

**Comments on Notice of Proposed Rulemaking**

Docket ID ED-2014-OPE-0161

Submitted August 6, 2015

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. TICAS developed the policy framework on which the federal Income-Based Repayment plan (IBR) is based.

These comments are in response to the [Notice of Proposed Rulemaking](#) (NPRM) published in the Federal Register on July 9, 2015. The proposed rules will allow all federal Direct student loan borrowers to cap their monthly student loan payments at 10% of their discretionary income, help ensure that military servicemembers benefit from the interest rate cap provided under the Servicemembers Civil Relief Act (SCRA), increase the efficacy of Participation Rate Index (PRI) challenges and appeals to encourage colleges to continue offering federal loans, and make other changes to improve the treatment of federal loan borrowers. We write to express our strong support for certain elements in the proposed regulations, but also to suggest a number of ways to strengthen them.

The proposed regulations include a new income-driven repayment plan, called Revised Pay As You Earn (REPAYE), which improves upon existing plans in a number of key ways. We strongly support how REPAYE would let all federal Direct student loan borrowers cap their monthly payments at 10% of their discretionary income, regardless of when they borrowed or their debt-to-income ratio. This will better help struggling borrowers stay on top of their payments and avoid default, give all borrowers the ability to have their loan payments fluctuate with their income should they want to do so, and greatly simplify the plan. We also strongly support changes that make the plan fairer and better target its benefits, such as limiting interest accrual for borrowers with low income relative to their debt to prevent ballooning balances, treating married borrowers more equitably, and removing the “standard payment cap” so higher income borrowers pay the same share of their income as lower income borrowers.

While we are strong proponents of allowing more borrowers to cap their payments at 10% of income, as REPAYE does, we also strongly support the streamlining of the multiple income-driven repayment (IDR) plans into one improved income-driven plan that caps monthly payments at 10% of income, provides loan forgiveness after 20 years of payments, and targets benefits to borrowers who need help the most.<sup>1</sup> We recognize that this cannot be achieved through regulation and requires legislative changes. With the incorporation of our recommended changes, REPAYE would become an excellent model for Congress to consider when developing that single, streamlined IDR plan. Additionally, we continue to

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<sup>1</sup> For more information on TICAS’ proposal to streamline the multiple IDR plans into one improved plan, see <http://bit.ly/1FL7yrr>. Borrowers in existing plans would be able to stay in them or switch to the new plan.

urge legislative changes to prevent debt discharged under IDR plans from being treated as taxable income.<sup>2</sup>

Additionally, we strongly support the proposed regulations requiring loan holders to proactively use the Department of Defense’s database to apply the six percent interest rate cap to eligible military servicemembers under the SCRA, instead of requiring servicemembers to submit written requests for those benefits.<sup>3</sup> This process is already in place for federal loans held by the Department of Education.<sup>4</sup> Requiring Federal Family Education Loan (FFEL) Program lenders and servicers to implement this process will substantially reduce burden for military servicemembers and help ensure that they receive the benefits they are entitled to. We appreciate the Department’s clarifying in the preamble that reservists are entitled to the SCRA interest rate limitation (p. 39614) and that the proposed regulations are not intended to affect any private right of action a borrower may have under the SCRA (p. 39615).

We are joining a coalition of organizations to submit comments strongly supporting certain elements of the proposed regulations and recommending **five important improvements**:

1. Provide loan forgiveness to *all* borrowers after 20 years of payments in REPAYE
2. Count all qualifying payments – made before and after consolidation – towards forgiveness
3. Eliminate the capitalization of interest within REPAYE
4. Make it easier for borrowers to continue making payments based on their income, including by letting them choose to have their income information updated automatically
5. Implement changes to PRI challenges and appeals before 2017, and ideally in 2015

Below, we expand on those and other recommendations. Our comments are organized by issue. Double-underlined text and strike-outs indicate our proposed changes to the regulations as currently written. All page numbers in parentheses correspond to the page numbers in the July 9, 2015 Federal Register.

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<sup>2</sup> For more information about this issue and examples illustrating the tax consequences for sample borrowers, see TICAS. 2015. “Tax Consequences of Loan Discharges for Borrowers in Income-Driven Repayment Plans.” <http://bit.ly/1C5Ez71>.

<sup>3</sup> Proposed language in 682.202(a)(8), 682.208(j), 682.410(b)(3), and 685.202(a)(11).

<sup>4</sup> U.S. Department of Education. August 14, 2014. Dear Colleague Letter. “Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs.” <http://ifap.ed.gov/dpcletters/GEN1416.html>.

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## [Revised Pay As You Earn \(REPAYE\) \[685.209\(c\), pp. 39637-39640\]](#)

We indicate below where our recommended changes also apply to the other income-driven repayment plans: Pay As You Earn (PAYE), Income-Based Repayment (IBR), and Income-Contingent Repayment (ICR).

### [Loan Forgiveness](#)

#### [Maximum Repayment Period \[685.209\(c\)\(5\), pp. 39639-39640\]](#)

##### **Establish a 20-year maximum repayment period for *all* borrowers in REPAYE**

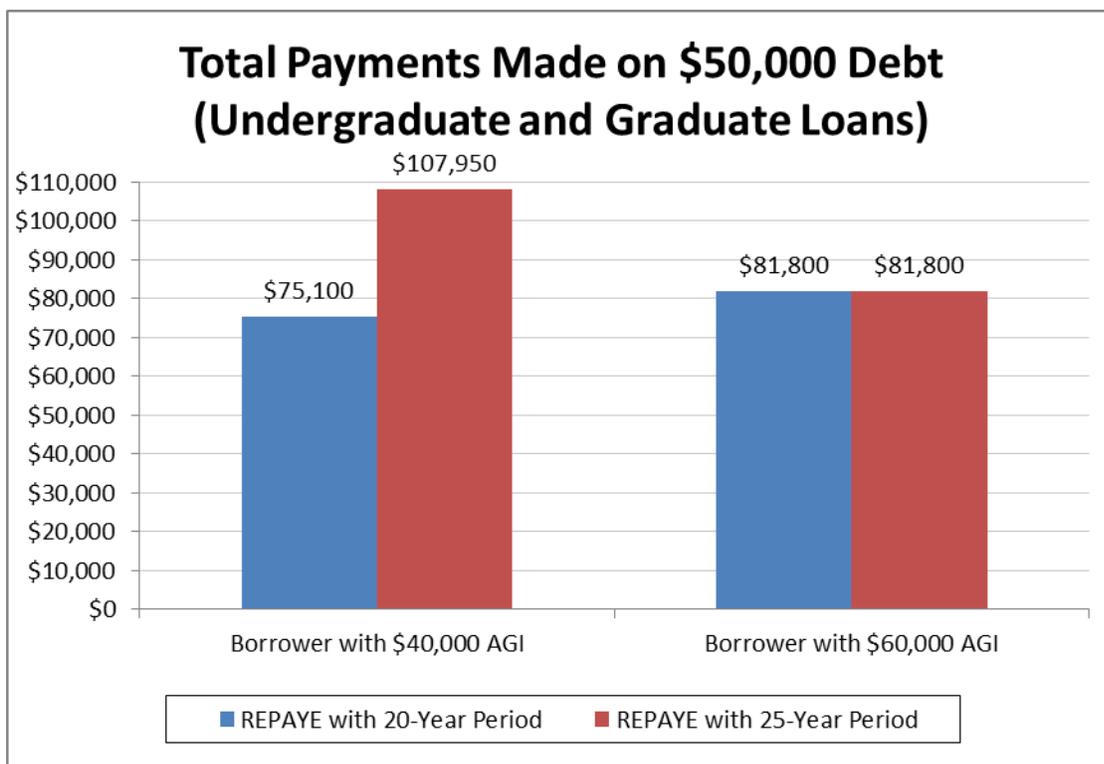
For all borrowers in PAYE and new borrowers<sup>5</sup> in IBR, any debt remaining after 20 years of qualifying payments is discharged. However, under the proposed regulations, borrowers in REPAYE who have any graduate school loans will be required to make 25 years of payments on all of their loans (rather than 20 years) before any remaining balance is discharged. Borrowers in REPAYE who have only undergraduate debt would have a 20-year maximum repayment period. In other words, the proposed regulations extend the maximum repayment period by five years for all of a borrower’s loans – increasing the total cost of those loans – based solely on whether he or she took out a certain type of loan, *not on the borrower’s income or ability to pay*.

Though many borrowers will repay their loans in full before the 20-year period is over, capping loan repayment at 20 years provides needed relief for borrowers whose earnings *for 20 years* were too low to enable them to fully repay their student loans. The Department emphasizes in the preamble its goal of “targeting the REPAYE plan to the neediest borrowers” (p. 39620) but the proposal to extend the repayment period solely based on loan type *hurts* many of the neediest borrowers. Borrowers with graduate debt and high enough earnings will not be affected by the extension of the maximum repayment period because they will be able to repay their loans in less than 20 years. But those with low earnings relative to their debt would pay the price of making five additional years of payments.

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<sup>5</sup> “New borrowers” in IBR are those who had no outstanding balance on a Direct or Federal Family Education Loan when they received a Direct Loan on or after July 1, 2014.

To illustrate how the proposed extension of the maximum repayment period disproportionately harms lower income graduate students, consider two borrowers who both have \$50,000 in combined federal debt from undergraduate and graduate school, with a 6.8% interest rate. One borrower earns \$40,000 in adjusted gross income (AGI), increasing 4% a year. Under the proposed regulations, he would have to make 25 years of payments before any remaining amount is discharged, because he is repaying loans received as a graduate student. As shown in the chart below, extending his maximum repayment period to 25 years increases the total amount paid on his loans by *almost \$33,000, or 44%*.<sup>6</sup> In contrast, this proposal would not affect the total payments made by a higher income borrower who starts off earning \$60,000 AGI. She is able to fully repay her loans in a little over 14 years, so it doesn't matter whether her maximum repayment period is 20 years or 25 years.



Forcing borrowers to make payments for an additional five years has significant consequences. Beyond increasing the overall cost of borrowing, 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, opening a small business, saving for their children's education, or saving for their own retirement.<sup>7</sup>

<sup>6</sup> Calculations assume that both borrowers are single, do not have anyone else in the household, and live in the 48 contiguous states. The average interest rate on their loans is 6.8% and borrowers' AGIs increase 4% a year. Calculations are based on 2015 poverty levels and assume that the poverty level increases annually at the rate of inflation. Figures are in current dollars, rounded to the nearest \$50.

<sup>7</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. Eyer mann. 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>.

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>8</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>9</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>10</sup> Delaying forgiveness in REPAYE by an additional five years would make this problem even worse. *Twenty years is long enough to have to repay your student debt.*

In addition, extending the repayment period for all loans if a borrower has any federal graduate loans may lead students to take out riskier private loans to pay for graduate school, discourage them from going to graduate school in the first place, or lead them to avoid borrowing for graduate school when doing so could help them complete their degree.

There are much fairer and more targeted ways to prevent borrowers with high incomes and high levels of graduate debt from receiving loan forgiveness when they could have afforded to pay more. Instead of extending the repayment period for borrowers with any graduate debt, **we propose better targeting the benefits of REPAYE by gradually phasing out the "income exclusion" for high-income borrowers.** This would have the effect of increasing monthly payment amounts for high-income borrowers, so that they are more likely to pay off their debt within 20 years while still capping payments at 10% of their income.

Appendix A explains this proposal in more detail and illustrates how sample borrowers would be affected by the combined effect of removing the standard payment cap, as under the proposed regulations for REPAYE, and our proposal to phase out the income exclusion for high-income borrowers. For example, in the current PAYE plan, a married doctor with two children, \$192,000 in loans, and \$190,000 in income after her residency could have nearly \$83,000 in loans discharged. However, after removing the standard payment cap and phasing out the income exclusion, this same doctor would receive *no forgiveness and would pay more in total than under current PAYE or IBR.*

**If the Department moves forward with extending the repayment period for certain borrowers in REPAYE, it would be fairer to do so for only the graduate debt that borrowers are repaying, rather than all of their debt.** In the proposed regulations for REPAYE, a borrower with undergraduate and graduate debt would have a 25-year maximum repayment period for all of her loans. If she begins

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<sup>8</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>9</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, Donghoon. Federal Reserve Bank of New York. 2013. Presentation for Press Briefing. "Household Debt and Credit: Student Debt."

<http://www.newyorkfed.org/newsevents/mediaadvisory/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>10</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>.

repaying her undergraduate loans in REPAYE before going to graduate school, she would do so with the understanding that those loans have a 20-year maximum repayment period. However, if she then goes to graduate school and borrows even one dollar in federal loans to do so, the terms of repayment for her undergraduate loans would *retroactively* adjust to have a 25-year maximum repayment period.

If the repayment period is to be extended, a fairer approach would apply the 25-year maximum repayment period only to her graduate loans, while her undergraduate loans retain a 20-year maximum repayment period. If this borrower consolidates her undergraduate and graduate loans, the portion of the consolidation loan repaying her undergraduate debt should have a 20-year repayment period while the portion repaying her graduate debt should have a 25-year repayment period. Not only would this be fairer and help mitigate the “cliff effect” created by the policy, but it would be less likely to encourage graduate students to rely on riskier private loans or discourage students from enrolling in graduate school at all.

*Qualifying Payments for Loan Forgiveness [682.215(f); 685.209(a)(6); 685.209(b)(3)(iii); 685.209(c)(5), pp. 39639-39640; 685.219(c); 685.221(f)]*

#### **Count all qualifying payments – made before or after consolidation – towards loan forgiveness in income-driven repayment (IDR) plans and Public Service Loan Forgiveness (PSLF)**

Under the proposed REPAYE and other existing IDR plans, any remaining debt is discharged after 20 or 25 years of qualifying payments. For borrowers qualifying for PSLF, any remaining debt is forgiven after 10 years. However, if a borrower consolidates multiple loans into one loan, qualifying payments made before the loans were combined suddenly don't count toward forgiveness anymore. This can and should be changed through regulations for REPAYE, PAYE, IBR, and ICR, 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 REPAYE. 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 the proposed rules, she would have to make an additional 25 years of payments on her undergraduate loans before being eligible for a discharge of any remaining debt on those loans under REPAYE<sup>11</sup> (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 25-year repayment period into 35 years. Instead, loans that borrowers were repaying before consolidation should be tracked separately, so that borrowers don't lose credit for the payments they have already made.

*There are multiple precedents for tracking payments made on loans before consolidation.* For example, servicers 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>12</sup> Additionally, for discharges

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<sup>11</sup>We recommend on pages 3-6 that the maximum repayment period be set at 20 years in REPAYE or, if it is extended for students with graduate debt, that students' *undergraduate loans* retain a 20-year maximum repayment period.

<sup>12</sup> 682.215(b)(4), 685.209(a)(2)(iii), and 685.221(b)(3).

of consolidation loans due to a closed school, false certification, or unpaid refunds, only the amount of the underlying loans that were used to pay for the affected program of study are considered for discharge.<sup>13</sup>

### [Annual Income Recertification Process \[685.209\(c\)\(4\), pp. 39638-39639\]](#)

Under all of the IDR plans (REPAYE, PAYE, IBR, and ICR), borrowers are required to provide tax or other income information each year of their repayment period to continue making monthly payments based on income. The penalty for missing the annual income recertification deadline varies by repayment plan, and the proposed penalty in REPAYE is unnecessarily complex. We recommend simplifying that process in REPAYE and implementing administrative changes to the annual income recertification process for all the IDR plans to help borrowers more easily keep their income information up to date and continue having manageable monthly payments.

The Department of Education recently shared that a startling 57% of borrowers in PAYE and IBR missed the deadline to update their income information.<sup>14</sup> As a result, those borrowers' monthly payments can skyrocket to an unaffordable level and any unpaid interest capitalizes, potentially increasing the total cost of the loan.<sup>15</sup> These data underscore the urgency of improving the process of updating income information in IDR plans and ensuring that borrowers who miss the deadline can easily return to making payments based on income.

The proposed treatment of borrowers who miss the annual income recertification deadline in REPAYE is unnecessarily complex, which will make it difficult to understand, communicate, and successfully navigate. Unlike in other IDR plans, under the proposed regulations, borrowers would be forced out of REPAYE if they miss the income recertification deadline and placed into an alternative repayment plan.<sup>16</sup> This alternative repayment plan may require much higher monthly payments than their previous income-driven amount, particularly if the borrower has a low income and/or is near the end of the repayment period in REPAYE.<sup>17</sup> In order to get back into REPAYE, borrowers would have to overcome several hurdles, including providing what may be years' worth of income documentation and clearing any delinquencies due to unaffordable alternative plan payments. Even if these borrowers successfully reenter REPAYE, their payments may not be based solely on income due to a complicated "catch-up payment" requirement that adjusts their monthly payments for the remainder of their repayment period.

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<sup>13</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/Zuyai6>.

<sup>14</sup> U.S. Department of Education. "Sample Data on IDR Recertification Rates for ED-Held Loans." Shared on April 1, 2015 at the second negotiated rulemaking session.

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/payee2-recertification.xls>.

<sup>15</sup> 682.215(e)(3)(ii), 685.209(a)(5)(iii)(B), and 685.221(e)(3)(ii).

<sup>16</sup> Proposed language in 685.209(c)(4)(vi)-(vii), p. 39639. Borrowers can avoid these penalties if they submit their documentation late but their loan servicer is still able to calculate the new monthly payment amount before the end of the annual payment period.

<sup>17</sup> See page 9 for a borrower example illustrating this.

Instead, we propose a simpler solution. **Borrowers who miss the income recertification deadline should remain in REPAYE but have their monthly payment recalculated (see below), and any payments made in the absence of income documentation should not count toward forgiveness in REPAYE or toward Public Service Loan Forgiveness (PSLF).** This approach avoids shuffling borrowers between repayment plans as well as calculating “catch-up payments” that adjust monthly payments for the remainder of their repayment period, while also preventing borrowers who fail to recertify income from receiving forgiveness sooner than they should.

We recommend that the monthly payment for borrowers who fail to recertify their annual income on time be recalculated as the higher of:

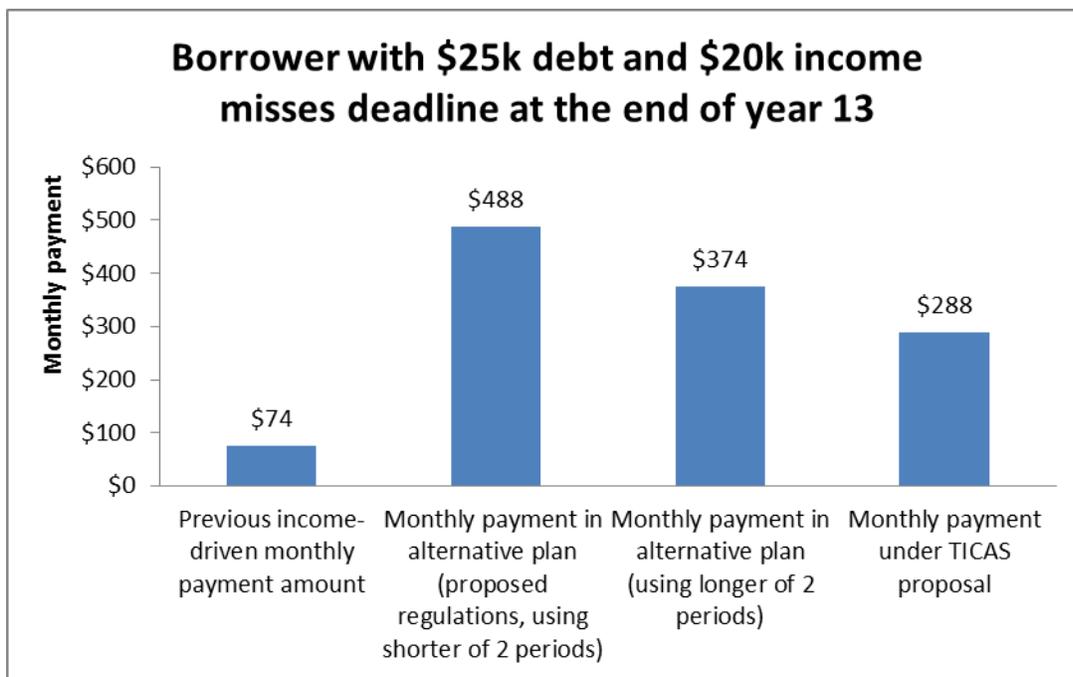
- The 10-year standard repayment amount calculated on the outstanding balance at the time the student entered REPAYE (the “permanent standard” amount); or
- The borrower’s previous income-driven payment amount, based on the last set of income documentation provided.

To encourage borrowers to submit timely information, payments made without income documentation should not be considered qualifying monthly payments for loan forgiveness. This addresses the Department’s concerns about providing “an incentive for timely submission of income documentation” and a “disincentive to those who would withhold updated information reflecting a significant increase in income” (p. 39629). Borrowers would be motivated to update their income information to resume making monthly payments that count toward forgiveness and to avoid being bumped to a higher payment amount (if their previous IDR amount was lower than the permanent standard amount).

Additionally, counting only those payments made with income documentation toward forgiveness would help prevent borrowers who miss their income documentation deadline from receiving forgiveness under REPAYE or PSLF sooner than they should. Under our alternative approach, if borrowers never recertify their income in REPAYE, they will simply end up paying off their loans in full and receive no forgiveness. If they do update their income documentation and resume making payments that count toward forgiveness, they will likely receive less forgiveness than if they had not missed the income recertification deadline. This is because those borrowers would have been paying down their balance with payments that don’t count toward forgiveness, so once payments start counting toward forgiveness again, there is a smaller balance left to repay.

**If the Department moves forward with an approach that forces borrowers who fail to recertify their income into an alternative repayment plan, their monthly payments should be calculated using the longer of 10 years or the remaining repayment period in REPAYE, rather than the shorter of those periods.** In the proposed regulations for REPAYE, the monthly payment in the alternative plan is the amount required to pay off the outstanding balance (including capitalized interest) within 10 years from the date the borrower enters the alternative plan or by the end date of the 20- or 25-year REPAYE repayment period, whichever is *earlier*. As illustrated in the example on the next page, this approach may require borrowers to make monthly payments that are much higher than their previous income-driven amount, particularly if they have a low income and/or are near the end of their repayment period in REPAYE. Our alternative proposal would help prevent borrowers who fail to recertify their income from falling into delinquency when they are faced with skyrocketing payment amounts.

To explore the effect of these different proposals, consider a borrower with \$25,000 in undergraduate unsubsidized loans (6.8% interest rate) who earns \$20,000 AGI during her first year of repayment and whose income increases 4% a year. The chart below illustrates her monthly payment amounts under different proposals if she misses the income recertification deadline at the end of her 13<sup>th</sup> year in REPAYE.



- Her previous income-driven payment (in year 13) was \$74/month
- Under the proposed regulations for REPAYE, her alternative plan payment for year 14 would be \$488/month (her remaining balance of \$32,519 at the end of year 13 amortized over the remaining 6 years in REPAYE, since 6 years is a shorter period than 10 years).
- If the alternative plan payment for year 14 was based on the *longer* of 10 years or the remainder of her REPAYE repayment period, she would have 10 years in the alternative plan and her monthly payment would be \$374/month.
- Under our proposal (higher of permanent standard or previous IDR payment), her monthly payment in year 14 would be \$288/month (the permanent standard amount, which is higher than her previous income-driven payment amount).

In addition to improving the regulations for REPAYE on the annual income recertification process, **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 give the Department advance permission to automatically access their tax information** for the limited purpose of determining eligibility and/or monthly payment amounts for all IDR plans (sometimes called “multi-year consent”), rather than requiring borrowers to proactively submit updated income information every year. Borrowers could revoke this permission at any time. Implementing multi-year consent for IDR plans would help ensure that struggling borrowers are able to keep their monthly loan payments manageable and avoid delinquency and default. It would also significantly reduce the administrative burden on

borrowers and servicers. Borrowers used to be able to provide multi-year consent,<sup>18</sup> and they should be able to again.

Nonfederal negotiators representing every constituency on the negotiating committee for REPAYE have expressed strong support for multi-year consent.<sup>19</sup> The Department has already acknowledged its support for this process (p. 39611), and we urge the Department to work with the IRS to reinstate multi-year consent as soon as possible.

- 2. Improve the efficacy of loan servicers' notifications to borrowers about the annual income recertification deadline.** The Department's own data show that the majority of borrowers in PAYE and IBR missed their annual income recertification deadline, raising questions about the effectiveness of communications from loan servicers. We applaud the Department for implementing experimental pilots to identify ways that those communications can be improved.<sup>20</sup> We urge the Department to be as transparent as possible in sharing the results from those pilots and to implement improvements in a timely fashion.

## Interest Accrual and Capitalization

### *Interest Accrual [685.209(c)(2)(iii), p. 39638]*

We support the proposal to limit the amount of interest charged to borrowers whose monthly payments do not cover accrued interest (i.e., negative amortization). As in PAYE and IBR currently, while borrowers are in negative amortization, no unpaid interest accrues on *subsidized* loans during the first three years a borrower is in REPAYE. In addition, under the proposed regulations for REPAYE, only 50% of any unpaid interest would accrue on *subsidized* loans after the first three years, and only 50% of any unpaid interest on *unsubsidized* loans would accrue at any time borrowers are in negative amortization.

Capping the accrual of unpaid interest for borrowers with negatively amortizing loans is a targeted benefit that helps minimize the growth of loan balances for borrowers with low incomes relative to their debt. As a result, these borrowers may pay off their loans faster, pay less in total, and/or have a smaller loan amount discharged at the end of the repayment period than if this interest accrual proposal were not implemented. Additionally, borrowers who see their loan balances rapidly increase, despite making monthly payments, may experience anxiety about their debt, and concern about ballooning loan balances may discourage some borrowers from enrolling in IDR plans altogether even if they would benefit from doing so.

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<sup>18</sup> U.S. Department of Education. "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. Available online, as of June 18, 2015, at <http://loanconsolidation.ed.gov/forms/icr.pdf>. Borrowers used this form to authorize the IRS to provide their income information for five years (2008-2012). It expired on June 30, 2012.

<sup>19</sup> Letter to Treasury Secretary Jacob Lew and Internal Revenue Service Commissioner John Koskinen from selected nonfederal negotiators on the negotiating committee for REPAYE. June 15, 2015. <http://bit.ly/1InKGRk>.

<sup>20</sup> For more information, see U.S. Department of Education. "Income Driven Repayment (IDR) Notification Pilots." Shared on April 1, 2015 during the second negotiated rulemaking meeting. <http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-idr-notificationpilots.pdf>.

### *Interest Capitalization [685.209(c)(2)(iv), p. 39638; 685.209(c)(4)(iv), p. 39639]*

Under the proposed regulations, interest capitalizes when a borrower enrolled in REPAYE no longer has a partial financial hardship (PFH) and when he or she exits REPAYE 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.

**We recommend eliminating the capitalization of interest while a borrower remains in REPAYE** because it adds unnecessary complexity and can increase costs for borrowers whose incomes are low for extended periods of time.

The elimination of the standard payment cap and the PFH requirement for initial eligibility for REPAYE means that PFH is no longer a relevant benchmark. It is simply a carryover from other IDR plans with different eligibility requirements. Since borrowers' monthly payments in REPAYE will always be based on income, there is no need to capitalize interest when their debt-to-income ratio falls below a particular threshold. Under the proposed regulations, the only reason loan servicers will have to calculate PFH is to determine whether interest should capitalize at what will be an irrelevant threshold, adding unnecessary complexity for servicers and creating confusion for borrowers. As such, removing interest capitalization within REPAYE would simplify 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 REPAYE, because no interest would capitalize at all within the plan.

Additionally, capitalizing interest when borrowers in REPAYE lose their PFH status may increase costs for borrowers whose incomes are low for extended periods of time. 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.

### Calculation of Monthly Payments

#### *Removal of "Standard Payment Cap"*

We strongly support the removal of the "standard payment cap" so that borrowers in REPAYE are always making payments based on their income. In PAYE and IBR, monthly payments are capped at the "permanent standard" amount – the monthly amount the borrower would have had to repay had she entered a fixed 10-year repayment plan (often referred to as the "standard" plan) with what she owed when she entered PAYE or IBR.<sup>21</sup> The proposed regulations for REPAYE instead calculate all monthly payments as 10% of discretionary income, without a "standard payment cap." This change increases program fairness and targeting by requiring higher income borrowers to pay the same share of their income as lower income borrowers, and by preventing high-debt, high-income borrowers from receiving substantial loan forgiveness when they could have afforded to pay more.

Appendix A illustrates how sample borrowers would be affected by the combined effect of removing the standard payment cap, as under the proposed regulations for REPAYE, and our proposal to phase out the income exclusion for high-income borrowers.

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<sup>21</sup> 682.215(d)(1)(i), 685.209(a)(4)(i)(A), and 685.221(d)(1)(i).

### *Married Borrowers [685.209(c)(1)(i) and (iii), p. 39637]*

The proposed regulations in REPAYE treat married borrowers more consistently, regardless of how they file their federal taxes. In PAYE, IBR, and ICR, married borrowers may get lower monthly payments if they file their taxes separately than if they file jointly.<sup>22</sup> Married borrowers who file their federal taxes jointly have their eligibility and payment amounts based on their combined income and combined federal debt. However, those who file separately can *exclude* their spouse's income from payment 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 taxes 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.

In the proposed language for REPAYE, the monthly payment for married borrowers is calculated based on the combined income of the borrower and spouse regardless of how they file federal taxes, with exceptions for borrowers who are separated from their spouse or cannot reasonably access their spouse's income information (e.g., in cases of domestic violence). We appreciate the Department's acknowledgment of the need for those exceptions and its plans to allow borrowers to self-certify that they meet the conditions for an exception.

The proposed regulations for REPAYE also adjust the definition of "family size" to exclude the borrower's spouse if the spouse's income is not included in the payment calculation. **We recommend changing the definition of "family size" in PAYE, IBR, and ICR<sup>23</sup> as well [682.215(a)(3), 685.209(a)(1)(iv), and 685.221(a)(3)].** 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 PAYE, IBR, or ICR, so this regulatory change could be made to all of those programs.

### **Technical Corrections**

- 1. A description of the adjustment to monthly payment amounts for borrowers who miss the income recertification deadline should be added to 685.209(c)(2)(ii).** Pp. 39637-39638.
- 2. In the proposed language for 685.209(c)(4)(vii)(D), replace "(c)(4)(vi)(C)" with "(c)(4)(vii)(C)."** P. 39639. There is no (c)(4)(vi)(C).
- 3. In the proposed language for 685.209(c)(4)(vii)(F), replace "Pay As Your Earn" with "Pay As You Earn."** P. 39639.
- 4. In the proposed language for 685.209(c)(5)(iv)(B), replace "income-based-repayment" with "income-based repayment."** P. 39640

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<sup>22</sup> 682.215(a)(1) and (3), 685.209(a)(1)(i) and (iv), 685.209(b)(2), and 685.221(a)(1) and (3).

<sup>23</sup> The definition of "family size" for ICR refers back to the definition in PAYE. See 685.209(b)(1)(iii)(A).

5. **Add the following language to paragraph (f)(1)(v) of 685.221.** P. 39641. This was included in the consensus language but not in the NPRM.

(v) Made monthly payments under a the Direct Loan income-contingent repayment plan, the Pay As You Earn Repayment plan, or the Revised Pay As You Earn repayment plan, including a calculated monthly payment amount of \$0.00.

## **Participation Rate Index (PRI) challenges and appeals [668.16, 668.204, 668.208, and 668.214; pp. 39634-39635]**

We strongly support the proposed changes to increase the efficacy of Participation Rate Index (PRI) challenges and appeals, for which we have long advocated. PRI challenges and appeals protect colleges with low borrowing rates from sanctions triggered by high cohort default rates (CDRs). Colleges may lose eligibility for both federal grants and loans when they have three consecutive CDRs at or above 30%, but they can challenge or appeal those sanctions if their borrowing rate for any one of those three years is sufficiently low. 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 challenge and appeals process is not as effective as it could be because colleges currently have to wait until the third high-CDR year to challenge or appeal, without any assurance in the first or second years that they are not at risk of sanction. Withholding this assurance until colleges are on the brink of losing eligibility for aid makes it more likely that colleges will choose to stop offering federal 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 one in 10 community college students does not have access to federal student loans.<sup>24</sup> In seven states, at least 20% of community college students are enrolled in schools that do not offer federal loans.

The Department's proposed changes would allow colleges to submit a challenge or appeal in any year in which their CDRs exceed allowable thresholds, providing low-borrowing colleges immediate assurance that their Title IV program participation is secure. Allowing for annual appeals will promote loan program participation by providing college leaders with the assurance they need, when they need it, that they can continue offering federal loans without putting their institution at risk.

**We urge the Department to implement this change in 2015, rather than in February 2017**, to assist colleges seeking reassurance related to their final FY 2012 CDRs, which will be released in September 2015, or their draft FY 2013 CDRs, which will be issued in spring 2016. Each spring and fall, colleges receive draft and final CDRs, respectively. At each of these points, colleges are making decisions about whether to continue offering federal loans, or whether the risk of future, potential sanction feels too great to stay in the federal loan program. Delaying implementation of the proposed regulations will decrease the effectiveness of the rule change, missing key opportunities to protect students from having to take out private loans or having to drop out.

Further, delays are not necessary for workload reasons. As important as the availability of this timely assurance is, very few colleges will likely be eligible and want to use the option, meaning it will not be

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<sup>24</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).

burdensome for the Department to administer. Looking at the most recent official CDRs, no more than 21 schools could have benefited from this option, and that is an upper bound. Twenty-one is the number of schools with a FY 2011 CDR at or above 30%, that had at least 30 borrowers enter repayment across the last three cohorts, had a borrowing rate for all undergraduates (as reported to the Integrated Postsecondary Education Data System, or IPEDS) under 21%, and an estimated PRI below 0.0625. The actual number of schools that were eligible is almost certainly less than 21 because the IPEDS borrowing rate is usually lower than the borrowing rate used for PRI calculation purposes (which excludes students who enroll less than half time), which would make some of the 21 schools ineligible for a PRI challenge or appeal. The preamble states that the Department does not plan to implement this option until February 2017 when a new computerized data challenge and appeals solution system (DCAS) is slated to be implemented (p. 39611). However, with at most 21 schools submitting a PRI challenge or appeal, it would not seem to constitute a significant burden or require a new computerized system to implement.

The schools that could benefit from a timely assurance—and their students—should not have to wait for a new data system to be built. We urge the Department to implement these regulatory changes to PRI challenges and appeals no later than July 2016, and preferably in 2015.

Thank you for the opportunity to comment on these proposed regulations. If you have any questions about our comments, please contact Diane Cheng or Jessica Thompson at (510) 318-7900 or by email at [dcheng@ticas.org](mailto:dcheng@ticas.org) and [jthompson@ticas.org](mailto:jthompson@ticas.org).

## Appendix A: Better Targeting the Benefits of PAYE

The current design of Pay As You Earn (PAYE) can substantially reduce monthly payment amounts for low- and moderate- income borrowers, helping them stay on top of their payments and avoid default even in an uncertain economy. 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 removing the standard payment cap and gradually phasing out the income exclusion for borrowers with high incomes. Both changes would be based on borrowers' debt relative to their income, unlike other targeting proposals that solely focus on borrowers' debt amounts or type of debt without factoring in their income and ability to repay.

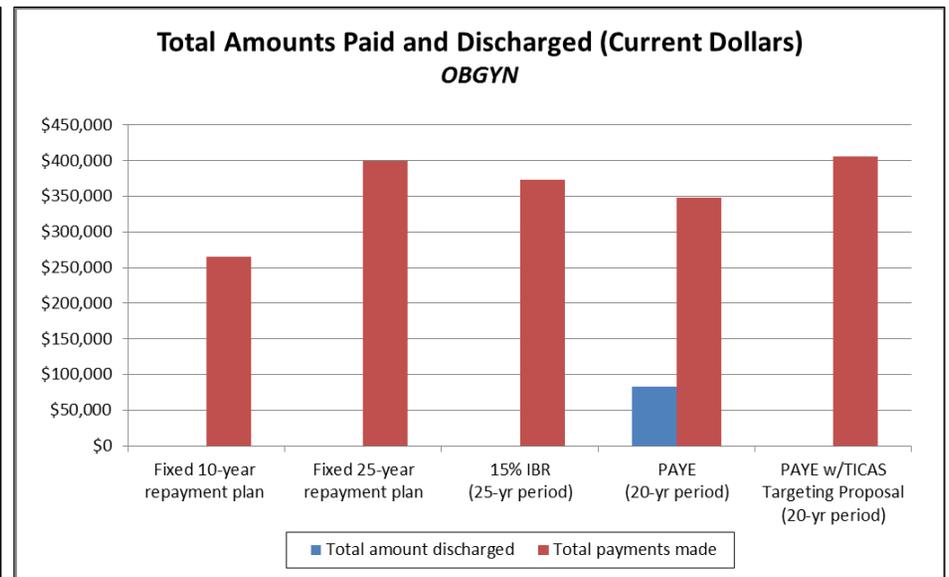
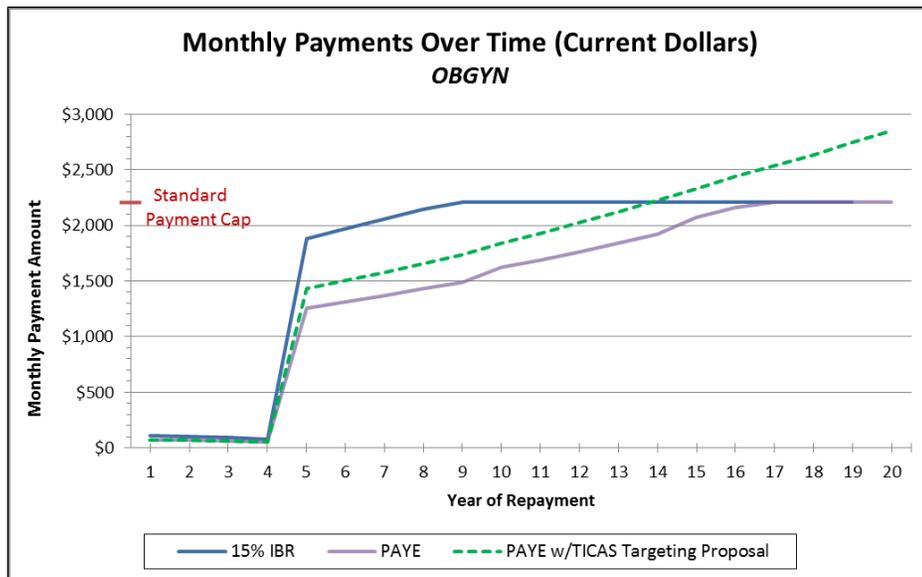
- **Current Policy:** The monthly payment for PAYE is calculated as 10% of the borrower's "discretionary income," up to but not exceeding the 10-year standard payment (also known as the "permanent standard") amount.
  - Discretionary income is defined as the borrower's adjusted gross income (AGI) minus an "income exclusion" of 150% of the poverty level for the borrower's household size and state.
  - The standard payment is the monthly amount the borrower would have had to repay if she had entered a fixed 10-year repayment plan (often referred to as the "standard" plan) with what she owed when she entered PAYE. The standard payment functions as a cap on the monthly payment amount in PAYE.
- **Proposed Changes:**
  - **Remove standard payment cap:**
    - Proposal: Remove the standard payment cap on monthly payments so that borrowers are always making payments based on income.
    - Justification: The way monthly payments are capped in PAYE (and IBR) 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 standard payment 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). Removing the standard payment cap better targets benefits by preventing high-debt, high-income borrowers from receiving substantial loan forgiveness when they could have afforded to pay more.
  - **Income exclusion phase-out:**
    - Proposal: Gradually phase 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. The income exclusion would remain 150% of poverty up to an AGI of \$100,000. In the following examples, the percentage of poverty used to calculate the income exclusion decreases 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. This 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).
    - Justification: Borrowers with high incomes can spend a larger share of total income on loan payments and still have sufficient funds left over to cover basic necessities, such as food and housing.

See examples on the following pages and methodology notes on page 19. For additional recommendations on improving federal student loans, see TICAS' white paper, [Aligning the Means and the Ends: How to Improve Federal Student Aid and Increase College Access and Success](#).

**OBGYN: Married with two children, has \$192,000 in loans, earns \$45,000/year during 4-year residency, then \$190,000 when she enters private practice in year 5, increasing 4% a year.**

- Without TICAS' proposed targeting changes, she pays less in total under PAYE than under 15% IBR and receives nearly \$83,000 in loan forgiveness.
- With TICAS' proposed targeting changes, she pays more in total under PAYE than in 15% IBR or PAYE and receives no loan forgiveness.

	Fixed 10-year plan	Fixed 25-year plan	15% IBR (25-yr period)	PAYE (20-yr period)	<b>TICAS Proposal: PAYE w/income exclusion phase-out, no standard payment cap</b>
Monthly payment amounts	\$2,210	\$1,330	\$110 to \$2,210	\$70 to \$2,210	\$70 to \$2,850
Total payments made	\$265,150	\$399,800	\$372,850	\$348,050	\$405,900
Total payments, adjusted for inflation	\$235,500	\$300,400	\$286,500	\$257,550	\$299,600
Total amount discharged	n/a	n/a	\$0	\$82,800	\$0
Total amount discharged, in 2015 dollars	n/a	n/a	\$0	\$51,650	\$0
Years in repayment	10.0	25.0	18.3	20.0	20.0



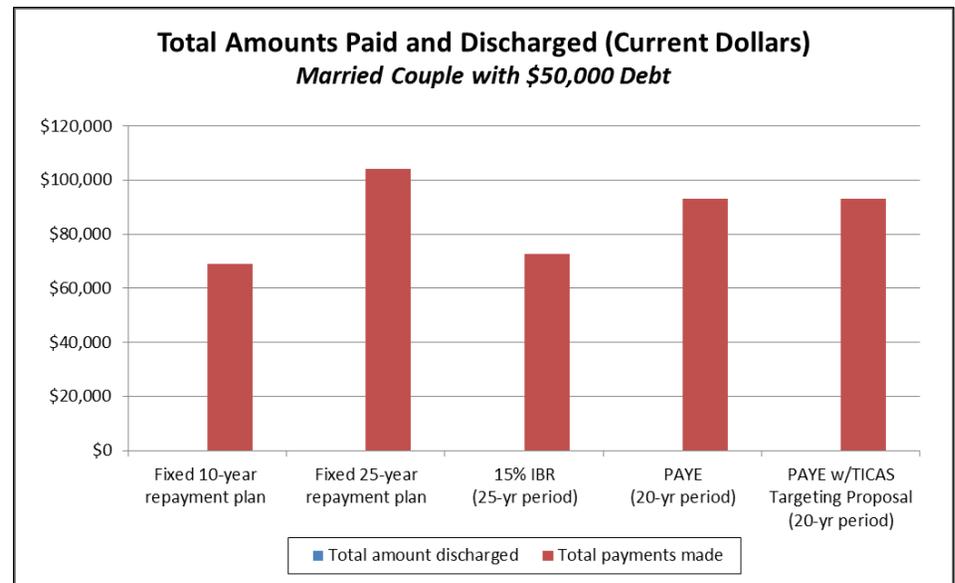
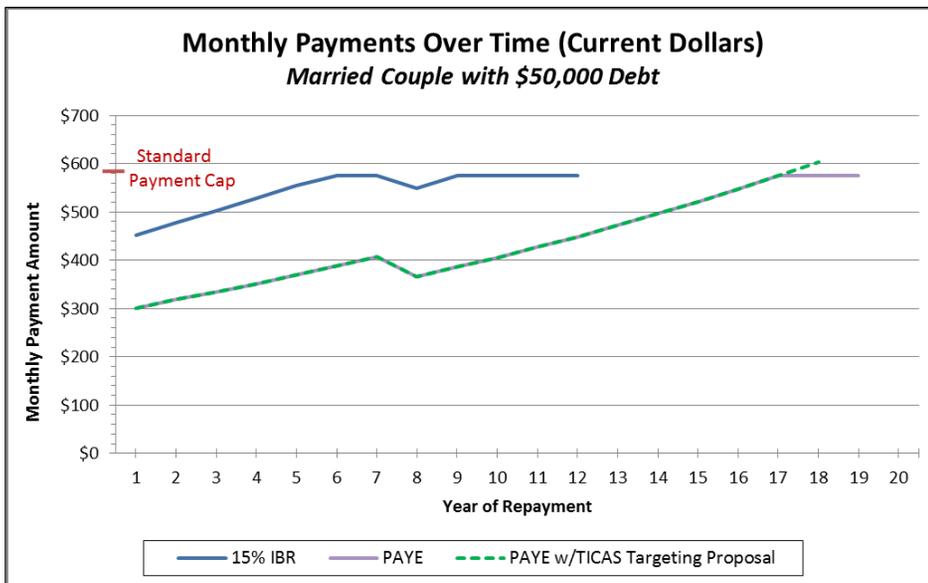
The line graph above displays the monthly payment amount at the beginning of each year. Generally, the borrower pays the same monthly payment amount for the entire year, unless the loan is repaid during that year. The line stops at the year when the borrower pays off his/her loan (if applicable). As her children turn 21 and begin to support themselves, this borrower's household size for PAYE purposes decreases from four in year 1 to three in year 10, then two in year 15.

Note: In 15% IBR (Income-Based Repayment), monthly payments are calculated as 15% of discretionary income and any remaining balance after 25 years of payments is discharged. Borrowers who did not take out loans in the required time period to qualify for PAYE may be eligible for 15% IBR. A version of IBR that is similar to PAYE is available to borrowers who took out their first loan on or after July 1, 2014. For more information about these plans, see [studentaid.gov/idr](http://studentaid.gov/idr).

**Married Couple: Have a child in year 8, \$50,000 in combined loans, earn \$60,000 in first year, income increases 4% a year.**

- They repay in full in less than 20 years under all the income-driven repayment plans.
- They pay *more* in total under PAYE and the TICAS proposal than under 15% IBR, but their monthly payments are more manageable.
- Removing the standard payment cap in PAYE would slightly increase their monthly payments at the end of the repayment period, but would not substantially affect the total amount paid or discharged. They would not be affected by the income exclusion phase-out because their income is below the AGI threshold.

	Fixed 10-year plan	Fixed 25-year plan	15% IBR (25-yr period)	PAYE (20-yr period)	TICAS Proposal: PAYE w/income exclusion phase-out, no standard payment cap
Monthly payment amounts	\$580	\$350	\$450 to \$580	\$300 to \$580	\$300 to \$600
Total payments made	\$69,050	\$104,100	\$72,700	\$93,200	\$93,200
Total payments, adjusted for inflation	\$61,350	\$78,250	\$63,350	\$73,700	\$73,700
Total amount discharged	n/a	n/a	\$0	\$0	\$0
Total amount discharged, in 2015 dollars	n/a	n/a	\$0	\$0	\$0
Years in repayment	10.0	25.0	11.3	18.2	18.1



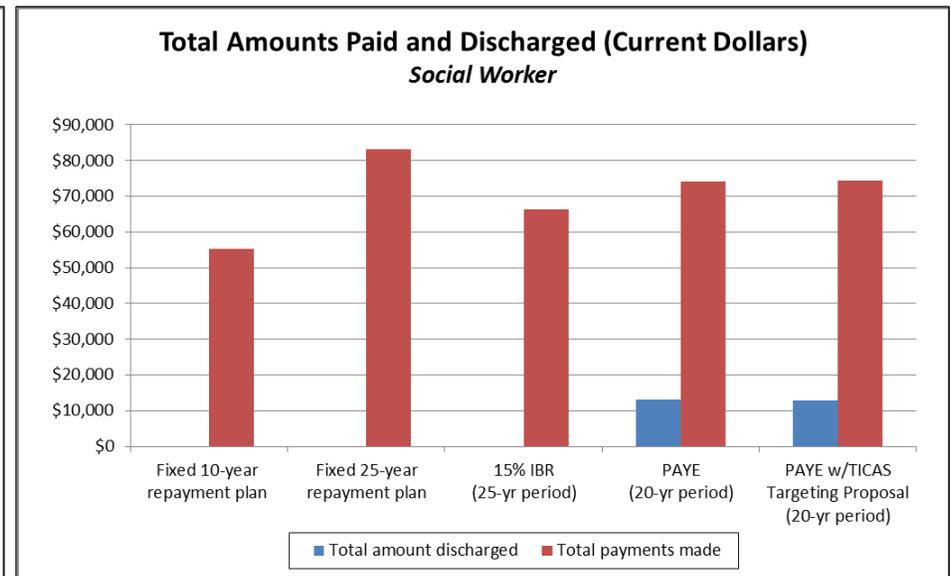
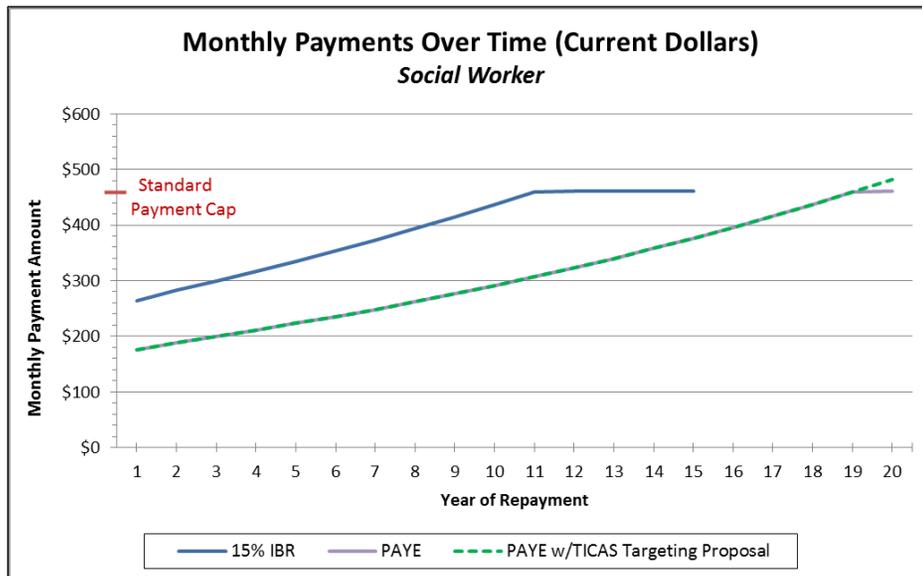
The line graph above displays the monthly payment amount at the beginning of each year. Generally, the borrower pays the same monthly payment amount for the entire year, unless the loan is repaid during that year. The line stops at the year when the borrower pays off his/her loan (if applicable). In PAYE with TICAS' proposed targeting changes, the couple would make one last payment of \$560 (the remainder of their loan balance) at the beginning of year 19 (not depicted in chart).

Note: In 15% IBR (Income-Based Repayment), monthly payments are calculated as 15% of discretionary income and any remaining balance after 25 years of payments is discharged. Borrowers who did not take out loans in the required time period to qualify for PAYE may be eligible for 15% IBR. A version of IBR that is similar to PAYE is available to borrowers who took out their first loan on or after July 1, 2014. For more information about these plans, see [studentaid.gov/idr](http://studentaid.gov/idr).

**Social Worker: Divorced with one child, \$40,000 debt from undergraduate and graduate school, earns \$45,000 as a contractor for a state agency (doesn't qualify for Public Service Loan Forgiveness) when he enters repayment, income increases 4% a year.**

- He pays *more* in total under PAYE and the TICAS proposal than under 15% IBR, but his monthly payments are more manageable.
- After 20 years of payments in PAYE (with and without TICAS' proposed targeting changes), he repays his entire loan principal plus over \$30,000 of interest, and receives about \$13,000 in forgiveness.
- Removing the standard payment cap in PAYE would slightly increase his monthly payments in the last year of repayment, which has a small effect on his total payments and amount discharged. He would not be affected by the income exclusion phase-out because his income is below the AGI threshold.

	Fixed 10-year plan	Fixed 25-year plan	15% IBR (25-yr period)	PAYE (20-yr period)	TICAS Proposal: PAYE w/income exclusion phase-out, no standard payment cap
Monthly payment amounts	\$460	\$280	\$260 to \$460	\$180 to \$460	\$180 to \$480
Total payments made	\$55,250	\$83,300	\$66,300	\$74,200	\$74,450
Total payments, adjusted for inflation	\$49,050	\$62,600	\$54,950	\$56,550	\$56,700
Total amount discharged	n/a	n/a	\$0	\$13,200	\$12,900
Total amount discharged, in 2015 dollars	n/a	n/a	\$0	\$8,250	\$8,050
Years in repayment	10.0	25.0	14.5	20.0	20.0



The line graph above displays the monthly payment amount at the beginning of each year. Generally, the borrower pays the same monthly payment amount for the entire year, unless the loan is repaid during that year. The line stops at the year when the borrower pays off his/her loan (if applicable). This borrower continues to provide more than half of his daughter's support after she turns 18, so he continues to count her in his family size for PAYE purposes.

Note: In 15% IBR, monthly payments are calculated as 15% of discretionary income and any remaining balance after 25 years of payments is discharged.

**Methodology notes:**

- Calculations for the TICAS proposal add the income exclusion phase-out and remove the standard payment cap from PAYE. Calculations assume that interest capitalizes if/when the borrower no longer has a partial financial hardship (PFH), consistent with current rules for IBR and PAYE.
- Calculations are based on 2015 poverty levels and assume that the poverty level increases annually at the rate of inflation.
- Calculations assume an average interest rate of 6.8% on all loans.
- Monthly payments are rounded to the nearest \$10, total payments to the nearest \$50.
- Total amounts paid and discharged 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.