



November 21, 2008

The Honorable George Miller
Chairman
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller:

On behalf of the Project on Student Debt, I am writing to propose technical corrections to two student loan programs established by Public Law 110-84, the College Cost Reduction and Access Act of 2007 (CCRAA): Income-Based Repayment and Public Service Loan Forgiveness.

The Project on Student Debt is an initiative of the Institute for College Access & Success, a nonpartisan, not-for-profit organization working to make higher education more available and affordable for people of all backgrounds. The Project identifies cost-effective policies that expand educational opportunity, protect family financial security, and advance economic competitiveness by reducing the burden of student debt. The new Income-Based Repayment program (IBR) is modeled on a policy proposal that the Project developed with support from students, parents, lenders, and the higher education community.

We commend Congress for creating the IBR and Public Service Loan Forgiveness programs to help encourage students of modest means to go to and get through college, and ensure that responsible borrowers can afford to serve their country and community, start a family, save for retirement, and contribute to their own children's education.

However, our analysis of the U.S. Department of Education's draft regulations for the CCRAA identified several significant obstacles that would reduce or eliminate access for borrowers meant to benefit from these programs. As these obstacles undermined the law's intent, we called on the Department of Education to fix them before finalizing the regulations. Because the Department declined to do so, we are now asking Congress to address the following concerns through technical amendments.

CCRAA TITLE II: Income-Based Repayment

Unfair penalty for married borrowers

IBR was designed to limit student loan payments to an affordable level: no more than 15 percent of a borrower's discretionary income (i.e., income above 150 percent of the

poverty level). However, under the Department of Education’s final rules, when two married individuals both have student loan debt and file taxes jointly, they will be required to pay *up to double the monthly loan payment* of two unmarried borrowers in otherwise identical situations. That is, each borrower will be stuck with payments representing up to *30 percent* of his or her discretionary income.

This double-counting penalty occurs because the final rules in Sec.682.215 and 685.221(a)(1) assume each spouse has access to the couple’s total discretionary income, without regard for the fact that the other spouse is also making loan payments from the same discretionary income.

It is neither appropriate nor equitable to suggest that this problem is solved if married borrowers file their taxes separately, as allowed by a previous technical correction to the CCRAA. Filing separately makes married borrowers ineligible for a number of valuable tax benefits. The tax penalties that result from filing separately can eliminate or even exceed any IBR benefits gained. Several examples of the tax benefits that couples filing separately are forced to forgo include the Earned Income Tax Credit, which can be worth thousands of dollars each year to low-income families with children, the Child and Dependent Care Credit, and the Hope and Lifetime Learning Credits.

There is no compelling reason to require student loan borrowers to give up tax benefits that they would otherwise be entitled to solely because they are repaying their student loans under the IBR program. To address this inequity and to make the treatment of dual-borrower couples consistent with Congress’ intent to limit IBR payments to no more than 15 percent of discretionary income, we recommend including *both spouses’ debt in addition to both spouses’ income* in calculating a total IBR payment cap for the couple. Then a proportion of the total payment can be assigned to each spouse, using a method such as his or her share of the couple’s total student loan debt. This would ensure the spouses’ payments together do not exceed 15 percent of their discretionary income.

No further special rule is needed for FFEL loans, because Sec.682.215(b)(1)(i) of the regulations already provides for a method of allocating IBR payment amounts to multiple loans on a proportional basis. For the William D. Ford Federal Direct Loan Program, an additional rule will be required to implement this change.

Proposed amendment:

Sec. 493C is amended by adding at the end the following: “e) Special Rule for Married Borrowers Filing Jointly.—In the case of a married borrower who files a joint Federal income tax return, the Secretary shall calculate the amount of the borrower’s income-based repayment under this section on the basis of the combined student loan debt made, insured, or guaranteed under part B or D (other than an excepted PLUS loan or excepted consolidation loan) of the borrower and the borrower’s spouse.

Proposed report language:

Congress developed the income-based repayment program to protect student loan borrowers from undue hardship in repaying their loans by capping payments at 15

percent of discretionary income. Congress expects the Secretary to develop a method for calculating married borrowers' loan payments under the income-based repayment plan to guarantee that this intent is achieved. A possible method for achieving this goal would be to allocate loan payments according to the rule in Sec.682.215 (b)(1)(i), i.e., according to percentage of the couple's total student loan debt.

IBR eligibility Catch-22 and other special eligibility situations

The CCRAA does not specify which loan debt amount should be used to determine IBR eligibility: the loan balance upon first entering repayment, or the loan balance upon applying for IBR. The Department of Education's final regulations specify that partial financial hardship for IBR eligibility will be determined by the loan balance upon entering repayment. While the eligibility criteria chosen by the Department makes sense for most borrowers (those who have yet to begin paying their loan or have already partially paid down their loan), one group will face a Catch-22: those whose original loan balance would not have been great enough to qualify them for IBR, but who have had difficulty paying down their loan, so that their current loan balance exceeds the balance of the initial loan. For this group, loan payments are high enough relative to income that they should be eligible for IBR, but they are denied access to the lower IBR payments.

Additionally, there are other groups of borrowers in special situations that are currently unfairly excluded from income-based repayment, either because of consolidation choices they made prior to IBR being made available, or other viable reasons.

Proposed amendment:

Sec. 493C(a)(3)(A) is amended by adding at the end the following: “e) Special Situations.—The Secretary shall develop methods to allow borrowers with special situations to enter into the income-based repayment program. Such situations include: borrowers whose loan balance upon entering repayment would not qualify them for income-based repayment but whose loan balance at the time of application for income-based repayment would qualify them; borrowers with joint consolidation loans; borrowers who had loans eligible for income-based repayment that were subsequently consolidated with excepted PLUS loans; and other situations that the Secretary determines are appropriate in order to make federal student loan debt manageable for borrowers.

Penalizing borrowers who enroll in IBR and later decide to leave the repayment plan:

Sec. 493C(b)(8) of the CCRAA indicates that a borrower who exits IBR would no longer have access to repayment plans for which he or she would otherwise be eligible (e.g. extended, graduated, etc.):

“(b) INCOME-BASED REPAYMENT PROGRAM AUTHORIZED.—
Notwithstanding any other provision of this Act, the Secretary shall carry out a program under which— “(8) a borrower who is repaying a loan made under part B or D pursuant to income-based repayment may elect, at any time, to terminate

repayment pursuant to income-based repayment and repay such loan under the *standard repayment plan*;" (Note: italics for emphasis)

Additionally, the Department of Education's final regulations in Sec.682.215 and 685.221(d)(2)(i) specify that, for a borrower in the scenario above, the Secretary will recalculate the borrower's monthly payment based on "*the time remaining under the maximum 10-year repayment period* for the amount of the borrower's loans that were outstanding at the time the borrower discontinued paying under the income-based repayment plan." It is our opinion that the time in IBR should be treated like a deferral or forbearance: it should *not* count as part of the fixed-length repayment periods. The Department's regulation is of particular concern because it suggests that borrowers could pay down some of their loan debt under IBR for 10 years, and then be asked to pay the remainder of their loan debt as a lump sum upon choosing to exit the program. The current legislative language in Sec. 493C(b)(8) does not specify whether the time the borrower has spent in IBR should be excluded from or included in the calculation of the "time remaining" in the applicable repayment period, or whether a new 10-year repayment period begins upon exiting IBR.

Therefore, we propose the following technical corrections:

Proposed amendment:

Sec. 493C is amended—

- (1) by inserting in subparagraph (b)(8) "or any other payment plan for which he or she would be otherwise eligible" after "standard repayment plan"; and
- (2) adding at the end the following: "d) Special Rule for Borrowers Terminating Repayment Pursuant to Income-Based Repayment.— For the purposes of determining the time remaining under (i) or (ii), the time the borrower spent in the income-based repayment program shall not be included.

TITLE IV: Public Service Loan Forgiveness Program

Uncertainty Regarding Eligibility for Public Service Loan Forgiveness

The Public Service Loan Forgiveness program is supposed to encourage people to serve their country and community in government and nonprofit jobs. However, the final rules published by the Department would require borrowers to fully document 10 or more years of employment and loan payment history *after the fact*, submit all that documentation to the Department, and simply hope for the best (Sec.685.219(e)).

This is an unreasonable burden on borrowers. Borrowers need to know if their time in a particular job will count towards the required 10 years of public service *before* they can make informed career and financial decisions, or know when it is appropriate to apply for loan forgiveness.

Giving borrowers clear, periodic confirmation of how many more years of eligible work and payments are required before they qualify for forgiveness will provide an incentive to

continue in public service and ultimately meet the forgiveness requirements. It will also reduce the number of unqualified borrowers applying for forgiveness.

While borrowers certainly have the primary responsibility for securing documentation of their eligibility, the Department is the only entity that can provide confirmation of eligibility. Therefore, we propose the following technical correction:

Proposed amendment:

Sec. 455(m) is amended by inserting a subparagraph (4) at the end as follows:

“(4) Verification and Confirmation of Eligibility.—

(A) Not later than 180 days after the date of enactment of this technical amendment, the Secretary shall provide borrowers with a system for easily verifying whether their past, current, and/or future employer meets the definition of “public service job” as defined in subparagraph (3)(B), and for confirming qualifying payments made as outlined in subparagraphs (1)(A)(i),(ii), (iii), or (iv).

Unreasonable Condition for Receiving Public Service Loan Forgiveness:

Current legislative language in Sec. 455(m)(1) mandates:

“IN GENERAL.—The Secretary shall cancel the balance of interest and principal due, in accordance with paragraph (2), on any eligible Federal Direct Loan not in default for a borrower who—

(B)(i) is employed in a public service job at the time of such forgiveness;”

Borrowers who have fulfilled the fundamental requirements for Public Service Loan Forgiveness (i.e., made 120 qualifying payments while working in a public service job) should not have to exceed those requirements in order to receive the benefit. Borrowers should be able to request forgiveness at any time after meeting the employment and payment eligibility thresholds.

Therefore, we propose the following technical correction:

Proposed amendment:

Sec. 455(m)(1) is amended by striking subparagraph (B)(i).

Proposed report language:

Congress expects the Secretary to provide timely responses to borrowers’ requests for Public Service Loan Forgiveness. However, borrowers should not be required to exceed the employment requirements for forgiveness while waiting for confirmation from the Secretary.

Inequity in definition of full-time:

The CCRAA defines “public service job” as a full-time job, but does not define “full-time.” In its final regulations governing public service loan forgiveness (Sec.

685.219(b)), the Department of Education has defined “full-time” as “working in qualifying employment in one or more jobs for the greater of –

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

The second half of clause (ii) creates an unnecessary inequity for individuals whose employers consider full-time to be more than 30 hours per week. Defining full-time as 30 hours per week for all employees would ensure that all borrowers are treated equitably with regard to qualifying for public service loan forgiveness. There is no statutory language that requires this dual definition for full-time. We requested that the Department fix this issue before issuing final regulations, but it declined to do so.

Proposed amendment:

Sec. 455(m)(3) is amended—

- 1) by redesignating subparagraph (B) as subparagraph (C); and
- 2) by inserting a new subparagraph (B) as follows: “(B) Full-time Employment.— The term ‘full-time’ means an annual average of at least 30 hours per week, with the exception of contractual or employment periods of at least 8 months, in which ‘full-time’ means an average of 30 hours per week during the contractual or employment period.

We thank you for your commitment to reducing the burden of student debt, and for considering these suggested technical amendments. Please call me or my associate Melissa Tooley at 510-559-9509 with questions or for additional information.

Sincerely,

Lauren Asher
Associate Director, The Project on Student Debt
Vice President, The Institute for College Access & Success