payment amounts divided proportionally between spouses based on each one’s share of the total debt. And if only one spouse has eligible loans, he will be responsible for the entire IDR payment, calculated based on their combined income. However, because some married borrowers may file taxes separately because they are not able to access their spouse’s income, such as in cases of domestic violence or estrangement, it is vital that borrowers have access to an appeals process for such circumstances. In the absence of a robust appeals process, we recommend only making the above regulatory change to the definition of family size.

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<sup>14</sup> 34 CFR 685.209(a)(2)(ii)(B)

<sup>15</sup> 34 CFR 685.209(a)(1)(iv)

## Allow borrowers who consolidate to retain time earned toward forgiveness

After borrowers make 20 or 25 years of qualifying payments in PAYE or IBR (the applicable period depends on which program and when the borrower first took out loans), or 10 years of payments that qualify for Public Service Loan Forgiveness (PSLF), any outstanding loan balance and accrued interest are discharged. However, under current regulations, qualifying payments are not counted toward forgiveness in any of these programs if the loans are later consolidated. This can and should be changed through regulations for PAYE and IBR, as well as for PSLF.

**Borrowers who consolidate their loans should get the appropriate credit for what may be years of qualifying payments.** For example, consider a student with undergraduate Stafford loans who makes 10 years' worth of payments under PAYE. She decides to go back to school for a master's degree to expand her job opportunities and takes out graduate Stafford loans. After completing her master's degree, she consolidates her graduate loans with her undergraduate loans. Under current rules, she would have to make an additional 20 years of payments on her undergraduate loans before being eligible for a discharge of any remaining debt on those loans under PAYE (if she has not already paid them off), even though she has already made 10 years of payments on those loans – turning what should be a 20-year repayment period into 30 years. Instead, loans that borrowers were repaying before consolidation should be tracked separately from loans just entering repayment, so that borrowers don't lose credit for the payments they've already made.

*There are multiple precedents for tracking payments made on loans before consolidation.* For example, the Department and FFEL lenders already track pre-consolidation payments on subsidized loans in order to provide a three-year period of interest subsidy on negatively amortized loans in PAYE and IBR.<sup>16</sup> Additionally, for discharges of consolidation loans due to a closed school, false certification, or unpaid refund, only the amount of the underlying loans that were used to pay for the affected program of study are considered for discharge.<sup>17</sup>

## Make it easier for borrowers to keep their income information up to date

Currently, borrowers making income-driven payments in PAYE and IBR must provide tax or other income information each year to avoid being forced to make the permanent standard payment, which is likely higher than they can afford, and having all their unpaid accrued interest capitalize. We recommend that the Department make the following **administrative changes** to help borrowers in IDR keep their income information up to date:

1. **Allow borrowers to electronically transfer their earnings data from W-2 and 1099 forms, instead of just from their Internal Revenue Service (IRS) 1040 forms.** The online IDR Plan Request form on [StudentLoans.gov](http://StudentLoans.gov) streamlines the annual process of updating income information by allowing some borrowers to electronically transfer their own tax information

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<sup>16</sup> 34 CFR 685.209(a)(2)(iii), 34 CFR 682.215(b)(4), and 34 CFR 685.221(b)(3).

<sup>17</sup> U.S. Department of Education. *Loan Discharge Application: School Closure*. Expiration date 08/31/2017. <http://1.usa.gov/Zuy9vN>. U.S. Department of Education. *Loan Discharge Application: False Certification (Ability to Benefit)*. Expiration date 08/31/2017. <http://1.usa.gov/1tHDmIj>. U.S. Department of Education. *Loan Discharge Application: Unpaid Refund*. Expiration date 08/31/2017. <http://1.usa.gov/Zuyaj6>.

from the Internal Revenue Service (IRS).<sup>18</sup> Unfortunately, this process is only available to borrowers who have filed an IRS 1040 form within the two most recent years. Borrowers with incomes too low to owe federal income tax may not have a 1040 form to draw from, requiring them to go through extra steps to verify their income. As a result, borrowers with the greatest need for income-driven payments may have the hardest time continuing to qualify for them. As we have long recommended for the parallel IRS data retrieval process used for the FAFSA,<sup>19</sup> the annual income verification process for PAYE and IBR should also draw on earnings data in borrowers' W-2 and 1099 forms to simplify the process for borrowers.

2. **Allow borrowers to give the Department advance permission to access their AGI, W-2, and 1099 information for some period of time** (e.g., five years), as they could until recently for IBR and ICR.<sup>20</sup> Reinstating this type of multiyear consent for borrowers in IDR plans would help ensure that monthly loan payments stay manageable and prevent delinquency and default, while also reducing the paperwork burden on borrowers and servicers.

**We also recommend that the Department assess how many borrowers in IDR plans have not submitted their annual income information**, resulting in their interest capitalizing and their monthly payments soaring to what they would be in a 10-year standard plan. If it has not done so already, the Department should analyze how many and what share of Direct Loan and/or FFEL borrowers in income-driven repayment plans:

- Have not submitted their annual income information in the last year
  - Of those, how many had been required to submit alternative documentation of income (ADOI) because they did not file federal taxes in the two most recent years or because their income changed significantly since their most recent tax return?
- Are required to make 10-year standard payments while in IBR or PAYE (which happens if your income rises so you no longer have a partial financial hardship or if you do not submit your annual income information)
  - Of those required to make the 10-year standard payment, what share are delinquent or in default, and how does that compare to others in IBR and PAYE?

## **Increase fairness in Public Service Loan Forgiveness (PSLF)**<sup>21</sup>

We also propose three changes to the Public Service Loan Forgiveness (PSLF) program, which discharges any remaining eligible debt after 10 years of qualifying payments and full-time work in the public and nonprofit sectors. Some borrowers enrolling in PAYE intend to apply for PSLF, particularly if they enter a field requiring extensive training but where incomes are not very high (e.g., teaching, social work, public interest law).

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<sup>18</sup> U.S. Department of Education. December 21, 2012, updated January 11, 2013. Electronic Announcement. "Loan Servicing Information - Availability of Pay As You Earn Repayment Plan and Electronic IBR/Pay As You Earn/ICR Repayment Plan Request." <http://ifap.ed.gov/eannouncements/122112LSIPayAsYouEarnPlanIBRnICR.html>.

<sup>19</sup> TICAS. 2014. Comments on the 2015-16 FAFSA. [http://www.ticas.org/files/pub/TICAS\\_Comments\\_on\\_2015-16\\_FAFSA.pdf](http://www.ticas.org/files/pub/TICAS_Comments_on_2015-16_FAFSA.pdf). Pp. 5-6.

<sup>20</sup> See Appendix B for the form borrowers in IBR and ICR were, until recently, able to use to authorize the IRS to provide their income information for five years (2008-2012). This form expired on June 30, 2012, and is no longer available online.

<sup>21</sup> 34 CFR 685.219

## Simplify and make equitable the definition of full-time employment for PSLF

The authorizing legislation for PSLF defines a “public service job” specifically as a full-time job, but it does not define “full-time.”<sup>22</sup> In its current regulations governing PSLF, the Department defines “full-time” in a way that creates inequity for individuals whose employers consider full-time to be *more* than 30 hours per week.<sup>23</sup> **We propose changing the regulations to ensure that all borrowers are treated equitably with regard to how much they have to work to qualify for PSLF.**

The definition for “full-time” should be:

*Working in qualifying employment in one or more jobs for—*  
*(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, not to exceed 30 hours.*

## Apply a reasonable method for calculating work hours for certain employees

The IRS recently clarified that employers, to calculate work hours for the purposes of the Affordable Care Act, need a reasonable method for crediting employees for hours of service where those hours are difficult to quantify or track, such as for airline pilots or adjunct faculty at colleges and universities.<sup>24</sup> For example, in the case of adjunct faculty, one reasonable method would credit an adjunct with 2.25 hours of work for each hour of classroom time to account for teaching as well as preparation, grading, and other course-related activity. Additionally, adjuncts should be credited for each additional hour of required service including office hours and meeting attendance. **We recommend that the Department use this guidance to inform employers and borrowers about how to calculate hours worked for the purposes of PSLF eligibility.**

## Allow borrowers who consolidate to retain time earned toward forgiveness

As discussed on page 9, **borrowers who consolidate their loans should get the appropriate credit for what may be years of qualifying payments for PSLF** (as well as the income-driven repayment plans). Loans that borrowers were repaying before consolidation should be tracked separately from loans just entering repayment, so that borrowers don’t lose credit for the payments they’ve already made.

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<sup>22</sup> College Cost Reduction and Access Act (CCRAA), Section 401. <http://1.usa.gov/1Dy6QPY>.

<sup>23</sup> 34 CFR 685.219(b)

<sup>24</sup> U.S. Treasury Department, Internal Revenue Service. February 12, 2014. Federal Register Notice. Docket Number TD 9655. “Final regulations: Shared responsibility for employers regarding health coverage.” <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>. Pp. 8851-8852.

## Prevent cohort default rate (CDR) and 90/10 rule manipulation

We join more than a dozen other organizations, multiple state attorneys general, and eight U.S. Senators in urging the Department to modify its regulations and take other actions to prevent companies from evading the law at the expense of students and taxpayers.<sup>25</sup> There is now abundant evidence that some for-profit education companies are using multiple strategies to evade the spirit, if not also the letter, of current program integrity laws, and in the process putting students at greater risk of defaulting on higher loan balances. Below we recommend specific regulatory and administrative actions to prohibit colleges from evading the law, including:

- **Prevent CDR evasion via abuse of forbearance and deferments by:**
  - Amending current regulations under the Higher Education Act (428(c)(3)(B)) to ensure that forbearance is “for the benefit of the student borrower,” not for the benefit of schools. This could be done by specifying that certain types of forbearance patterns (such as back-to-back forbearances) are rarely to borrowers’ benefit and requiring greater documentation for such forbearances, including why an income-driven repayment plan is not preferable to extending forbearance.
  - Amending current regulations to clarify what constitutes “a payment to prevent a borrowers’ default.”<sup>26</sup> Schools and their contractors should not be permitted to lower their CDRs by providing borrowers with gift cards or other means that provide monetary value in exchange for an action by a borrower.
  - Issuing additional guidance to schools on beneficial vs. impermissible “default management.” The Department should clarify what constitutes proper default management and what constitutes CDR evasion.
  - Using default data to prompt warnings, investigations, program reviews, and/or audits. Serial forbearances and spikes in defaults after the three-year CDR window closes should be used as triggers to prompt public warnings to a school or servicer, an investigation of possible CDR evasion, a program review, and/or an audit.
  
- **Prevent CDR and 90/10 manipulation through the combining of campuses by:**
  - Prohibiting changes in OPEIDs when institutional compliance is in question or requiring continued compliance under former OPEIDs for at least three years after any change in OPEID.
  
- **Prevent 90/10 manipulation through disbursement delays by:**
  - Counting any Title IV funds that a school disburses *or could have disbursed* in the 90/10 calculation for the reporting period that includes the start of that payment period.

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<sup>25</sup> For the comments from organizations and state attorneys general, see <http://www.protectstudentsandtaxpayers.org/who-supports-strong-regulations-2/>. For the comments from eight U.S. Senators, see Lautenberg, Frank. U.S. Senator. December 13, 2012. Press Release. “Senators Lautenberg, Harkin, Colleagues Call for Crackdown on Manipulation of Student Loan Default Rates.” <http://bit.ly/19IINPO>. See the December 12, 2012 letter from eight U.S. Senators to the U.S. Department of Education at <http://bit.ly/1t9KXod>.

<sup>26</sup> 34 CFR 668.183(c)(1)(iii)

## CDR evasion via abuse of forbearance and deferments

It is indisputable that some for-profit college corporations are abusing forbearance and deferment, using them as tools to manipulate their CDRs regardless of the students' best interests. These corporations are using forbearance and deferment to *delay* defaults until after the period when schools are held accountable. According to a September 30, 2014 analysis by Compass Point, "the general improvement in CDRs among the for-profits is likely attributable to greater utilization of 'default management' whereby schools work to push defaults out beyond the three-year measurement window through the use of forbearance and/or deferment."<sup>27</sup>

While avoiding default is always in students' best interest, increasing their loan balance and leaving them to default on a higher balance is not. Loans always accrue interest while in forbearance, and unsubsidized loans accrue interest during both forbearances and deferments. The additional interest accrued is added to the principal loan balance at the end of the forbearance or deferment, with the result that interest then begins accruing on an even larger balance. In most cases, students struggling to make loan payments are better served with counseling on how to repay their loans and the availability of income-driven repayment plans.

Documents from four large companies demonstrate that, on average, over 75% of the delinquent borrowers "cured" (i.e., prevented from defaulting) were put in forbearance or deferment, while only 24% made payments on their loans.<sup>28</sup> For instance, in 2010, 78% of the ITT borrowers were "cured" by its "default management" contractor by being placed in deferment or forbearance, two-thirds of whom were placed in forbearance.<sup>29</sup>

Corinthian Colleges reduced its three-year CDR from 29.2% in FY2009 to 18.7% in FY2010, a *10.5 percentage point decrease in just one year*. As Corinthian executives told investors in May 2011, "Forbearance, as you well know, is a pretty easy – it's just a question, you have to agree to it and you're on your way."<sup>30</sup> However, the executives made clear that the number of students repaying their loans had changed little: "Our repayment rate really hasn't moved a whole heck of a lot from where it was prior to this effort."

The Senate report concludes that many of the tactics used by for-profit college corporations "appear to cross the line from default management to default manipulation."<sup>31</sup> It notes that these efforts to prevent student default often "abruptly halt" after the period when schools are held accountable for defaults.

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<sup>27</sup> Compass Point Research and Trading, LLC. 2014. *Higher Education Landscape: Fundamental & Policy Update Education Market Monitor - September 2014*

<sup>28</sup> U.S. Senate HELP Committee. 2012. *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*. [http://www.help.senate.gov/imo/media/for\\_profit\\_report/Contents.pdf](http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf).

<sup>29</sup> U.S. Senate HELP Committee. 2012. *Profile of ITT Educational Services, Inc.* [http://help.senate.gov/imo/media/for\\_profit\\_report/PartII/ITT.pdf](http://help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf). Pp. 534-5.

<sup>30</sup> Corinthian Colleges, Inc. May 3, 2011. Q3 2011 Earnings Call Transcript. [http://clips.corinthiancolleges.com/wp-content/uploads/downloads/2011/05/COCO\\_Q311\\_Transcript.pdf](http://clips.corinthiancolleges.com/wp-content/uploads/downloads/2011/05/COCO_Q311_Transcript.pdf).

<sup>31</sup> U.S. Senate HELP Committee. 2012. *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*. [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf). Executive Summary and pp. 151-158.

In fact, Secretary Duncan has said that *the Department's own investigation* of forbearance abuse found that “some institutions are aggressively pursuing their former students to compel them to request forbearance from their loan servicer.”<sup>32</sup> Further, many borrowers “expressed the view that they were pressured or ‘forced’ to apply for forbearance and were not made aware of other options, such as deferment or the income-based repayment plan.” Most shockingly, one borrower who was current in her payments was offered a \$25 gift card to complete the forbearance process.

**Regulatory recommendation: amend current regulations to ensure that forbearance is “for the benefit of the student borrower,” not for the benefit of schools.** In defining the authority to grant forbearances, the Higher Education Act (428(c)(3)(B)) specifies that contracts “may, to the extent provided in regulations of the Secretary, contain provisions that permit such forbearance *for the benefit of the student borrower* as may be agreed upon by the parties to an insured loan and approved by the insurer” (emphasis added). The Department could, for instance, specify that certain types of forbearance patterns are rarely to borrowers’ benefit and prohibit most back-to-back forbearances. Alternatively, the Department could require documentation for why income-driven repayment (IDR) is not preferable to forbearance before an extended forbearance is granted. Each of these rule modifications recognizes the importance of forbearance as short-term relief but prioritizes longer-term solutions, such as affordable repayment plans. They are also consistent with the guidance recently provided by the Office of the Comptroller of the Currency included in Appendix C, which advises that forbearances should be temporary and used when a borrower “can demonstrate a reasonable prospect of increased income in the foreseeable future.”<sup>33</sup>

**Regulatory recommendation: amend current regulations to clarify what constitutes “a payment to prevent a borrowers’ default.”** Current CDR regulations consider any borrower who a school has paid to avoid default to be in default. Specifically, 34 CFR 668.202(c)(1)(iii) defines which borrowers are considered defaulters for the purpose of CDR calculations, and includes those for whom “you or your owner, agent, contractor, employee, or any other affiliated entity or individual *make a payment to prevent a borrower’s default* on a loan” (emphasis added). The regulation does not specify exactly which payments count as “preventing a borrower’s default,” or even whether the payment must be made on the loan in question. For instance, the provision of gift cards or other means that provide monetary value in exchange for an action by a borrower that could affect a CDR should be considered “a payment to prevent a borrower’s default.” If such actions are not already prohibited under current regulations, the Department should propose changes to prohibit them.

**Administrative recommendation: use default data to prompt public warnings, investigations, program reviews, and/or audits.** Outside of the rulemaking process, there are other steps that the Department can and should immediately take to prevent the abuse of forbearance and deferment to evade CDR thresholds. First, if the Department has not already done so, it should immediately analyze the extent to which companies are using forbearance and deferment, particularly serial forbearance and deferments, which are an indication that borrowers are not receiving proper counseling about IDR and other repayment options. Second, the Department should examine whether the number of defaults at an OPEID spikes after the CDR window closes. For instance, when four additional months were examined for the 2008 cohort, the number of OPEIDs with three-year CDRs over 40% more than doubled. The use

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<sup>32</sup> February 27, 2013 letter from Education Secretary Arne Duncan to eight U.S. Senators, available at <http://bit.ly/1yhrT6t>.

<sup>33</sup> May 14, 2013 letter from Thomas J. Curry, Office of the Comptroller of the Currency, to Richard Hunt, Consumer Bankers Association. See Appendix C for a copy of the letter.

of serial forbearances and spikes in defaults after the CDR window closes should be used as triggers to prompt public warnings to a school or servicer, an investigation of possible CDR evasion, a program review, and/or an audit. During the student loan negotiated rulemaking process that ended in March 2012, the Department publicly committed to scrutinize serial forbearances, including in program reviews and audits, but provided no timetable for doing so.

**Administrative recommendation: issue additional guidance to schools on beneficial vs. impermissible “default management.”** We applaud the Department for recently issuing practical new tools to help schools conduct appropriate default management.<sup>34</sup> However, much more is needed to clarify what constitutes proper default management and what constitutes CDR evasion, and on the additional steps the Department is taking to prevent both loan defaults and CDR evasion.

### 90/10 manipulation through disbursement delays

Other internal company documents obtained by the U.S. Senate HELP Committee indicate that some for-profit college companies are delaying giving students their federal aid for the sole purpose of moving these funds into the next fiscal year in order to keep the school below the 90% federal funding limit (known as the 90/10 rule).<sup>35</sup> These delays occur without regard to what students want or need. As documented in the Senate report, Career Education Corporation senior executives instructed employees to delay students’ disbursements for weeks after students requested their refunds for the sole purpose of manipulating campuses’ 90/10 rates, while providing disingenuous explanations to students inquiring about the delays.<sup>36</sup> For example, Career Education Corporation admitted doing this in August 2012, stating in a filing that, “The Company has implemented several initiatives in order to assist certain of our institutions in complying with the 90-10 Rule, including... delaying until the first quarter of 2013 the disbursement and subsequent receipt of up to \$25.0 million of Title IV funds.”<sup>37</sup>

In general, colleges and universities are required to disburse Title IV funds to their students once per payment period. More frequent disbursements are permitted if the institution determines that a more frequent disbursement schedule “best meets the student’s needs” (e.g., regulations on the frequency of payments for grants – 34 CFR 690.76). Subregulatory guidance provided in the Federal Student Aid Handbook goes further and specifies that aid “must be provided to students in a timely manner to best assist them in paying their educational expenses.”<sup>38</sup>

**Count any Title IV funds that a school disburses *or could have disbursed* in the 90/10 calculation for the reporting period that includes the start of that payment period.** Current 90/10 regulations generally require institutions to presume that any Title IV funds disbursed to students will be used to pay institutional charges, including tuition and fees. The oversight of institutional compliance with the

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<sup>34</sup> U.S. Department of Education. Federal Student Aid E-Training website. “Default Prevention and Management” training module. <http://fsatraining.info>.

<sup>35</sup> For more information about the 90/10 rule, see TICAS. 2013. *Q&A on the For-Profit College “90-10 Rule.”* <http://bit.ly/ZO1Vf9>.

<sup>36</sup> U.S. Senate HELP Committee. 2012. *Profile of Career Education Corporation*. [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartII/CEC.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf). Pp. 348-350.

<sup>37</sup> Career Education Corporation. July 31, 2012. Form 10-Q. Quarterly Report to the U.S. Securities and Exchange Commission. <http://services.corporate-ir.net/SEC.Enhanced/SecCapsule.aspx?c=87390&fid=8304039>.

<sup>38</sup> U.S. Department of Education. 2014. *2014-15 Federal Student Aid Handbook*. Volume 3 (Calculating Awards and Packaging), Chapter 1 (Academic Calendar, Payment Periods & Disbursements). <http://ifap.ed.gov/fsahandbook/attachments/1415FSAHbkVol3Ch1.pdf>. P. 3-24.

90/10 rule would be improved by including a similar presumption regarding disbursements of Title IV aid. That is, the institution should be required to presume that any Title IV program funds it disbursed or *could have disbursed* to students during a payment period be considered as Title IV revenue for the 90/10 reporting period that includes the start of that payment period. This will eliminate the incentive for a school to delay disbursements based on the interests of the school rather than on the interests of the student.

## CDR and 90/10 manipulation by combining campuses

Still other companies are combining campuses for reporting purposes so that their new “combined campus” complies with the CDR thresholds and/or 90/10 rule. Consolidating campuses with high CDRs and 90/10 rates with those that do not has the potential to *mask* serious, known quality problems at campuses that may otherwise have exceeded thresholds for federal funding. As analysts have pointed out, the program-level CDRs included in the draft gainful employment rule proposed in March 2014 would make it more difficult for schools to combine campuses and programs to mask high default rates.<sup>39</sup> However, it would not help curb the combining of campuses to manipulate 90/10 rates.

The Department’s CDR Guide defines CDR evasion as “an attempt to avoid cohort default rate sanctions by changing a school’s name, location, corporate structure, OPEID, or other status.”<sup>40</sup> As the Senate HELP Committee abundantly documents and as explained below, this is exactly what several large for-profit colleges appear to be doing, including Corinthian Colleges (Corinthian), Career Education Corporation (CECO), and ITT.

CDRs and 90/10 ratios are calculated based on assigned six-digit Office of Postsecondary Education ID numbers (OPEIDs), rather than by campus or corporate owner. Many for-profit companies have multiple six-digit OPEIDs, each of which may consist of a main campus and multiple branch campuses.<sup>41</sup> Schools with multiple six-digit OPEIDs can and do shift campuses to different OPEIDs and classify them as branches regardless of their geographic proximity, even when they are located in far-flung states.

For example, ITT recently merged 29 separate six-digit OPEIDs into just three OPEIDs. According to the then-CEO of ITT:

[T]he reasons for doing that certainly relate to our compliance efforts and risk mitigation associated with all of the different regulatory controls ... So, this impacts your CDR, your 90/10 and all those other metrics that exists, including any new metrics that may come our way as a result of regulatory change.<sup>42</sup>

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<sup>39</sup> Just as program-level CDR calculations would help uncover poorly performing programs, so too could CDR and 90/10 calculations disaggregated by college campus or location (eight-digit OPEIDs). We encourage the Department to explore the viability and potential efficacy of such an approach.

<sup>40</sup> U.S. Department of Education. *Cohort Default Rate Guide – Glossary*.  
<http://ifap.ed.gov/DefaultManagement/guide/attachments/CDRGuideGlossary.pdf>.

<sup>41</sup> Branch campuses that share a single six-digit OPEID often have unique eight-digit OPEIDs that are based on the common six-digit one. These campuses report a CDR together (under the six-digit OPEID) but report other data separately, such as graduation rates.

<sup>42</sup> ITT Educational Services, Inc. May 12, 2011. “ITT at Barclays Capital Inc. Global Services Conference.” *Lexis Nexis*. Cited in U.S. Senate HELP Committee. 2012. *Profile of ITT Educational Services, Inc.*  
[http://help.senate.gov/imo/media/for\\_profit\\_report/PartII/ITT.pdf](http://help.senate.gov/imo/media/for_profit_report/PartII/ITT.pdf). P. 540.

In February 2012, CECO told investors that it had submitted an application to the Department seeking to consolidate up to 19 of its 26 OPEIDs into one OPEID. If it had been approved, CECO would have operated just eight OPEIDs. At the time, CECO had six OPEIDs with 90/10 rates above 90% in FY2011, and all six were among the 19 the corporation sought to consolidate.<sup>43</sup> Four of these six OPEIDs also had three-year FY08 CDRs over 24%. Its annual report stated “another result of this consolidation will be the calculation of a single student loan cohort default rate and a single rate under the 90-10 Rule for all of the campuses within the consolidated institution.”<sup>44</sup>

**Prohibit changes in OPEIDs when institutional compliance is in question or require continued compliance under former OPEIDs for at least three years after any change in OPEID.** To prevent the evasion of accountability measures such as CDR thresholds and the 90/10 rule, the Department should either not allow changes in OPEIDs in cases where institutional compliance is in question, or require continued compliance under former OPEIDs for at least three years after any change in OPEID and sanction any that would have exceeded the CDR thresholds but for the change in OPEID.<sup>45</sup> Such monitoring would be well in line with other steps the Department takes to prevent gaming of accountability measures: the Department’s Federal Student Aid Handbook for 2014-15 explicitly provides for the continued monitoring and enforcement of 90/10 rates when a school converts from for-profit to nonprofit.<sup>46</sup>

## **Provide equity to any borrowers whose defaults are removed from colleges’ CDRs**

In September 2014, the Department announced it had adjusted the CDRs of colleges that would otherwise be subject to sanctions, removing from the numerator of those colleges’ CDRs “certain borrowers who defaulted on a loan but who had one or more other Direct or FFEL Program loans... that

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<sup>43</sup> The six CECO OPEIDs with 90/10 rates over 90% in FY2011 were Sanford Brown in Atlanta, GA; Boston, MA; Farmington, CT; Fenton, MO; and McLean, VA and Missouri College. From CECO’s February 27, 2012 Form 10-K: “The six OPEIDs with estimated 90-10 rates above 90% for fiscal year 2011 are all among the institutions included in the pending application for consolidation. These six institutions will cease to separately exist if and when ED approves the consolidation. We would not expect ED to issue them separate 90-10 rates for fiscal year 2012 since they would not exist as separate institutions at the end of fiscal year 2012, but we cannot be certain of ED’s procedures in this situation. If ED approves the consolidation, it is uncertain whether the fiscal year 2011 90-10 rates for this smaller group of institutions will affect how ED will calculate or apply the fiscal year 2012 90-10 rate for the larger consolidated institution.” <http://bit.ly/1DygeDn>.

<sup>44</sup> Career Education Corporation. February 27, 2012. Form 10-K. Annual report to the U.S. Securities and Exchange Commission. <http://bit.ly/1DygeDn>. Later in 2012, CECO withdrew its application to consolidate these OPEIDs in order to expedite the approval of new programs.

<sup>45</sup> The Higher Education Act (20 USC 1085(m)(3)) specifically authorizes the Secretary to act to prevent CDR evasions, stating “The Secretary shall prescribe regulations designed to prevent an institution from evading the application to that institution of a default rate determination under this subsection through the use of such measures as branching, consolidation, change of ownership or control, or any similar device.”

<sup>46</sup> U.S. Department of Education. 2014. *2014-15 Federal Student Aid Handbook*. Volume 2 (School Eligibility and Operations), Chapter 4 (Audits, Financial Standards, Limitations, & Cohort Rates). <http://ifap.ed.gov/fsahandbook/attachments/1415FSAHbkVol2Ch4.pdf>. P. 2-61

did not default.”<sup>47</sup> As a result, some colleges avoided sanctions that would otherwise have been imposed due to unacceptable levels of default.

If the Department has determined that the servicing of some loans in recent years was so problematic that it is inappropriate to hold the borrowers’ college accountable for them, then it is equally inappropriate to hold the borrowers accountable for them. Neither schools nor borrowers can choose their loan servicers. Yet these borrowers are being left in default, subject to high collection and default fees and to damaged credit.

**If defaults are removed from schools’ CDRs due to faulty servicing, they should be eliminated from borrowers’ records as well.** We believe that doing so is well within the Department’s existing authority. The Department has clear authority to provide forbearances to borrowers in default,<sup>48</sup> and servicers can and do provide borrowers with retroactive forbearances to erase prior delinquencies. Borrowers who defaulted in fiscal years 2011, 2012, or 2013 would require multiple forbearances to become current, but neither statute nor regulations limit the number of forbearances that can be granted in such circumstances. Further, separate federal rules already provide precedent for reversing determinations of default, as well as for updating reports to consumer credit agencies to reduce the harm of an earlier default determination.<sup>49</sup> If the Department believes that under current regulations defaults removed from colleges’ CDRs cannot also be removed from borrowers’ records, then this issue should be added to the negotiated rulemaking panel’s agenda. In addition, the Department may use its authority to compromise loans for these borrowers.<sup>50</sup>

## Increase the efficacy of Participation Rate Index (PRI) appeals

The Higher Education Act (HEA) protects colleges with low borrowing rates from sanctions through the Participation Rate Index (PRI) appeal. This provision acknowledges that when only a small share of students borrow, the default rate may not be representative of the entire school. However, the current PRI appeals process is hugely problematic, as it does not provide colleges with the assurance that they are not at risk when it is most needed.

Colleges may lose eligibility for both federal grants and loans when they have three consecutive years of default rates at or above 30%, but they can appeal those sanctions if their borrowing rate for any one of those three years is sufficiently low. The problem is that colleges currently have to wait until the third high-CDR year to appeal, without any assurance in years one or two that they are not at risk of sanction.

Withholding any assurance until colleges are on the brink of losing eligibility for aid makes it more likely that colleges will choose to stop offering student loans. As documented in our July 2014 report, *At What Cost? How Community Colleges that Do Not Offer Federal Loans Put Students at Risk*, nationally nearly

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<sup>47</sup> U.S. Department of Education, Federal Student Aid. September 23, 2014. Electronic Announcement. “Adjustment of Calculation of Official Three Year Cohort Default Rates for Institutions Subject to Potential Loss of Eligibility.” <http://1.usa.gov/1r830tQ>.

<sup>48</sup> 20 USC 1080

<sup>49</sup> 34 CFR 685.206

<sup>50</sup> See, for example, 20 USC 1082(a) (FFEL); 31 USC 3711 (General authority to compromise government debts); 34 CFR 30.70.

one in 10 community college students does not have access to federal student loans.<sup>51</sup> In seven states, at least 20% of community college students are enrolled in schools that do not offer loans.

**Allow colleges to submit a PRI appeal or petition in any year in which its CDR exceeds sanction thresholds.** The Department’s current regulation governing PRI appeals is based directly on the HEA, which explicitly provides an opportunity for relief when an institution is facing an immediate CDR sanction. However, there is nothing in the statute that prevents the Department from accepting appeals before the institution is facing an immediate sanction. In other words, the Department could choose to allow an institution to appeal its CDR based on its PRI at any time. Institutions would simply be appealing *the applicability of its CDR towards a sanction*, rather than appealing a sanction based on its CDR. If the Department thinks of its current rule as implementing a statutory “appeal” policy, this proposal could be thought of as a “petition” process that supplements the statutory appeal policy. We believe the Department has the authority to implement such a process administratively, but should the Department believe current regulations need to be changed, then it should be added to this negotiated rulemaking panel’s agenda.

Allowing annual PRI petitions or appeals would provide an institution with a relatively small share of student borrowers—particularly community colleges, at which borrowing is less common—with an ongoing, yearly assurance that its Title IV program participation is secure. The Department last year declined to do so on the grounds that it would impose an “unmanageable workload” on its staff.<sup>52</sup> However, the burden on the Department would in fact be minimal, as few schools with borrowing rates low enough to qualify for the PRI have CDRs that would trigger sanctions in the first place. The Department also argued that colleges have sufficient time to avoid losing Pell Grant eligibility, since they can currently appeal when their third high CDR is in draft, rather than final, form. But this misses the point and ignores what we already know: without assurance from the Department earlier in the process, colleges will stop offering federal loans after their first or second year with high default rates.

Finally, the Department argued that such a change is “not necessary to protect institutions.” That may be true, but it *is* necessary to protect students. Kaskaskia College in Illinois is a very recent example illustrating why. Kaskaskia reported a borrowing rate of just 9% for 2012-13 – a borrowing rate that would allow the school to successfully appeal sanctions. However, without assurance from the Department and with two CDRs above 30%, the school decided to stop offering federal loans for 2014-15, and now tells students who need to borrow that “student loans will be offered through two different preferred lenders, Sallie Mae and Wells Fargo.”<sup>53</sup>

For students who can’t otherwise afford to attend or finish school, federal student loans are the safest way to borrow. If we are serious about helping community college students complete their programs, community colleges need to participate in the federal loan program. To assist colleges in participating in the federal loan program, the Department must improve the PRI appeal process.

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<sup>51</sup> TICAS. 2014. *At What Cost? How Community Colleges that Do Not Offer Federal Loans Put Students At Risk*. [http://www.ticas.org/pub\\_view.php?id=948](http://www.ticas.org/pub_view.php?id=948).

<sup>52</sup> U.S. Department of Education. November 1, 2013. Federal Register Notice, Docket ID ED-2013-OPE-0063. Final regulations on Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program. <http://1.usa.gov/1zjOZO6>.

<sup>53</sup> Kaskaskia College. “Student Loans.” <http://www.kaskaskia.edu/financialaid/StudentLoans.aspx>. Accessed October 15, 2014. A screenshot of this webpage is included in these comments as Appendix D.

## Provide relief to defrauded students and deter schools from engaging in fraud

**Broaden false certification determination regulations to conform to statutory authority.** The false certification discharge provisions in the Higher Education Act are intended to provide relief for harmed students and discourage illegal, abusive school practices by providing for the discharge of loans falsely certified by institutions and for the Secretary to recover the loan amounts from the schools and its affiliates.<sup>54</sup>

The current false certification regulations<sup>55</sup> should be revised to more explicitly address additional forms of false certification. The Department has interpreted the false certification provisions very narrowly, yet the statutory authority is broad. The statute is not limited to specific types of false certification. It provides for relief for a range of illegal and abusive acts. For example, borrowers should be eligible for relief in any case in which a school falsely certifies eligibility, not just in the context of Ability-to-Benefit testing. Relief should also be available if the school improperly or falsely certifies a student's satisfactory academic progress, which is a necessary requirement for student eligibility.<sup>56</sup> Another way schools falsely certify student eligibility is by enrolling students in career education programs that lack the programmatic accreditation necessary for employment in the occupation. Other false certifications of eligibility for programs from which students cannot benefit include enrolling students who do not speak English in programs taught only in English, or enrolling students with criminal records in programs that prepare them for employment in professions from which they are barred because of their criminal record. These false certifications need to be stopped and borrowers provided relief from the resulting debts. The regulations should be revised to more explicitly provide relief in a range of circumstances.

**Adopt the Fair Credit Reporting Act standard of proof for identity theft cancellations.** In 2006, Congress provided for the cancellation of loans resulting from identity theft false certifications. However, the current regulations require borrowers to prove that a crime was committed in order to obtain relief, even though police rarely prosecute cases of identity theft. The Department should adopt a standard of proof similar to the Fair Credit Reporting Act, which defines identity theft as fraud committed or attempted using the identifying information of another person without authority. The Department could rely on the same type of documentation that credit reporting agencies rely on to determine if a crime of identity theft has occurred, to place fraud alerts, or to remove erroneous information from credit reports.

**Address problems with the burden of proof.** Currently, the Department regularly requires borrowers to present independent evidence, including proof of federal or state investigatory findings of fraud. However, in many cases, schools have not been investigated and such evidence does not exist. The Department has been relying on a 1995 Dear Colleague letter that states that an absence of findings of improper practices raises an inference that no improper practices were reported because none were taking place. The regulations should clarify that the Department should look at evidence of findings from oversight agencies or other evidence such as student complaints. The regulations should specify that

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<sup>54</sup> 20 USC 1087(c)

<sup>55</sup> E.g., 34 CFR 685.215

<sup>56</sup> For examples of teachers being pressured to manipulate grades in order to retain students, see Field, Kelly. May 8, 2011. "Faculty at For-Profit Colleges Allege Constant Pressure to Keep Students Enrolled." *The Chronicle of Higher Education*. <http://chronicle.com/article/Pawns-in-the-For-Profit/127424/>.

assuming the borrower's statement and any other evidence is credible, the Department must grant discharges if it does not find evidence contradicting the information in the borrower's application. The Department should also reinforce in regulations the guidance in the 2007 Dear Colleague letter for FFEL loans requiring agencies to check for the availability of evidence to support false certification allegations and to make inferences in certain circumstances that problems or violations have occurred. The Department should also be required to keep all evidence that it collects in evaluating discharge applications and promptly make the information available to borrowers on request. Once presumptive eligibility is established based on the borrower's application, the burden should shift to the Department to disprove the borrower's eligibility.

**Require evaluation for group discharges.** The Department should be required to grant group discharges in cases where the Department determines that a school committed pervasive and serious violations of false certification provisions (e.g., if the Department determines that a school was systematically falsely certifying ATB tests during a certain period of time). Individual borrowers simply do not have access to the full range of information that guaranty agencies and the Department collect, and the Department should not be able to avoid group discharges in cases of serious widespread violations affecting an identifiable group of students.

## Improve federal student loan debt collection

**Regulatory changes to increase private collection agency compliance with the law and to better serve borrowers.** For the reasons documented by the National Consumer Law Center,<sup>57</sup> we urge the Department to propose regulatory changes to limit collection charges to those that are bona fide, reasonable and actually incurred, and ensure that collection letters include information about exemptions and other rights.

**Pilot test in-house collection of federal student loans.** We recommend that Treasury Department staff be charged with collecting on a randomly selected number of defaulted federal student loans for the purpose of studying whether taxpayers' and borrowers' interests would be better served by collecting defaulted federal student loans by trained Treasury employees rather than by private debt collectors. Currently, federal student loans are collected almost entirely by private debt collection agencies. These debt collectors are given the authority to act on behalf of the lender or guarantor in everything from rehabilitation of defaulted loans to information about loan discharges to negotiating loan compromises. Recent reports from the Department's Inspector General, Government Accountability Office, National Consumer Law Center and the news media have documented widespread problems, including illegal actions by the Department's contractors, and violations of the Department's own contracts.<sup>58</sup> In

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<sup>57</sup> National Consumer Law Center. 2013. *Searching for Relief: Desperate Borrowers and the Growing Student Loan "Debt Relief" Industry*. <http://bit.ly/1wn1Nhh>.

<sup>58</sup> U.S. Department of Education, Office of the Inspector General. 2014. *Final Audit Report: Handling of Borrower Complaints Against Private Collection Agencies*. <http://1.usa.gov/1jLRBxi>. U.S. Government Accountability Office. 2014. *Federal Student Loans: Better Oversight Could Improve Defaulted Loan Rehabilitation*. <http://www.gao.gov/assets/670/661437.pdf>. National Consumer Law Center. 2014. *Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies*. <http://www.nclc.org/issues/pounding-student-loan-borrowers.html>. Martin, Andrew. September 8, 2012. "Debt Collectors Cashing In on Student Loans." *The New York Times*. <http://nyti.ms/1rpUBMT>. Hechinger, John. March 25, 2012. "Obama Relies on Debt Collectors Profiting From Student Loan Woe." *Bloomberg News*. <http://bloom.bg/1t9U7Rw>.

response, the Department changed its contracts and regulations to ensure that borrowers in default are offered reasonable and affordable repayment options as required by the HEA, but many problems persist.

With the Department of Education spending more than \$1 billion a year on commission-based contracts with private debt collectors, an examination of whether outsourcing is the most effective or appropriate approach is long overdue. In 2009, the Internal Revenue Service conducted an extensive review of its private collections contracts and moved to bring the function in-house.<sup>59</sup> The Treasury Department is responsible for the collection of debts owed to the federal government but has delegated to the Education Department the authority to collect on defaulted student loans.<sup>60</sup> We recommend that the Treasury Department withdraw the delegation of its authority for a randomly selected number of defaulted loans for the purpose of studying whether taxpayers' and borrowers' interests would be better served by collecting defaulted federal student loans by trained Treasury employees rather than by private debt collectors.

## **Prohibit mandatory pre-dispute arbitration clauses as a condition of Title IV funding**

Increasingly, private education loan contracts and many for-profit college enrollment contracts contain sweeping arbitration clauses that make it difficult for borrowers to seek redress and that protect unscrupulous schools and lenders from being held to account.<sup>61</sup> These forced arbitration clauses severely limit a consumer's ability to seek redress for harmful or abusive practices by: (1) limiting discovery; (2) mandating an arbitration forum hand-picked by the lender, (3) allowing the lender to determine how arbitration costs will be allocated; and (4) waiving the borrower's right to appeal.<sup>62</sup> Forced arbitration clauses also commonly prohibit class action proceedings, nearly completely shielding schools and lenders from liability by curbing individual actions and explicitly prohibiting class actions.

A 2013 report by the Consumer Financial Protection Bureau (CFPB) confirmed the harmful effects of forced arbitration clauses in consumer contracts.<sup>63</sup> Although the study examined credit card, checking account, pre-paid card, and payday loan disputes, the results and their implications are applicable to student loans and enrollment agreements. The CFPB report found that consumers brought fewer than 1,000 arbitration claims from 2010 to 2012, indicating that forced arbitration clauses frequently pose

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<sup>59</sup> Internal Revenue Service. March 5, 2009. Press release. "IRS Conducts Extensive Review, Decides Not to Renew Private Debt Collection Contracts: IRS Employees More Flexible, More Cost Effective." <http://1.usa.gov/1xaDN0t>.

<sup>60</sup> As specified in 31 USC 3711g: "For purposes of this section, the Secretary of the Treasury may designate, and withdraw such designation of debt collection centers operated by other Federal agencies. The Secretary of the Treasury shall designate such centers on the basis of their performance in collecting delinquent claims owed to the Government."

<sup>61</sup> For example, the National Consumer Law Center's analysis of the note terms of 28 private student loans found that over 60% included forced arbitration clauses. National Consumer Law Center. 2008. *Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers*. <http://bit.ly/ZO6VjO>.

<sup>62</sup> Loonin, Deanne. National Consumer Law Center. Testimony before the U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee Hearing on "Strengthening the Federal Student Loan Program for Borrowers." Delivered March 27, 2014. <http://www.help.senate.gov/imo/media/doc/Loonin1.pdf>.

<sup>63</sup> Consumer Financial Protection Bureau. 2013. *Arbitration Study Preliminary Results*. [http://files.consumerfinance.gov/f/201312\\_cfpb\\_arbitration-study-preliminary-results.pdf](http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf). Pp. 12-15.

insurmountable barriers to consumers seeking relief, and that 90% of the arbitration clauses examined for the CFPB study waived class action proceedings.

Other federal agencies have acted to protect consumers from contracts containing mandatory pre-dispute arbitration clauses. For example, in a report to Congress, the Department of Defense (DOD) notes that: “[s]ervice members should retain full legal recourse against unscrupulous lenders. Loan contracts to service members should not include mandatory arbitration clauses . . . and should not require the service member to waive his or her right of recourse, such as the right to participate in a plaintiff class.”<sup>64</sup> Just last month, the DOD proposed to broaden its existing ban on forced arbitration clauses to significantly more credit products offered to service members and their families.<sup>65</sup>

**Prohibit mandatory pre-dispute arbitration clauses as a condition of Title IV funding.** We join The Project on Predatory Student Lending and others in urging the Department to follow the DOD’s lead by limiting participation in Title IV programs to institutions that prohibit mandatory pre-dispute arbitration clauses in enrollment contracts and in private education lending contracts arranged by the school.

Thank you for the opportunity to provide input on where regulations need to be improved. If you have any questions about our comments, please feel free to contact Pauline Abernathy or Diane Cheng by phone at (510) 318-7900, or by email at [pabernathy@ticas.org](mailto:pabernathy@ticas.org) and [dcheng@ticas.org](mailto:dcheng@ticas.org).

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<sup>64</sup> U.S. Department of Defense. 2006. *Report on Predatory Lending Practices Directed at Members of the Armed Forces and their Dependents*. [http://www.defense.gov/pubs/pdfs/report\\_to\\_congress\\_final.pdf](http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf). Pp. 7-8.

<sup>65</sup> U.S. Department of Defense. September 29, 2014. Federal Register Notice. Docket ID DOD-2013-OS-0133. “Proposed Rule: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.” <http://1.usa.gov/1pBPfhO>.

# Appendix A

## **Borrower Examples: Eliminating the Partial Financial Hardship (PFH) Requirement to Enter Pay As You Earn (PAYE)**

We recommend eliminating the “partial financial hardship” (PFH) requirement to enter PAYE, so that Direct Loan borrowers who want the assurance of having their loan payments fluctuate with their income can enroll regardless of their debt-to-income level. This would greatly simplify PAYE for borrowers and for program administration and communication, and help prevent defaults. See pages 3-4 for a detailed description of this proposal.

The following examples illustrate how borrowers without a PFH are no better or worse off in the current PAYE plan than the 10-year standard repayment plan if their incomes stay effectively the same or rise over time, but have the assurance of manageable monthly payments if their incomes drop unexpectedly. The examples also show how the PAYE targeting changes we propose on pages 4-6 would lead borrowers without a PFH to pay off their loans even faster.

### **Borrower A: Enters PAYE without a PFH and continues without a PFH**

Consider a single borrower with \$29,400 in federal debt who earns \$60,000 (adjusted gross income, or AGI) in her first year at work, and her income increases 4% a year. The average interest rate on her loans is 6.8%.

- Under current rules, she is not eligible to enroll in PAYE because she does not have a PFH.
- If she were able to enter PAYE (with no other changes to the program besides removing the PFH eligibility requirement), she would repay her loans in 10 years because she would be making 10-year standard payments the whole time she is in PAYE. This is because of the standard payment cap on monthly payments in PAYE.
- With our targeting changes to PAYE, she would repay her loans in 7.8 years, because her monthly payments would always be based on her income and be higher than the 10-year standard payment.
- **In PAYE, regardless of whether our targeting changes are made, this borrower would receive no forgiveness.**

### **Borrower B: Enters PAYE without a PFH but experiences a drop in income partway through repayment**

Now consider that this borrower (single, \$29,400 debt, earns \$60,000 AGI in her first year of work) loses her job and gets a new job at lower pay (\$30,000 AGI) in year 7. **She benefits from the “insurance” of PAYE when her income falls unexpectedly, but still ends up paying off most or all of her loan, depending on whether our targeting changes are implemented.**

- Under the current rules in PAYE, \$2,050 is discharged after 20 years of payments. She receives no forgiveness under PAYE if our targeting changes are implemented.
- Under PAYE with or without our proposed targeting changes, this borrower ends up paying *more in total* than she would under 10-year standard repayment.

*(See detailed tables and methodology on the following page)*

**Detailed Tables:**

**BORROWER A: Single borrower with \$29,400 debt (6.8% interest), earns \$60,000 AGI in first year, increasing 4% a year**

	10-year standard repayment	Current PAYE (20-yr period)	TICAS Proposal: PAYE w/income exclusion phase-out, no standard payment cap (20-yr period)
Monthly payment amount in first year	\$340	\$340	\$350 to \$490
Total payments made	\$40,600	\$40,600	\$38,400
Total payments made, adjusted for inflation	\$36,050	\$36,050	\$34,850
Total amount discharged	\$0	\$0	\$0
Total amount discharged, in 2014 dollars	\$0	\$0	\$0
Years in repayment	10.0	10.0	7.8

**BORROWER B: Single borrower with \$29,400 debt (6.8% interest), earns \$60,000 AGI in first year increasing 4% a year, then \$30,000 AGI in year 7, increasing 4% a year**

	10-year standard repayment	Current PAYE (20-yr period)	TICAS Proposal: PAYE w/income exclusion phase-out, no standard payment cap (20-yr period)
Monthly payment amounts	\$340	\$80 to \$340	\$80 to \$450
Total payments made	\$40,600	\$46,650	\$41,450
Total payments made, adjusted for inflation	\$36,050	\$38,650	\$36,400
Total amount discharged	\$0	\$2,050	\$0
Total amount discharged, in 2014 dollars	\$0	\$1,250	\$0
Years in repayment	10.0	20.0	15.4

**Methodology Notes:**

- The borrower is single, does not have anyone else in the household, and lives in one of the 48 contiguous states.
- All incomes shown in this appendix are Adjusted Gross Incomes (AGIs).
- Unless otherwise noted, the borrower's adjusted gross income (AGI) increases 4% a year.
- The average interest rate on the borrower's loans is 6.8%.
- The income exclusion is 150% of the poverty level for the borrower's household size, as under current rules for PAYE.
- Calculations are based on 2014 poverty levels and assume that the poverty level increases annually at the rate of inflation.
- Total amounts paid are illustrated in current dollars and then discounted at a 2.4% annual rate, the projected average annual increase in the Consumer Price Index over the next 20 years.
- Monthly payments are rounded to the nearest \$10, total payments to the nearest \$50.

# **Appendix B**

**Consent to Disclosure of Tax Information for ICR and IBR  
Direct Loans, OMB No. 1845-0017**



# William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan & Income-Based Repayment Plan Consent to Disclosure of Tax Information

OMB No. 1845-0017  
Form Approved  
Exp. Date 06/30/2012

I (We) authorize the Internal Revenue Service (IRS) to disclose certain tax return information (for the tax years listed below) which includes my (our) name(s), address(es), Social Security Number(s), filing status, tax year, and Adjusted Gross Income(s). This information will be disclosed to the U.S. Department of Education (ED) and the William D. Ford Federal Direct Loan (Direct Loan) Program contractors and subcontractors for the sole purpose of determining the appropriate income contingent repayment (ICR) amount, or determining eligibility for income-based repayment (IBR) and the appropriate IBR amount on the Direct Loan Program loan(s) that may be repaid under the ICR or IBR Plan. ED's Direct Loan Program contractors and subcontractors may change. You may obtain the names of the current Direct Loan Program contractors and subcontractors by writing to ED at the address shown at the bottom of this page.

**Request for Tax Years: 2008, 2009, 2010, 2011, and 2012.**

***Read the instructions on the back of this form before completing the items below.***

**Items 1-3:** If you are repaying or want to repay your loan(s) under the Income Contingent Repayment Plan or the Income-Based Repayment Plan, you **must** complete Items 1-3 below:

\_\_\_\_\_  
(1) Borrower's (Taxpayer's) Name Printed **as it appears on your tax returns**

\_\_\_\_\_  
(2) Borrower's (Taxpayer's) Social Security Number

\_\_\_\_\_  
(3) Borrower's (Taxpayer's) Signature  
**Signature is valid for 60 days – see instructions on the back of the form.**

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_(MM-DD-YYYY)  
Date of borrower's signature

**Items 4-6:** Your spouse must complete Items 4-6 if:

- You are repaying under the Income Contingent Repayment Plan and you are married, OR
- You are repaying under the Income-Based Repayment Plan and you and your spouse file a joint federal income tax return.

\_\_\_\_\_  
(4) Spouse's (Taxpayer's) Name Printed **as it appears on your tax returns**

\_\_\_\_\_  
(5) Spouse's (Taxpayer's) Social Security Number

\_\_\_\_\_  
(6) Spouse's (Taxpayer's) Signature  
**Signature is valid for 60 days – see instructions on the back of the form.**

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_(MM-DD-YYYY)  
Date of spouse's signature

**Return this form to: U.S. Department of Education  
Consolidation Department  
P.O. Box 242800  
Louisville, KY 40224-2800**

**William D. Ford Federal Direct Loan Program  
Income Contingent Repayment Plan & Income-Based Repayment Plan – Consent to Disclosure of Tax Information**

**Borrower Instructions:** Please complete this form using the following instructions. To be considered for the Income Contingent Repayment Plan or the Income-Based Repayment Plan, you must complete Items 1-3 for the Consent to Disclosure of Tax Information on the front of this form:

- Item 1.** Print (or type) your name as it appears on your tax returns.
- Item 2.** Print (or type) your Social Security Number.
- Item 3.** Sign and date the form in blue or black ink only. Report the date as month-day-year (MM-DD-YYYY).

**Items 4-6 must be completed only if:**

- You are repaying under the Income Contingent Repayment Plan and you are married (even if you file separate federal income tax returns), OR
- You are repaying under the Income-Based Repayment Plan and you and your spouse file a joint federal income tax return.

**(Do not complete Items 4-6 if you are repaying under the Income-Based Repayment Plan and you and your spouse file separate federal income tax returns.)**

- Item 4.** Print (or type) your spouse's name as it appears on tax returns.
- Item 5.** Print (or type) your spouse's Social Security Number.
- Item 6.** Have your spouse sign and date the form in blue or black ink only. Report the date as month-day-year (MM-DD-YYYY).

Make a copy of the completed form for your records. Send the original form to the U.S. Department of Education (ED) at the address shown on the front. **DO NOT SEND THIS FORM TO THE INTERNAL REVENUE SERVICE (IRS).** Once your application to participate in the Income Contingent Repayment Plan or the Income-Based Repayment Plan has been approved, ED will forward this form to the IRS. **Because the IRS will not accept this form if more than 60 days have passed since you and/or your spouse signed the form, you must return the completed form to ED promptly.**

**Request to Revoke Tax Information Authorization:** You and/or your spouse may revoke the Consent to Disclosure of Tax Information at any time. To revoke consent, send a copy of this completed form with the word **"REVOKE"** across the top directly to the revocation address given below. The revocation must be signed by the taxpayer(s) who signed the original Consent to Disclosure of Tax Information. If you and/or your spouse do not have a copy of the original form, a statement of revocation is acceptable. The statement must indicate that the authority to disclose tax information to the Direct Loan Program is revoked, and must be signed by the taxpayer(s) who signed the original authorization form.

**NOTE:** If you and/or your spouse revoke(s) the Consent to Disclosure of Tax Information, you and/or your spouse become(s) ineligible for income contingent or income-based repayment, and you and/or your spouse must contact the Direct Loan Servicing Center to select another repayment option. If you and/or your spouse fail(s) to contact the Direct Loan Servicing Center, ED will assign you and/or your spouse to the Standard Repayment Plan.

**Revocation Address:**  
**Direct Loan Servicing Center  
P.O. Box 5609  
Greenville, TX 75403-5609**

**PRIVACY ACT NOTICE**

**The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:**

The authority for collecting the requested information from and about you is §451 *et seq.* of the Higher Education Act (HEA) of 1965, as amended (20 U.S.C. 1087a *et seq.*) and the authorities for collecting and using your Social Security Number (SSN) are §484(a)(4) of the HEA (20 U.S.C. 1091(a)(4)) and 31 U.S.C. 7701(b). Participating in the William D. Ford Federal Direct Loan (Direct Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the Direct Loan Program, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect and report on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed, on a case-by-case basis or under a computer-matching program, to third parties as authorized under routine uses in the appropriate systems of records notices. The routine uses of this information include, but are not limited to, its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to consumer reporting agencies, to financial and educational institutions, and to guaranty agencies in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default. To provide default rate calculations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to state agencies. To provide financial aid history information, disclosures may be made to educational institutions. To assist program administrators with tracking refunds and cancellations, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal or state agencies. To provide a standardized method for educational institutions to efficiently submit student enrollment status, disclosures may be made to guaranty agencies or to financial and educational institutions. To counsel you in repayment efforts, disclosures may be made to guaranty agencies, to financial and educational institutions, or to federal, state, or local agencies.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may be made to our contractors for the purpose of performing any programmatic function that requires disclosure of records. Before making any such disclosure, we will require the contractor to maintain Privacy Act safeguards. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

**Paperwork Reduction Notice:** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 1845-0017. The time required to complete this information collection is estimated to average 0.2 hours (12 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4537. **Do not send the completed form to this address.**

If you have questions about the status of your individual submission of this form, contact the Consolidation Department at the following address:

U.S. Department of Education  
Consolidation Department  
P.O. Box 242800  
Louisville, KY 40224-2800

# **Appendix C**

**Office of the Comptroller of the Currency  
May 14, 2013 letter to the Consumer Bankers Association**



May 14, 2013

Mr. Richard Hunt  
President and CEO  
Consumer Bankers Association  
1225 Eye Street, Suite 550  
Washington, DC 20005

Dear Mr. Hunt

Thank you for your letter of March 27, 2013, regarding private student lending forbearance programs. We appreciate your concerns and recognize the challenges that banks face in balancing workout program terms with prudent accounting and safety and soundness practices.

The interagency "Uniform Classification and Account Management Policy" (OCC Bulletin 2000-20) provides longstanding guidance for controlling the use of extensions, deferrals, renewals and re-writes of closed-end loans. OCC recognizes that some borrowers transitioning from school to the job market can experience delays in achieving full employment and may not have sufficient resources to begin repayment immediately. To address this aspect of student lending and some of the unique elements in repayment sources, in August 2010 the OCC issued guidance to examiners interpreting how to apply the principles of OCC Bulletin 2000-20 to private student loans. In particular, besides the regular six-month grace period immediately following separation, the guidance allows institutions to offer an extended grace period of up to six months for borrowers experiencing financial hardship. This gives private student loan borrowers up to twelve months after leaving school to obtain employment and transition to repayment. The guidance also allows in-school deferments and, in some cases, modifications of student loans. No other unsecured consumer loan has a grace period or extended grace period option.

Your letter asks us to review two measures you believe could assist recent graduates temporarily struggling to find employment. We are always interested in receiving suggestions as to how banks and the OCC can work together to help students as they transition from school to the workplace, and we thank you for taking the time to make us aware of your ideas. To help you work prudently with troubled borrowers, we are happy to clarify how each would be viewed in the context of regulatory reporting and loan modification guidelines.

- 1. Permitting banks to offer graduated repayment (including interest-only) when a loan enters repayment or soon thereafter. CBA suggests this be permitted during the first three to four years of repayment, with full amortization and no principal forgiven. Such a loan should not be classified as a "Troubled Debt" since graduated repayment would not result in a concession in the long term. Such alternate payment terms would be tailored to the individual circumstances of student loan borrowers.*

Graduated payment terms can be an acceptable modification structure for troubled borrowers. Lowering monthly payments has proven an important characteristic for successful modification structures, and graduated payments are used in other programs such as the Home Affordable Mortgage Program (HAMP)

to prevent payment shock and help borrowers transition to stable, structured, sustainable terms. In addition, it may also be appropriate for borrowers to make graduated payments, consistent with ability to pay, during the regular or the extended grace period. However, interest-only repayment programs do not reduce the borrower's outstanding liability or the bank's credit exposure, and thus, raise significant concerns. Ultimately, interest-only payments benefit neither of the parties involved in the loan. It would seem that lenders can achieve the desired result – making loan payments more affordable to student borrowers – by reducing or waiving the interest portion of payments, which we believe is a more common and prudent method of making payments affordable and mitigating risk as students transition into the workplace.

For financial reporting and allowance purposes, a long-term modification of the loan structure to allow graduated payments for a borrower having financial difficulties would generally be considered a troubled debt restructure (TDR). A three- to four-year change in payment terms falls clearly within the realm of a concession, and granting the change due to unemployment, or under-employment, satisfies the financial-difficulties portion of the TDR standard. While tailoring payment terms to individual circumstances is appropriate, and we recognize and support the potential loss mitigation benefits of modifications, financial reporting and loan-loss reserve practices need to accurately reflect the actual quality of the underlying exposures, including TDR recognition.

*2. For existing loans in repayment, more flexibility in offering forbearance, also without the triggering of a TDR classification.*

As noted above, the OCC recognizes there are unique aspects to student lending and has advised examiners to allow extended grace periods, even up to 12 months, when necessary, as borrowers transition from school to full-time employment. However, we also believe that once repayment has begun, private student loans generally should not be treated differently from other consumer loans except in cases where the borrower returns to school.

We believe OCC Bulletin 2000-20 provides reasonable flexibility for designing forbearance program terms once repayment has begun. Implicit in that flexibility is the expectation that institutions work diligently to understand the nature and depth of the borrower's hardship and tailor forbearance programs appropriately. Significant term extensions or non-amortizing payments for unemployed (or under-employed) borrowers are generally not appropriate since they tend to be speculative and do not address the underlying issues prudently and directly. Rather, forbearance programs should be designed to mitigate risk and improve positions immediately and should not be used to delay or defer loss recognition or speculate on economic trends or conditions. For example, temporary forbearance could be appropriate if a borrower has low current income but can demonstrate a reasonable prospect of increased income in the foreseeable future.

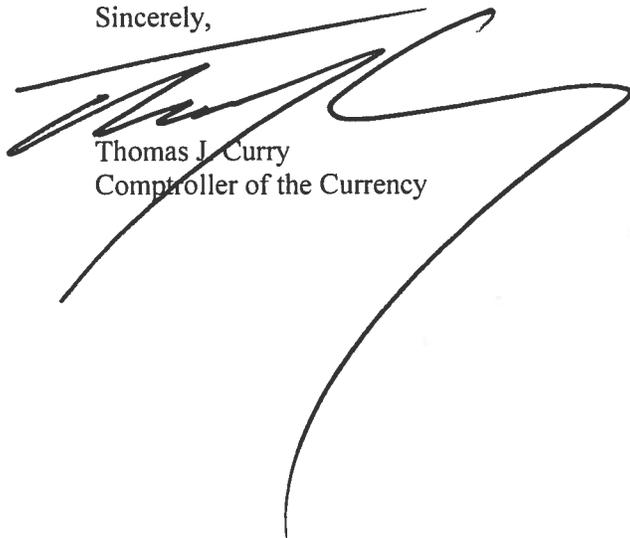
Similarly, financial reporting needs to be clear, consistent and objective. Offering prudent forbearance or modification programs is encouraged, but does not relieve lenders of their fiduciary responsibility to ensure regulatory reports and financial statements are accurate and fairly represent the financial condition of the institution and its assets. Institutions offering student lending modification programs must follow generally accepted accounting principles (GAAP) to ensure those programs are accurately reflected in the institution's regulatory reports and financial statements. This includes the identification of TDRs and a complete analysis of the allowance for loan and lease losses (ALLL) related to student loan modification efforts.

We do recognize the special issues that can arise in the context of private student loans. In that context, we would be happy to engage in dialogue with you and other interested parties concerning flexible and creative means of addressing those issues that do not involve non-amortization or interest-only payments

within the parameters of existing guidance and GAAP. Of course, appropriate solutions should reflect safe and sound banking principles, compliance with all applicable law, and the unique factors involved in student loans.

I hope this is responsive to your concerns. If you have questions or wish to continue the discussion, please contact Robert Piepergerdes, Director for Retail Credit Risk, at (202) 649-6670.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Tom Curry', is written over the typed name and title.

Thomas J. Curry  
Comptroller of the Currency

# Appendix D

## Kaskaskia College Webpage on Student Loans



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## Student Loans

Beginning in the fall 2014 semester, Kaskaskia College will no longer be offering the Direct Loan Program through the Department of Education. Student Loans will be offered through two different preferred lenders, Sallie Mae and Wells Fargo. The interest rates, repayment options, and terms may vary depending on which lender the student chooses to use. Students may also need to provide a credit worthy co-signer in order to qualify for a student loan or to receive a lower interest rate through one of these preferred lenders.

### 1. Steps before applying for a Student Loan

- a. Fill out FAFSA
  - i. <http://www.fafsa.ed.gov/>
- b. Complete additional paperwork with the FA Office (optional)

### 2. Steps to apply for an Outside Loan

- a. Choose a lender
  - i. Wells Fargo
    - a) <https://www.wellsfargo.com/student/>
  - ii. Sallie Mae
    - a) <https://www.salliemae.com/student-loans/>
- b. If you are a first-time borrower with Kaskaskia College, you will need to attend a First-Time Loan seminar after being approved for a student loan
  - i. [View Loan Seminar Dates & Times](#) 
- c. Follow up with Financial Aid Office to make sure Loan was certified
  - i. 618-545-3080

**3. Steps after you've graduated, withdrawn, or dropped below 6 credit hours if you have previously had a Direct Loan through the Department of Education**

- a. Attend an Exit Counseling Seminar
  - i. [Click here for Dates and Times](#) 
- b. Complete Online Exit Counseling
  - i. <https://studentloans.gov/myDirectLoan/index.action>

**4. Important Dates and Deadlines**

**Fall 2014**

- 1st Deadline - Friday, August 29, 2014
- 1st Loan Transfer - Tuesday, September 16, 2014
- 1st Loan Check Date - Friday, September 19, 2014
  
- 2nd Deadline - Friday, October 3, 2014
- 2nd Loan Transfer - Tuesday, October 21, 2014
- 2nd Loan Check Date - Friday, October 24, 2014
  
- 3rd Deadline - Friday, October 31, 2014
- 3rd Loan Transfer - Tuesday, November 18, 2014
- 3rd Loan Check Date - Friday, November 21, 2014

**Spring 2015**

- 1st Deadline - Monday, January 26, 2015
- 1st Loan Transfer - Tuesday, February 10, 2015
- 1st Loan Check Date - Friday, February 13, 2015
  
- 2nd Deadline - Monday, March 9, 2015
- 2nd Loan Transfer - Tuesday, March 24, 2015
- 2nd Loan Check Date - Friday, March 27, 2014
  
- 3rd Deadline - Monday, April 6, 2015
- 3rd Loan Transfer - Tuesday, April 21, 2015
- 3rd Loan Check Date - Friday, April 24, 2015

**Summer 2015**

- 1st Deadline - Friday, June 1, 2015
- 1st Loan Transfer - Tuesday, June 16, 2015
- 1st Loan Check Date - Friday, June 19, 2015

- 2nd Deadline - Monday, June 29, 2015
- 2nd Loan Transfer - Tuesday, July 14, 2015
- 2nd Loan Check Date - Friday, July 17, 2015

[View Loan Seminar Dates](#) 