BEFORE THE SECRETARY

U.S. DEPARTMENT OF EDUCATION

In re Petition for Rulemaking to Amend Title 34, Sections 682.210, 685.204, and 685.209 of the Code of Federal Regulations.

PETITION FOR RULEMAKING

Robert Shireman
Lauren Asher
Ajita Talwalker
The Project on Student Debt at
The Institute for College Access and Success (TICAS)
2150 Shattuck Ave. Suite 800
Berkeley, California 94704
Tel. (510) 647-4305
Fax (510) 845-4112

Jamienne S. Studley
President
John T. Affeldt
Michelle Natividad Rodriguez
Counsel for Petitioners
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, California 94105
Tel. (415) 431-7430
Fax (415) 431-1048

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I. INTRODUCTION[1]

In general, the economic returns to a college education have proved to be high. But for individual college graduates, the financial benefits are both variable and unpredictable. One important role of government is to provide some protection against those risks so that qualified students, regardless of wealth and expected post-college earnings, can advance their education. As Secretary Spellings has stated, "[w]e should send students a clear message: If you work hard in school, you can go to college – regardless of how much money you or your family has."[2] With the escalating cost of higher education and the lack of adequate protection for student borrowers, students are hearing the opposite message.

More than ever, access to student loans and effective student debt policies are essential to ensuring that our population continues to pursue higher education in increasing numbers. About two-thirds of baccalaureate recipients now graduate with education debt, and their average debt has increased by more than 50 percent over the past decade after accounting for inflation.[3] While borrowers and indebtedness have increased, interest rates are also rising, adding significantly to borrower payment levels. A 6.8 percent interest rate on federal student loans scheduled to take effect this coming July will result in payments on a 10-year loan that are 20 percent higher than at last year's low interest rate – more than doubling the total interest obligation.[4] In addition, some students are subject to aggregate loan limits in the federal loan programs, causing them to turn to private loans that generally carry significantly higher interest rates.[5]

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[1] Substantial portions of the petition are adapted from Robert Shireman, Lauren J. Asher, Ajita Talwalker, Shu-Ahn Li, Edie Irons, and Rowan Cota, *White Paper*: *Addressing Student Loan Repayment Burdens: Strengths and Weaknesses of the Current System*, The Project on Student Debt (2006).

[2] Press Release, Margaret Spellings, Secretary Spellings Convenes First Meeting of Commission to Examine Future of Higher Education (Oct. 17, 2005), *available at* http://www.ed.gov/news/pressreleases/2005/10/10172005.html.

[3] *2003–04 National Postsecondary Student Aid Study: Undergraduate Data Analysis System*, National Center for Education Statistics (NCES) (2005) (calculations by the Project on Student Debt using the Data Analysis System to compare 1993 and 2004 undergraduates), *available at* http://nces.ed.gov/index.asp.

[4] *White Paper*, *supra*, at 4.

[5] *Id*.

These trends impede the ability of students from low-income families to afford college and limit students from pursuing public service careers with low salaries, such as teaching, public health, and non-profit work. Also, students who face family medical crises or other unanticipated circumstances have a greater risk of financial ruin with high student debt. Without improved protections for borrowers, the nation may see an increase in defaults and bankruptcies instead of an increase in more productive graduates who can contribute more fully to society. In order to sustain and increase middle- and low-income student enrollment in higher education, encourage public service, and provide financial protection for students in crisis, potential college students need confidence that borrowing will not drive them or their families to financial ruin.

II. SUMMARY

Petitioners urge the Secretary to amend the student loan repayment regulations to help protect borrowers from unmanageable payment expectations or indefinite repayment obligations. The federal student loan system includes a number of provisions designed to ease repayment burdens. However, the protections are inconsistent and sometimes irrational, highly complex, and too narrow in scope when compared to legitimate needs. Here, petitioners focus on regulations in two areas: (1) economic hardship deferment and (2) income contingent repayment.

The Secretary has the authority and the duty to make these rules more consistent and more effective in accomplishing their original purposes. An "economic hardship" deferment, which is aimed at staving off poverty, works for a few. The government pays the full interest charges of borrowers with need-based Stafford and Perkins loans for up to three-year periods of income-related "economic hardship." To qualify for "economic hardship" the borrower must be in a public assistance program or qualify under complicated formulas that vary according to whether a borrower is working full-time or part-time.

The current limitations of "economic hardship" render it inaccessible for many who are struggling financially. First, its inconsistent income eligibility rules can counter-intuitively reward borrowers for working less or earning less. Because the interest relief is all-or-nothing (either the borrower qualifies and the government pays *all* of the interest during the hardship period or the borrower receives no relief), people with very similar incomes and debt have very different repayment obligations. A borrower can lose thousands of dollars in benefits simply by earning slightly more.

Second, the eligibility rules do not take family size into account in assessing the amount the borrower can afford to repay. Third, economic hardship relief has been read, unduly narrowly, as being limited to three years in a borrower's lifetime. Finally, the application process is dauntingly complex for borrowers.

Income-contingent repayment (ICR) provides critically important help reducing the immediate payment obligations for borrowers with low incomes relative to their debt. Under income-contingent repayment, borrowers make only token payments if they are below poverty income, taking family size into account, and the required payments are capped at 20 percent of any earnings above the poverty level. Unlike the economic hardship deferment, the government does not provide interest relief, but if the borrower makes payments for *25 years* any debt that remains, likely to be largely interest, will be forgiven. One of ICR's flaws is that negative amortization can make the option a hollow promise for many borrowers by extending their payments for 25 years and multiplying their interest costs. Another problem with ICR is that it is not available to borrowers in the FFEL program. For both economic hardship deferment and ICR, many borrowers who clearly should qualify for assistance do not, and/or borrowers are often not informed that the assistance is available.

In order to address the most serious shortcomings of the current regulatory provisions, petitioners propose amendments to the economic hardship deferral and income-contingent repayment rules. The draft regulatory changes are intended to: (a) establish required payment levels on federal student loans that are more likely to be manageable; (b) allow student borrowers to choose to repay federal loans within 20 years without excessive burden; (c) greatly improve the consistency of the regulations and effectiveness in implementing their purpose; and (d) increase the accessibility of repayment assistance.

These goals are accomplished by:

(1) Establishing a more uniform definition of "economic hardship" deferral that gradually phases out hardship benefits as borrower income rises rather than having interest relief that is all-or-nothing;

(2) Considering family size when calculating hardship benefits;

(3) Providing relief to borrowers faced with serious economic hardship over long periods;

(4) Making the economic hardship application less burdensome;

(5) Making income-contingent repayment available in both FDSL and FFEL; and

(6) Reducing the maximum pay period under income-contingent repayment from 25 years to 20 years to be more helpful to those who have high repayment burdens over long periods.

The relevant economic hardship and income-contingent repayment statutes provide the Secretary with the authority and flexibility to ameliorate the repayment burdens of the borrowers with the greatest need. Having sensible economic hardship and ICR provisions serves borrowers whose employment and financial situations change as a result of job market volatility, career changes, and crisis. Even people who expect to be able to repay their loans comfortably may find that they are in need of relief at certain junctures during their loan repayment lifetimes. As this petition demonstrates there are serious problems with and anomalies within the current regulations. The Secretary should correct these flaws by amending the regulations to be consistent with the letter and intent of the relevant statutes.

III. STATEMENT OF INTEREST OF PETITIONERS

The mission of petitioner THE PROJECT ON STUDENT DEBT ("the Project") at The Institute for College Access and Success (TICAS), a nonpartisan, not-for-profit organization, is to identify cost-effective solutions that expand educational opportunity, protect family financial security, and advance economic competitiveness. The Project brings together experts from across the political spectrum to focus on the implications of rising student debt. By promoting examination of the changing role of student loans, the Project on Student Debt aims to identify potential improvements to the systems and policies that help families pay for college. For Americans of all socio-economic backgrounds, borrowing has become a primary way to pay for higher education. The Project on Student Debt works to increase public understanding of this trend and the implications for families, economy, and society. Increasing access to higher education and improving the ability of individuals to take advantage of higher education opportunities is critical to the work and the mission of the Project. The negative effects of the current economic hardship and income contingent repayment regulations as described below have a substantial impact upon The Project's constituents and mission.

Petitioner, AMERICAN STUDENT ASSISTANCE, a non-profit organization of more than 500 dedicated professionals, is the oldest and one of the largest Federal Family Education Loan guaranty agencies in the country. American Student Assistance believes their role in higher education financing should reflect their vision for the future. They are forging a new public purpose role in the

student loan industry that is proactive and borrower-focused – centered on making student loans more accessible, manageable and successful for students, schools and lenders. To that end, the work and mission of American Student Assistance are directly affected by student loan repayment policies.

Petitioner, the COLLEGE BOARD, is a not-for-profit membership association whose mission is to connect students to college success and opportunity. Founded in 1900, the association is composed of more than 5,000 schools, colleges, universities, and other educational organizations. Each year, the College Board serves seven million students and their parents, 23,000 high schools, and 3,500 colleges through major programs and services in college admissions, guidance, assessment, financial aid, enrollment, and teaching and learning. Among its best-known programs are the SAT®, the PSAT/NMSQT®, and the Advanced Placement Program® (AP®). The College Board is committed to the principles of excellence and equity, and that commitment is embodied in all of its programs, services, activities, and concerns.

The mission of petitioner COLLEGE PARENTS OF AMERICA is to empower parents to best support their children on the path to and through college. Through a mix of advocacy, information and access to discounts, College Parents of America provides its parent members and supporters with a support system that can help their children best prepare for college academically, and them to best prepare for college financially. The members and supporters of College Parents of America are concerned about rising levels of student debt and support efforts to improve educational achievement and expand college opportunities for all students. For these reasons, the mission and work of College Parents of America are directly affected by student loan repayment policies.

Petitioner, the COUNCIL FOR OPPORTUNITY IN EDUCATION (COE), represents more than 1,000 colleges, universities, community colleges and agencies that offer federally-funded TRIO programs to expand college opportunity for low-income, first-generation and disabled students. Founded in 1981, the non-profit COE provides a voice for low-income, first-generation and disabled students in the United States, the Caribbean and the Pacific Islands. COE specializes in vital research, program improvement and advocacy for the TRIO community and its nearly one million students, two-thirds of who live at or below 150% of the poverty level. TRIO is a pipeline of federal programs that encourage students of all ages to aspire to, attend and complete college. TRIO serves pre-college students, college students, veterans and returning adult students, supplying the mentoring, academic support and college admissions and financial aid information needed to obtain a college education.

For these reasons, the work and mission of COE are directly affected by student loan repayment policies.

Petitioner, GREAT LAKES HIGHER EDUCATION AND AFFILIATES (Great Lakes), for over thirty-five years has been a national leader in the student loan industry, providing services to borrowers, lenders, schools, and guaranty agencies. Great Lakes works with schools and lenders to determine the financial aid options available to student borrowers, ensures that funds are available to borrowers when needed, answers questions about student loans, and helps borrowers understand their rights and responsibilities in repaying them. For nearly 40 years as a guarantor and servicer of student loans, Great Lakes has helped millions of students fulfill their higher education dreams. For these reasons, the work and mission of Great Lakes are directly affected by student loan repayment policies.

Petitioner, THE HOWARD CENTER FOR FAMILY, RELIGION AND SOCIETY, is an independent, non-profit research and education center that strives to be the leading source of fresh ideas and new strategies for affirmation and defense of the natural family, both nationally and globally. The Howard Center is also the founder and organizer of the World Congress of Families project which unites people of goodwill who recognize that the family is the fundamental unit of society and coordinates the efforts of pro-family groups from more the 60 countries worldwide. The Howard Center's work and mission are affected by student loan repayment policy. Dr. Allan Carlson, the president of The Howard Center and founder and General Secretariat of the World Congress of Families, recently wrote "'Anti-Dowry:' The Effects of Student Loan Debt on Marriage and Child-bearing" in which he found that the burden of student debt may be delaying or negatively affecting family formation by contributing to borrowers' postponement of marriage and creating impediments to having children and taking on family responsibilities.

The mission of petitioner, the STATE PUBLIC INTEREST RESEARCH GROUPS (PIRG), is to deliver persistent, result-oriented public interest activism that protects our environment, encourages a fair, sustainable economy, and fosters responsive, democratic government. The State PIRGs' Higher Education Project began in 1994 with its mission of making college more affordable. Along with a coalition of more than 50 other higher education organizations, the State PIRGs' Higher Education Project has been working to make Congressional support for higher education a reality. A priority of the Project is to secure policies that will make loan repayment more affordable. To that end, the work

and mission of the project are directly affected by economic hardship and income contingent repayment policies.

Petitioner UNITED STATES STUDENT ASSOCIATION (USSA) is the country's oldest and largest national student organization, representing millions of students. Founded in 1947, USSA is the recognized voice for students on Capitol Hill, in the White House, and in the Department of Education. USSA believes education is a right and works on building grassroots power among students to win concrete victories that expand access to education at the federal, state and campus level. USSA's work and mission to increase access to higher education for all students are directly affected by student loan repayment policy. Excessive loan debt has become a hindrance to students seeking higher education and an obstacle to borrowers in repayment. Today, the country is facing an entire generation of indebted educated youth with more than 39% of recent graduates facing unmanageable levels of debt. In light of these realities, one of USSA's primary goals to further its mission and work is to increase the manageability of student loans.

IV. JURISDICTION AND LEGAL DUTY

Under the Administrative Procedure Act (APA), "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e).[6] Thus, any person can submit an administrative petition to an agency and "[p]rompt notice shall be given of the denial in whole or in part of a written application [or] petition…." 5 U.S.C. § 555(e).

The Secretary has broad authority to regulate: she "is authorized to make, promulgate, issue, rescind, and amend rules and regulations … governing the applicable programs administered by[ ] the Department." 20 U.S.C. § 1221e-3. Specifically, the Secretary has the authority to "prescribe such regulations as may be necessary to carry out the purposes of [the Federal Family Education Loan Program, 20 U.S.C. §§ 1071, *et. seq*]." 20 U.S.C. § 1082. Congress seems to have anticipated the wisdom of Secretarial regulatory action or the need to expand the conditions for economic hardship deferments by referring to the Secretary's power to define additional criteria for deferment: Section 1085 permits the Secretary to establish "other criteria" for economic hardship relief as long as the criteria consider "the borrower's income and debt-to-income ratio as primary factors." 20 U.S.C. §

[6] Neither of the two narrow exceptions to the right to petition the Department of Education is applicable here. *See* 20 U.S.C. § 1232(d).

1085 (o)(1)(C), (o)(2).[7] The Secretary has exercised her authority by expanding the categories of borrowers who qualify for economic hardship deferment.[8]

Similar to the area of economic hardship, the Secretary has broad authority to establish "procedures as are necessary to implement effectively income contingent repayment." 20 U.S.C. § 1087e (e)(1). Congress specifically directed the Secretary to prescribe a time period for income-contingent repayment, 20 U.S.C. § 1087e (d)(1)(D),[9] and "establish procedures for determining the borrower's repayment obligation," 20 U.S.C. § 1087e (e)(1).

Under this authority, petitioners request that the Secretary amend current regulations, sections 682.210, 685.204, and 685.209 of Title 34 of the Code of Federal Regulations, to ensure that required payments on federal student loans are manageable; allow student borrowers to repay federal loans within 20 years without excessive burden; improve the consistency of the regulations and their effectiveness in implementing their purpose; and increase the availability of repayment assistance.

The Secretary not only has the authority to amend the regulations as proposed, but in fact, the Secretary has the duty to implement these statutes consistent with Congressional intent. Congress has

[7] The full text of section 1085, subdivision (o) is included as Exhibit 2. The House Education and Labor Committee stated that the debt-to-income ratio requirement arose out of an "understand[ing] that many students graduate with levels of debt and repayment obligations which are unrealistic when compared to their modest incomes," H.R. Rep. No. 102-447, at 44 (1992), *as reprinted in* 1992 U.S.C.C.A.N. 334, 377, underscoring congressional intent that the Secretary should promulgate regulations that make repayment manageable for low-income borrowers.

[8] A borrower experiences "economic hardship" as defined by statute when a borrower is working full-time and earns a low income. 20 U.S.C. § 1085(o). The Secretary has promulgated regulations on economic hardship relief that alter the calculation of income to a monthly rather than annual basis, 34 C.F.R. § 682.210(s)(6)(iii), (iv), *see also* Section 682.210 Deferment, 59 Fed Reg. 61210, 61216 (Nov. 29, 1994) (codified at 34 C.F.R. pt. 682), *see also* Economic Hardship Deferment, 65 Fed. Reg. 46316, 46318 (July 27, 2000) (codified at 34 C.F.R. pt. 682); added categories of borrowers including Peace Corps volunteers and those already granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the same period, 34 C.F.R. § 682.210(s)(6)(i), (vi), *see also* Economic Hardship Deferment, 64 Fed. Reg. 57528, 57529 (Oct. 25, 1999) (codified at 34 C.F.R. pt. 682); and added borrowers who are receiving payments under state or federal public assistance programs, *see also* Economic Hardship Deferment, 59 Fed. Reg. 33580, 33581 (June 29, 1994) (codified at 34 C.F.R. pt. 682), and added certain borrowers who do not work full time, 34 C.F.R. § 682.210(s)(6)(ii), (v).

[9] "The borrower may choose — (D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years…." 20 U.S.C. § 1087e (d)(1)(D).

underscored that "[t]he purpose of the Federal student financial aid programs is to fund that part of college costs that cannot be met out of family income and thereby expand educational opportunities." H.R Rep. No. 102-447, at 9 (1992), *reprinted in* 1992 U.S.C.C.A.N. 334, 342. Currently, repayment assistance is failing to reach some of the students most in need. To ensure that low-income students meet their full potential through higher education, the Secretary has the duty to improve the current regulations so that more students are able to manage debt repayment and low-income students are not deterred from pursuing higher education.

V. STATEMENT OF FACTS

A. While Student Aid Has Become Increasingly Necessary for Higher Education, Loans Have Become More Burdensome.

Secretary Spellings has often cited the fact that "[i]n today's global economy, about 80 percent of the fastest-growing jobs require postsecondary education."[10] Higher education is not only essential for the nation to compete in the global economy; but also societal benefits abound: students with higher levels of education contribute more in taxes, depend less on social services, have lower incarceration rates, and have higher civic participation rates.[11] But as the Secretary has pointed out "less than a third of Americans have bachelor's degrees. In other words, a college education is more important than ever, and too few Americans, especially too few African-Americans and Hispanics, have one."[12]

Borrowing for college used to be the exception. Today, most students require loans to be able to afford college. By borrowing to pay for tuition and costs, students have been able to fully engage in their learning in a way that improves their own lives, brings positive outcomes for society, and contributes to the nation's economic competitiveness. For example, just under half of the college

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[10] *See, e.g.*, Press Release, Margaret Spellings, Secretary Spellings Convenes First Meeting of Commission to Examine Future of Higher Education (Oct. 17, 2005), *available at* http://www.ed.gov/news/ pressreleases/2005/10/10172005.html.

[11] Sandy Baum and Kathleen Payea, *Education Pays 2004: The Benefits of Higher Education for Individuals and Society,* College Board (2005) at 7.

[12] Press Release, Margaret Spellings, Secretary Spellings Convenes First Meeting of Commission to Examine Future of Higher Education (Oct. 17, 2005), *available at* http://www.ed.gov/news/ pressreleases/2005/10/10172005.html.

graduates in 1992-1993 had loans. In contrast, two-thirds of students now carry education debt when they earn their baccalaureate degree.[13]

Borrowing has become the means for students to pay for higher education. But it is not simply that more students are borrowing. They are also borrowing much *more*. Adjusting for inflation, in 1993, graduating seniors with loans carried today's equivalent of about $12,000 in education debt. Just seven years later, that number had risen 60 percent to nearly $20,000. The proportion of borrowers with debt in excess of $25,000 tripled between 1993 and 2000, from 7 percent to more than a fourth of the graduates who borrow.[14]

B. Education Debt Deters Students From Investing in Higher Education and Choosing Public Service and Affects Borrowers' Important Life Choices.

Although higher education is a good investment overall, some people, especially students from low- and moderate-income backgrounds with the least experience with successful debt management and the least financial reserves, fear taking the financial risk of high student debt. According to data from the National Center for Education Statistics, in 2002, 406,000 college-qualified high school graduates from low- and moderate-income families would be prevented from enrolling in a four-year college, and 168,000 of them would be unable to enroll in any college at all because of finances.[15]

Just as student debt has a negative effect on low- and moderate-income students by deterring them from seeking higher education, debt burden constrains borrowers' life choices. In the 2002 *National Student Loan Survey*, significant percentages of borrowers reported delaying numerous choices because of their student loan burden including: buying a home (38%), buying a car (30%), getting married (14%), and having children (21%).[16] Dr. Allan Carlson, the president of The Howard Center, also found that the burden of student debt may be delaying or negatively affecting family

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[13] Susan P. Choy and Xiaojie Li, *Debt Burden: A Comparison of 1992-93 and 1999-2000 Bachelor's Degree Recipients a Year After Graduating*, U.S. Dep't of Educ., Nat'l Ctr. for Educ. Statistics, at 9 (2005). TICAS analysis of NPSAS data confirms two-thirds figure for graduating seniors in 2003-2004.

[14] *Id*. at 14.

[15] *Empty Promises: The Myth of College Access in America*, Advisory Committee on Student Financial Assistance, at 27 (2002).

[16] Sandy Baum and Marie O'Malley, *College on Credit: How Borrowers Perceive their Education Debt Results of the 2002 National Student Loan Survey*, Nellie Mae, at 27 (2003)

formation by contributing to borrowers' postponement of marriage and creating impediments to having children.[17] As one student testified before the Commission on the Future of Higher Education in considering the impact of her student debt on her future:

> What things am I going to have to give up? What opportunities will pass me by because I leave college paying thousands of dollars plus interest? Will I have to sacrifice my hopes and dreams? Will I have to tell my kids we're living in an apartment because I'm still paying for college ten years after I graduate?[18]

While the fear of high debt burden without a remunerative job has deterred low-and moderate-income students from pursuing higher education and has limited borrowers' life choices, the increasing need to borrow ever greater amounts has also kept students from public service careers such as teaching. Comparing the student debt for 2003-2004 college graduates with the starting salaries for teachers, one study found that 23% of public college and 38% of private college graduates would have unmanageable debt if they entered teaching.[19] While the demand for teachers is high, with the nation requiring two million new teachers to fill its classrooms over the next decade,[20] student loan debt is hindering teacher recruitment. For example, at the Commission on the Future of Higher Education Public Hearing, several students commented on how their goal of becoming teachers was being thwarted by unmanageable student debt. One student remarked:

> I want to be a teacher when I grow up. It is probably not going to be a very attractive career opportunity when I'm looking at $20,000 in debt and a low paying career field also. [21]

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[17] Dr. Allan Carlson, *'Anti-Dowry:' The Effects of Student Loan Debt on Marriage and Child-bearing*, Commissioned by the Project on Student Debt (2005).

[18] *A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education: Public Hearing in Seattle, Washington* (February 7, 2006) (Statement of Anne Groundwater, University of Oregon, Freshman) at 200.

[19] Luke Swarthout, *Paying Back, Not Giving Back: Student Debt's Negative Impact on Public Service Career Opportunities*, The State PIRGs' Higher Education Project, at 4 (2006). The author used the benchmark for estimating burdensome student debt proposed by Sandy Baum and Saul Schwarz in *How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt* (2005) before Baum and Schwarz updated their proposal in April 2006.

[20] *Id*. at 8 (citing The White House, "Teachers: Recruit, Train, and Retain the Best and Brightest, accessed April 2, 2006 at http://www.whitehouse.gov/firstlady/initiatives/education/teaching.html.)

[21] *A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education: Public Hearing in Seattle, Washington* (February 7, 2006) (Statement of Melissa Aar, University of Washington, Sophomore) at 178-179. *See also*, *id.* (Statement of Nathaniel Ashlock, Evergreen State College, Sophomore) at 201-202 ("I consider teaching to be one of the noblest professions ... What

Teaching is just one example of an important public service career that becomes much less financially viable as borrowing emerges as the dominant strategy for paying for higher education – another is government service. For example, in a 2005 survey conducted by the American Prosecutor's Research Institute, offices reported that 32% of the prosecutors who left the profession in the past year did so because of law school loan payments.[22]

Our families, communities, and economy depend on having sufficient qualified nurses, civil engineers, day care and health care workers, and other essential public service professionals to meet our country's needs. Yet student loans are preventing borrowers from serving the public.[23] As one borrower noted with disappointment,

> I'm one of those 39 percent of student graduates with unmanageable debt. With over $100,000 in debt after four years of undergraduate and three years of graduate school, I am going to be leaving my job in a non-profit on Friday because my modest salary won't cover my loans.[24]

We also need educated scientists, entrepreneurs, and others to take the risks that lead to innovation and economic growth – risks that they may not be able to afford to take if student loan burdens continue to rise.

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kind of life would I live as teacher in modern America with all of that debt? Would it be a dignified life or a life of struggle trying to make ends meet each month as I try to earn my financial freedom?"); (Statement of Nickalous Reykdahl, Central Washington University) at 205 ("Every day I wonder if this hard work will ever pay off [to become a teacher] and I'll ever surmount the mountainous debt that I'm incurring in order to graduate from college.").

[22] *Fact Sheet for Student Loan Forgiveness Survey Results*, American Prosecutor's Research Institute's Office of Research and Evaluation (2005). The negative effects of not being able to recruit or retain qualified attorneys included increased costs for training, fewer experienced attorneys to prosecute complex cases or violent crimes, increased caseload per attorney, decreased morale and increased prosecutorial error. Thomas J. Charron, *Law School Loans and Lawyers in Public Service, Message from the Executive Director of National District Attorneys Association* (Jan.-Feb. 2006), *available at www.ndaa.org.*

[23] *See, e.g.,* Michael Anft, *A Growing Debt to Society: Young graduates shun nonprofit employers*, Chronicle of Philanthropy (March 23, 2006) ("Heavy student-loan debts are diminishing the effectiveness of groups and possibly helping to create a future leadership vacuum....")

[24] *A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education: Public Hearing in Seattle, Washington* (February 7, 2006) (Statement of Jayme Rabenberg, Oregon Student Association (OSA)) at 211.

C. The Current Economic Hardship Deferment and Income-Contingent Repayment Regulations are Sometimes Inconsistent, Confusing and Contradictory.

Under current economic conditions, the majority of students are able to repay their loans, in part because they earn more as a result of their education. However, Congress has recognized that those earnings are not guaranteed; the loans pose real risks to borrowers. The Committee on Education and Labor, in its recommendation to pass the Higher Education Amendments of 1992, was "particularly concerned about the impact of increased student loan indebtedness. This debt threatens to undermine equal education opportunity since low-income and disadvantaged students, who lack familiarity with debt financing and credit arrangements, may choose to forego a postsecondary education rather than paying for it with loans." H.R Rep. No. 102-447, at 9 (1992) *as reprinted in* 1992 U.S.C.C.A.N. 334, 342.

Economic hardship deferment and income contingent repayment provisions attempt to balance the risk so that more students will attend college and support themselves afterward. Currently, these provisions are failing two basic principles: (1) borrowers in similar situations are treated vastly differently in terms of their repayment obligations; and (2) repayment policies are not providing clear and meaningful protections to borrowers who make good faith efforts to meet their obligations. In other words the provisions are neither fair nor effective. They are not fulfilling their original purposes to support equal educational opportunity. [25]

1. Economic Hardship Deferment

One of the most valuable repayment assistance programs offered by the federal government is hardship relief. The government pays the full interest charges of borrowers with need-based Stafford and Perkins loans during up to three years of income-related "economic hardship." To receive the deferment, borrowers must navigate a complex process. As the National Council of Higher Education Loan Programs, Inc. (NCHELP) has pointed out, the process is so complicated that many applicants'

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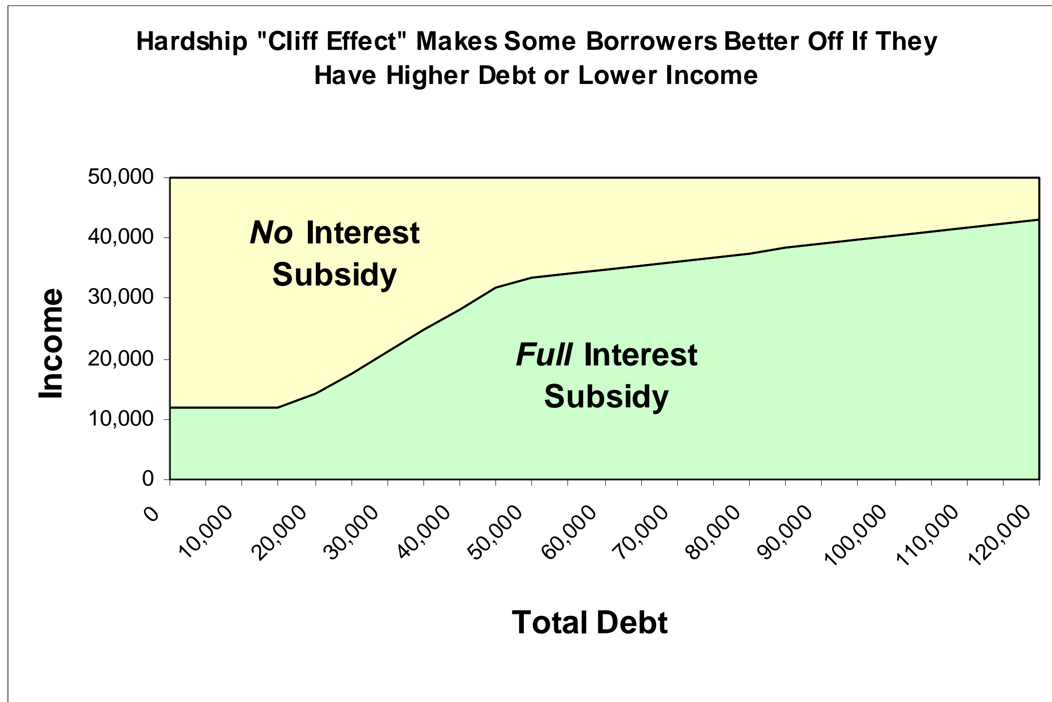
[25] "The student assistance programs have increasingly become the dominant means by which the Federal Government pursues the goal of equal educational opportunity." H.R Rep. No. 102-447, at 7 (1992), *as reprinted in* 1992 U.S.C.C.A.N. 334, 340 (referring to President Johnson's statement in his proposal for the Higher Education Act of 1965: "A fundamental theme of Federal support for postsecondary education is assistance to achieve the goal of equal educational opportunity.").

first and second submissions are rejected.[26] Moreover, under economic hardship, interest relief is all-or-nothing: either the borrower qualifies and the government pays *all* of the interest during the hardship period, or the borrower gets no relief. This creates a "cliff effect" at the debt and income levels (for borrowers working full time) shown in the chart below.



The criteria tests along with the all-or-nothing nature of the benefit create situations in which people with very similar incomes and debt have drastically different repayment obligations. Some borrowers can lose thousands of dollars in benefits simply by earning one dollar more placing them on the wrong side of the line in the above chart. In addition, borrowers with the same income, but with slightly different debt levels are treated vastly different. Some examples are illustrative:

> ***Example 1***: A borrower works 40 hours a week and earns $12,000 a year. He does not qualify for economic hardship because he is slightly above the poverty line and his loan payments do not exceed 20 percent of his income. On the contrary, if he worked 25 hours and had the same total income, he would qualify for economic hardship because his income minus his payments would put him below the poverty line using a different test that applies only to part-time workers.

[26] National Council of Higher Education Loan Programs, Inc., *Economic Hardship Deferment Reauthorization Proposal* (Dec. 23, 2003).

> ***Example 2***: A borrower has $25,000 in loans and a salary of $18,650. The student loan payments are nearly 20 percent of her income – much more than she can afford. She fills out complicated forms only to be informed that she does not qualify for interest relief. However, if she earned just $25 less, she would qualify for relief worth almost $1,500 because her loan payments would exceed 20 percent of her income (assuming 8 percent interest).

> ***Example 3***: A doctor serves indigent patients and earns $38,200 a year. To keep his $80,000 loan balance from growing, he pays $6,400 in interest each year. He discovers that his colleague, with the same salary, gets interest relief from the federal government while he does not. His colleague is eligible because she borrowed $1,000 more than he did. This is a result of the fact that the income that qualifies for interest relief rises with the borrower's payment amounts, which are related to the debt level and interest rate.

As demonstrated by these examples, the current criteria for economic hardship eligibility leave many borrowers who clearly are facing economic hardship without relief. One reason is that the benefit has been read as limited to three years. While difficult financial situations are short-lived for many borrowers, others face serious hardship for longer periods. Furthermore, many borrowers who are eligible are likely not receiving the benefit because the application process is too complex. Finally, the economic hardship criteria do not take into consideration a borrower's responsibilities for dependents. A core assumption of the system that allocates financial aid is that a borrower with dependents has more expenses than one without. But in loan repayment, when determining whether a borrower qualifies for lower payments, family size is not consistently considered.

2. Income Contingent Repayment

When Congress created the Federal Direct Loan Program in 1993, it was in part for the purpose of "provid[ing] borrowers with a variety of repayment plans, including an income-contingent repayment plan, so that borrowers['] … obligations [did] not foreclose community service."[27] One Congressman expressed his approval of income-contingent repayment because the "progressive system guarantee[d] that borrowers at all income levels [would] not pay more per month than they [could] afford." 138 Cong. Rec. H6091 (daily ed. July 8, 1992) (statement of Rep. Kildee). When income-contingent repayment was first conceived by policymakers it was anticipated that it would be

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[27] ABA Commission on Loan Repayment and Forgiveness, *Lifting the Burden: Law Student Debt as a Barrier to Public Service*, at 37 (2003) (citing Staff of Senate Committee on the Budget, 103D Congress, *Reconciliation of the Instructed Committees Pursuant to the Concurrent Resolution on the Budget* (H. Con. Res 64), 453 (Committee Print 1993)).

used by 15% to 30% of borrowers.[28] It has not been used nearly so extensively and has not fulfilled its purpose of facilitating public service and assisting borrowers to integrate planning for debt management and career choices.[29] Instead, income-contingent repayment has become primarily a last resort for borrowers who have either defaulted or are on the brink of defaulting.[30]

Under income-contingent repayment, borrowers make only token payments if they are below poverty income, taking family size into account, and the required payments are capped at 20 percent of any earnings above the poverty level. 34 C.F.R. § 685.209. But there is a caveat: when the borrower's payments fail to cover interest, the size of the debt grows. Unlike the economic hardship deferment, there is no significant interest relief in the near term.[31] This makes it increasingly more difficult for borrowers to catch up and finish paying off the loan. Their one solace is that if they continue making ICR payments for about a third of their life [32] - *25 years* - any debt that remains, likely to be largely interest, will be forgiven.

The ICR option is underused in part because it is available only in the Direct Loan Program. The rationale for this limitation was that income data from the IRS could only be shared within the government. However, today Direct Loans are serviced by private contractors who acquire borrower permission to verify income with the IRS. Those servicers could just as easily administer ICR for a private lender in the FFEL program.[33]

In addition, most borrowers are likely not aware of ICR because they are in the FFEL program. In order to use ICR, they would need to consolidate into direct lending. Furthermore, a provision in

[28] Phillip Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 Hofstra L. Rev. 733, 830-831 (2001) (citing Office of Post-Secondary Educ., Dep't of Educ., Discussion Paper on Issues Relating to the Repayment of Federal Direct Student Loans at 3 (Mar. 1, 1994)).

[29] ABA Commission on Loan Repayment and Forgiveness, *supra*, at 38.

[30] Phillip Schrag, *supra*, at 831 (citing Stephen Burd, Few Borrowers Repay Student Loans Through "Income-Contingent" System, CHRON. HIGHER EDUC., Sept. 25, 1998, at A40 (quoting an advisor)).

[31] The first 10 percent of interest that is not covered by borrower payments is added to the loan amount so that the interest compounds. Above 10 percent, any additional unpaid interest is added to the amount owed but does not compound while the borrower is in ICR. *See* 34 C.F.R. § 685.209.

[32] In 2002, life expectancy for men was 75 years and 80 years for women. Nat'l Ctr. for Health Statistics, United States, 2005, U.S. Dep't of Health and Human Services at 64 (2005).

[33] *White Paper*, *supra*, at 16.

the budget reconciliation legislation adopted by Congress makes it even more difficult for FFEL borrowers to participate in ICR.[34] Good candidates for ICR may also be dissuaded from accessing it because of the lack of any significant interest relief for 25 years. In a survey of law students, one of the top three reasons that students did not find ICR helpful was because of the extraordinarily long commitment of 25 years.[35] Finally, treating forgiven amounts as income for tax purposes makes the 25-year "forgiveness" somewhat disingenuous, and potentially problematic for someone who has already had a lifetime of low earnings. Essentially, this could generate significant tax liability for borrowers with very low incomes who lack the funds to pay the tax owed, particularly because this is "income" that they do not actually receive.[36]

VI. PROPOSED AMENDMENTS WOULD IMPROVE DEBT MANAGEMENT, REGULATORY CONSISTENCY AND EFFECTIVENESS, AND REPAYMENT ASSISTANCE.[37]

A. Petitioners Propose a New "Partial Economic Hardship" Deferment.

To ensure that borrowers in similar situations would be eligible for comparable assistance, the criteria for income-based economic hardship relief should be expanded so that the relief phases out gradually rather than ends with a cliff. To that end, petitioners propose a new "partial economic hardship" relief; it differs from the current economic hardship in that borrowers would make payments appropriate to their incomes. The graph below demonstrates how the new "partial economic hardship"

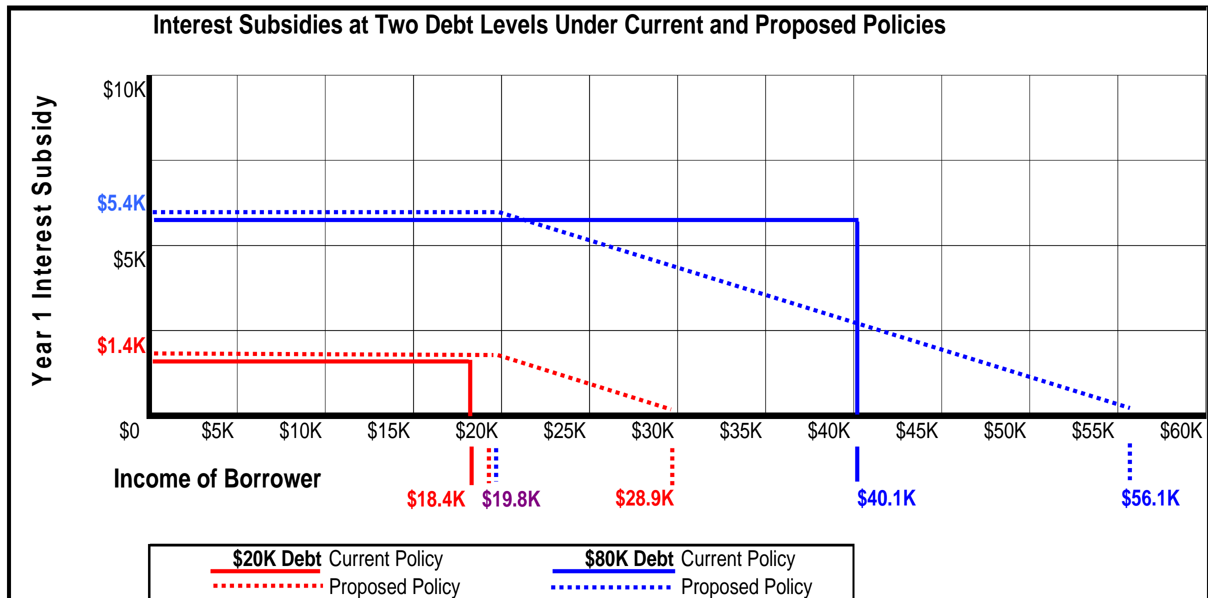
[34] The provision will make it more difficult for FFEL borrowers to consolidate into the Direct Loan Program. Prior to the budget reconciliation legislation, a FFEL borrower with Stafford or PLUS loans could consolidate into the Direct Loan Program in order to receive ICR if the borrower was unable to obtain a FFEL consolidation loan with income sensitive terms acceptable to the borrower. The Deficit Reduction Act limits eligibility to those Stafford and PLUS loan borrowers who are denied a FFEL consolidation loan with income sensitive repayment terms. However, FFEL Consolidation loan borrowers can still reconsolidate into the Direct Loan Program in order to obtain an ICR repayment plan provided they are more than 60 days delinquent. *See* Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 8009.

[35] Phillip Schrag, *supra,* at 789-793 (citing Office of Post-Secondary Educ., Dep't of Educ., Discussion Paper on Issues Relating to the Repayment of Federal Direct Student Loans at 3 (Mar. 1, 1994)).

[36] Petitioners do not propose an amendment to address this issue at this time.

[37] Summary of the proposals and text of the regulatory amendment proposals are attached as Exhibit 1A-1D.

would smooth out the cliff effects caused by the current regulations, particularly at the more common levels of indebtedness.



As is the case today, interest costs under economic hardship deferment would be covered by the government on "subsidized" loans, while "unsubsidized" loans would grow if the payments are insufficient to cover interest. The payments would be kept manageable by capping them at 15 percent of discretionary income, with discretionary income defined as income above 150 percent of the HHS poverty guidelines for the borrower's family size (the graph above assumes a family size of two). Federal rules for post-default wage garnishment limit the proportion of income that can be garnished to 15 percent of take-home pay (a lower threshold than 150 percent of poverty). Using the same 15 percent figure coupled with the higher income threshold would more clearly make repaying loans without defaulting the most advantageous path for borrowers.

The calculation of discretionary income for both "partial economic hardship" and income-contingent repayment would use 150 percent of poverty as a baseline. For a single person, this would give a threshold level at $14,700 and would increase with family size: for a family of two, 150 percent of poverty is $19,800; for a family of four, it is $30,000. Government programs (such as TRIO,[38]

[38] The Federal TRIO Programs are educational opportunity outreach programs designed to motivate and support students from disadvantaged backgrounds. *Available at* http://www.ed.gov/about /offices/list/ope/trio/index.html.

school lunch, LIHEAP,[39] and the new Medicare drug benefit) often add a factor to the poverty guidelines to determine eligibility for benefits targeted to lower-income populations. Using poverty-level protection is too low – 150 percent of poverty as a baseline more accurately reflects low-income borrowers' repayment ability. This recommendation is similar to the protected income that Sandy Baum and Saul Schwartz recommended in *How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt*.[40] To calculate hardship benefits, the new "partial economic hardship" provision would consider family size by setting the threshold at 150 percent of the poverty level for the borrower's family size, which more accurately reflects a borrower's manageable payment amount.

"Partial economic hardship" periods would extend the current 3-year-period of benefits up to a period of 6 years in recognition of the fact that these borrowers are making partial payments on their debts. For ease of administration, petitioners propose that the partial benefits be calculated at one-half the rate of the full deferment for a total of up to 6 years. An alternative would be to calculate the period of benefits proportionally to the partial payments. Payments under "partial economic hardship" would also count toward the maximum repayment period under income-contingent repayment. These measures address the circumstances of many borrowers who suffer financial difficulties over long periods and thus have the greatest need for assistance and are at the highest risk of default.

B. Petitioners Propose Amending the Regulations to Allow Borrowers to Apply for Additional Hardship Periods.

Section 1087e establishes borrowers' right to economic hardship relief during 3-year periods during which they meet certain economic conditions:

> Eligibility. A borrower of a loan made under this part [20 U.S.C. §§ 1087a *et seq*.] shall be eligible for a deferment during any period – (C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o) [20

[39] The Low Income Home Energy Assistance Program (LIHEAP) helps pay the winter heating bills or summer cooling bills of low-income and elderly people. *Available at* http://www.liheap.org/.

[40] Sandy Baum and Saul Schwartz, *How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt* (Updated April 2006). They suggest that U.S. policy should protect incomes below 150 percent of the poverty guideline for the borrower's family size. The percentage of income that borrowers should be expected to devote to student debt repayment increases with income where borrowers near the median income should not devote more than 10 percent of their incomes to repayment and the payment-to-income ratio should never exceed 18 to 20 percent. The paper, commissioned by the College Board and the Project on Student Debt, is available at www.projectonstudentdebt.org.

U.S.C. § 1085(o)], that the borrower has experienced or will experience an economic hardship.[41]

20 U.S.C. § 1087e (f)(2)(C). The Secretary has interpreted this statute by promulgating regulations that create a 3-year lifetime limit for economic hardship relief. In fact, the plain language of the statute only limits a deferment to "any period – not in excess of 3 years" during which the Secretary makes a determination of economic hardship. The statute makes no mention of how many periods of hardship relief to which a borrower may be entitled. Indeed, Congress has not limited the Secretary from making multiple determinations of "economic hardship" for the individual borrower, as long as each determination does not exceed 3 years. Just as a borrower may be entitled to a separate school deferment, unemployment deferment, and economic hardship deferment periods all within his or her lifetime of repayment, the plain reading of the statute would support a borrower's eligibility for multiple economic hardship deferments. *See* 20 U.S.C. § 1087e (f)(2). A given borrower may experience more than one period of unemployment, school deferment, or economic hardship in his or her lifetime and any one of these experiences may exceed three years in total. The statute in no way forecloses the Secretary from recognizing any of these simple realities. In fact, the 3-year lifetime limit currently in place appears to be inconsistent with the open-ended framework of the statute's plain language.

Petitioners propose that in the interests of borrowers with the greatest need the Secretary amend the regulations to be consistent with the letter and intent of the statute and thereby allow these borrowers to take advantage of the full deferment authority of the statute. Unlike the current regulations, the amendments would not subject borrowers to a 3-year lifetime limit, but rather the amendments would permit borrowers to apply for additional 3-year periods of hardship. Because any additional periods would continue to be subject to Secretarial determination, only those candidates with legitimate economic hardship would continue to receive benefits under the program. Allowing borrowers to apply for additional 3-year periods of economic hardship relief would assist those borrowers in the greatest need – those that have low-incomes and are burdened with repayment obligations over many years.

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[41] Similar language is reflected in 20 U.S.C. §§ 1077 (a)(2)(C)(iii), 1078 (b)(1)(M)(iii), and 1087dd (c)(2)(A)(iii).

C. Petitioners Propose Simplifying the Economic Hardship Application.

One of the obstacles facing borrowers eligible for economic hardship deferment is the complicated application process. Simplifying the process would make economic hardship more accessible. Borrowers would be allowed to use IRS Form 4506-T or another electronic method for income verification rather than having to provide hard copies of tax forms and other documentation. For example, the borrower would simply fill out IRS Form 4506-T which would authorize the IRS to release the borrower's income to the lender.

D. Petitioners Propose Reducing the Maximum Period of Income-Contingent Repayment From 25 Years to 20 Years, in both FFEL and the Direct Loan Program.

Current rules only allow forgiveness of student loan balances forgiven after death, permanent and total disability, or after a borrower has been in the Direct Loan Program income-contingent repayment program for 25 years. The proposed amendments would reduce that period to 20 years for both FDSL and FFEL, and allow payments in either program to count toward the total years of repayment when the borrower pays on a 10- or 12-year schedule and/or uses the new proposed economic hardship rules. For borrowers in FFEL who had reached the maximum period, the loans would need to be consolidated into FDSL (which compensates the lender for the remaining balance) before being discharged.

Twenty years is sufficient for most borrowers to fully repay their loans, and those who still have outstanding balances at that point have the greatest need for relief. Such borrowers would have had very low income relative to their debt. For them the financial benefit from borrowing was inadequate, and they should be allowed to move forward with their lives. A 20-year rule also reduces the risk that loan payments would permanently displace critical savings for retirement and children's education in households with little or no financial security. In addition, a reduction from 25 to 20 years gives struggling borrowers a stronger incentive to stay out of default.

By making income-contingent repayment loan forgiveness available in both major federal loan programs, FFEL as well as the Direct Loan Program, income-contingent repayment would be used

more equitably by struggling borrowers. Indeed, those with high loan burdens face the same risks regardless of the loan program.[42]

CONCLUSION

The current loan repayment regulations are well-intentioned but flawed, leaving many borrowers without adequate protection. Significantly improving loan repayment policies in the United States does not require a radical overhaul of the student loan system. The Secretary has the authority and duty to fulfill the original purpose of repayment assistance by limiting the risk of student loan debt for low-income borrowers, public service workers, and those subject to crises that contribute to unmanageable repayment burdens. Petitioners urge the Secretary to address the most serious shortcomings of the current system by implementing the proposed regulatory amendments, which would lead to significant improvements. Petitioners' proposed amendments would (a) establish required payment levels on federal student loans that are more likely to be manageable; (b) allow student borrowers to choose to repay federal loans within 20 years without excessive burden (and without preventing them from reducing payments further through extended repayment); (c) greatly improve the consistency and effectiveness of the regulations; and (d) increase the accessibility of repayment assistance.

Borrowers are in need of greater protections than are now offered. These amendments would create a better, more rational system of student loan repayment in the United States and would further Congressional intent to ensure equal educational opportunity in higher education.

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[42] The amendment would not prevent borrowers from choosing longer repayment periods. To protect against borrowers gaming the system in order to take advantage of forgiveness, these borrowers would not be able to count those years when they were making lower payments than were affordable toward the 20-year maximum.

Dated on the 2nd day of May 2006.

Respectfully submitted on behalf of petitioners,

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ROBERT SHIREMAN

Robert Shireman
Lauren Asher
Ajita Talwalker
The Project on Student Debt at
The Institute for College Access and Success (TICAS)
2150 Shattuck Ave. Suite 800
Berkeley, California 94704
Tel. (510) 647-4305
Fax (510) 845-4112

The petitioners include:

American Student Assistance

College Board

College Parents of America

Council for Opportunity in Education (COE)

Great Lakes Higher Education and Affiliates (Great Lakes)

The Howard Center for Family, Religion and Society

The Project on Student Debt (The Project) at The Institute for College Access and Success (TICAS)

State Public Interest Research Groups (PIRG)

United States Student Association (USSA)

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MICHELLE N. RODRIGUEZ

Jamienne S. Studley
President (Admitted in D.C.)
John T. Affeldt
Michelle Natividad Rodriguez
Counsel
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105
Tel. (415) 431-7430
Fax (415) 431-1048
Counsel for The Project on Student Debt at
The Institute for College Access and Success (TICAS)

Exhibit 1A

Summary of Proposed Regulatory Amendments to Regulations on Economic Hardship and Income-Contingent Repayment

(1) Rather than interest relief that is all-or-nothing, economic hardship relief would be gradually phased out as borrower income rises. To that end, a new "partial economic hardship" provision would be added with payments capped at 15 percent of discretionary income (the amount above 150 percent of the poverty level for the borrower's family size).

> _Rationale_: The formula for "partial economic hardship" deferment benefits helps provide assistance to those who need it, and to reduce the drastic cliff effects of the current rules.

(2) The new "partial economic hardship" provision would have payments capped at 15 percent of discretionary income.

> _Rationale_: Federal rules for post-default wage garnishment limit the proportion of income that can be garnished to 15 percent of take-home pay (a lower threshold than 150 percent of poverty). By using the same 15 percent figure along with the higher income threshold of 150 percent of poverty, repaying loans without defaulting would more clearly be the most advantageous path for borrowers to take.

(3) The calculation of discretionary income for "partial economic hardship" and income-contingent repayment would use 150 percent of poverty as a baseline. For a single person, this would give a threshold level at $14,700 and would increase with family size: for a family of two, 150 percent of poverty is $19,800; for a family of four, it is $30,000.

> _Rationale_: Government programs (such as TRIO, school lunch, LIHEAP, and the new Medicare drug benefit) often add a factor to the poverty guidelines to determine eligibility for benefits targeted to lower-income populations. Using 150 percent of poverty as a baseline more accurately reflects manageable payment levels for the borrower.

(4) To calculate hardship benefits, the new "partial economic hardship" provision would consider family size by setting the threshold at 150 percent of the poverty level for the borrower's family size.

> _Rationale_: Considering family size more accurately reflects the borrower's repayment ability.

(5) To assist borrowers with repayment burdens over many years, economic hardship deferments would not be subject to a lifetime limit of 3 years, but rather borrowers could apply for additional 3-year periods of hardship. "Partial economic hardship" periods would be limited to up to 6 years instead of 3, and payments would count toward the maximum repayment period under income-contingent repayment.

> _Rationale_: Borrowers who suffer financial difficulties over long periods have the greatest need for assistance and are at the highest risk of default.

(6) Procedures for borrowers would be simplified. Borrowers would be able to use IRS Form 4506-T or another electronic method for income verification rather than having to provide hard copies of tax forms and other documentation.

> Rationale: One of the obstacles facing borrowers eligible for economic hardship deferment is the complicated application process. Simplifying the process would make economic hardship more accessible.

(7) Instead of 25 years, the maximum period for income-contingent repayment would be reduced to 20.

> Rationale: Twenty years is enough for most borrowers to fully repay their loans, and those who still have outstanding balances at that point have the greatest need for relief. A reduction from 25 to 20 years gives struggling borrowers a stronger incentive to stay out of default. It also reduces the risk that loan payments would permanently displace critical savings for retirement and children's education in households with little or no financial security.

(8) Income-contingent repayment loan forgiveness would be available in both major federal loan programs, the FFEL as well as the Direct Loan Program.[43]

> Rationale: Those with high loan burdens face the same risks regardless of the loan program. Income-contingent repayment would be used more equitably by struggling borrowers if it were available in both programs.

[43] The regulatory changes allow for periods of repayment and partial economic hardship in FFEL to count toward the maximum period in ICR. The Secretary should issue guidance that makes it clear that upon reaching the maximum period, the loans would be consolidated (at the borrower's request) into FDSL, the lenders compensated as usual, and the remaining balances forgiven.

Exhibit 1B

Recommended Amendments to 34 C.F.R. § 682.210
Economic Hardship Deferment

Title 34 -- Education
Subtitle B -- Regulations of The Offices of The Department of Education
Chapter VI -- Office of Postsecondary Education, Department of Education
Part 682 -- Federal Family Education Loan (FFEL) Program
Subpart B -- General Provisions

34 C.F.R. § 682.210 Deferment.

* * *

(s) Deferments for new borrowers on or after July 1, 1993 --

* * *

(6) Economic hardship deferment. An eligible borrower is entitled to an economic hardship deferment for ~~periods of~~ up to one year at a time that, collectively, does not exceed a 3-year~~s~~ continuous period (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under ~~the~~ a 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(I) through (s)(6)(vi) of this section. An eligible borrower is entitled to an economic hardship deferment for additional 3-year periods. [44] A new period of deferment may begin 90 days after a 3-year period ends. [45]

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL loan.

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance.

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[44] To assist borrowers with repayment burdens over many years, economic hardship deferments would not be subject to a lifetime limit of 3 years, but rather borrowers could apply for additional 3-year periods of hardship.

[45] An eligible borrower may begin another period of economic deferment 90 days after any 3-year period of economic deferment expires. During the time between economic deferment periods, the borrower may seek other relief such as forbearance.

(iii) Is working full-time and has a monthly income that does not exceed the greater of (as calculated on a monthly basis) --

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that --

(A) Does not exceed twice the amount described in paragraph (s)(6)(iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s)(6)(iii) of this section.

(vi) Is serving as a volunteer in the Peace Corps.

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and (v) of this section, the lender shall --

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

(viii) For an initial period of deferment granted under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(x) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(xi) For purposes of paragraph (s)(6) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(7) Partial economic hardship deferment. An eligible borrower is entitled to a partial economic hardship deferment for up to one year at a time. A partial deferment counts toward the 3-year period in paragraph (s)(6) at a rate of one-half of the full deferment providing for a total of up to 6 years of partial deferments.[46] An eligible borrower shall receive deferment benefits with regard to that portion of the borrower's Federal education debt burden as defined in paragraph (s)(6)(vii) that exceeds 15 percent of the borrower's discretionary income as defined in 34 CFR 685.209 (a)(3).[47] An eligible borrower is entitled to an economic hardship deferment for additional 6-year periods. A new period of deferment may begin 90 days after a 6-year period ends.[48] To be eligible, the borrower must

(i) provide documentation of income satisfactory to the lender; and

[46] Under the proposed "partial economic hardship deferment," the borrower is making partial payments on his or her debt; thus the 3-year-period of benefits is stretched out over more years. For ease of administration, we propose that the partial benefits are calculated at one-half the rate of the full deferment for a total of up to 6 years. An alternative would be to calculate the period of benefits proportionally to the partial payments.

[47] Title 34, section 685.209 (a)(3) defines "discretionary income" as a borrower's AGI minus the amount of the HHS Poverty Guidelines. As described in footnote 53, we propose to revise that language to "a borrower's AGI minus 150 percent of [ ]the amount of the 'HHS Poverty Guidelines…'" By including discretionary income in the formula for economic hardship, family size is taken into consideration.

[48] To be consistent with the amendment to "economic hardship" described in footnote 44, borrowers may receive "partial economic hardship" for additional periods of up to 6 years.

(ii) make payments on the loan to the extent that the payments do not exceed 15 percent of the borrower's discretionary income, except that the monthly amount payable by the borrower shall not be less than $5.00.[49]

(8) For the purposes of paragraphs (s)(6) and (s)(7), it shall be considered satisfactory documentation if the lender is able to confirm the borrower's income with the Internal Revenue Service with the authorization of the borrower and a relevant spouse. [50]

[49] The $5.00 minimum payment is included here to mirror the same requirement in ICR. Alternatively, it could be eliminated or retooled. (Some support the minimum payment as a way to keep borrowers in the habit of repayment, others suggest that it is not worth processing such small payments).

[50] Borrowers would be allowed to use IRS Form 4506-T or another electronic method for income verification rather than having to provide hard copies of tax forms and other documentation. For example, the borrower would simply fill out IRS Form 4506-T which would then authorize the IRS to release the borrower's income to the lender.

Exhibit 1C

Recommended Amendments to 34 C.F.R. § 685.204
Economic Hardship Deferment

Title 34 -- Education
Subtitle B -- Regulations of The Offices of The Department of Education
Chapter VI -- Office of Postsecondary Education, Department of Education
Part 685 -- William D. Ford Federal Direct Loan Program
Subpart B -- Borrower Provisions

34 C.F.R. § 685.204 Deferment.

(a)(1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b) Except as provided in paragraphs (d) and (e) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower --

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(iii)(A) For the purpose of paragraph (b)(1)(i) of this section, the Secretary processes a deferment when --

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(3) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

(B)(1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(1)(iii)(A)(2) or (3) of this section, the borrower has the option to continue paying on the loan.

(2) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

(2)(i) The borrower is seeking and unable to find full-time employment.

(ii) For purposes of paragraph (b)(2)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h) with references to the lender understood to mean the Secretary.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) or partial economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(7) [51] with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b) (2) or (3) of this section may exceed three years for any one period except as otherwise indicated. An eligible borrower is entitled to an economic hardship deferment for additional 3-year periods or partial economic hardship deferment for additional 6-year periods.[52]

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[51] Borrowers in the Direct Loan Program would use the partial economic hardship deferment with the same benefits as described in footnotes 46 and 47.

[52] Consistent with the change proposed in footnote 44, the borrower is not subject to a lifetime limit of 3 years for economic hardship.

Exhibit 1D

Recommended Amendments to 34 C.F.R. § 685.209
Income Contingent Repayment

Title 34 -- Education
Subtitle B -- Regulations of The Offices of The Department of Education
Chapter VI -- Office of Postsecondary Education, Department of Education
Part 685 -- William D. Ford Federal Direct Loan Program
Subpart B -- Borrower Provisions

§ 685.209 Income contingent repayment plan.

(a) Repayment amount calculation.

(1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of --

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in a notice published annually by the Secretary in the Federal Register; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus 150 percent of [53] the amount of the "HHS Poverty Guidelines for all States

[53] Amending the regulation to base discretionary income on *150 percent* of poverty, rather than the poverty threshold, brings the level to $14,700 for an individual, up from $9,800 under the current regulation, and leaves room for considering family size: for a family of two, 150 percent of poverty is $19,800; for a family of four, it's $30,000. Using poverty-level protection is too low – it does not reflect the financial burdens that borrowers experience. This approach is similar to the one recommended by Sandy Baum and Saul Schwartz in *How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt* (Updated April 2006) *available at* www.projectonstudentdebt.org.

(except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of Health and Human Services on an annual basis. n1 For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the "HHS Poverty Guidelines for Alaska" and the "HHS Poverty Guidelines for Hawaii" respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

n1 The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

(4) For exact incomes not shown in the income percentage factor table in the annual notice published by the Secretary, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in the annual notice published by the Secretary, and updated HHS Poverty Guidelines (if applicable).

(6) If a borrower's monthly payment is calculated to be greater than $ 0 but less than or equal to $ 5.00, the amount payable by the borrower shall be $ 5.00.

(7) For purposes of the annual recalculation described in paragraph (a)(5) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(8) For each calendar year after calendar year 1996, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(9) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in the annual notice published by the Secretary.

(b) Treatment of married borrowers.

(1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under

paragraph (c)(5) of this section (unless the borrower is separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) Other features of the income contingent repayment plan.

(1) Alternative documentation of income. If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) First and second year borrowers. The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) Adjustments to repayment obligations. The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) Repayment period.

(i) The maximum repayment period under the income contingent repayment plan is 20 ~~25~~[54] years.

(ii) The repayment period includes periods in which the borrower makes payments, in either the Direct Loan or FFEL program, under (A) the standard repayment plan, ~~and under~~ (B) extended repayment plans in which payments are based on a repayment period that is up to 12 years, or (C) partial economic hardship deferment payment plan.[55] The repayment period does not include

[54] Twenty years is enough for most borrowers to fully repay their loans, and those who still have outstanding balances at that point have the greatest need for relief. A reduction from 25 to 20 years gives struggling borrowers a stronger incentive to stay out of default. It also reduces the risk that loan payments would permanently displace critical savings for retirement and children's education in households with little or no financial security.

[55] Rather than limiting income-contingent repayment to the Direct Loan Program, any payments the borrower makes in the FFEL program (when the borrower pays on the 10- or 12- year

periods in which the borrower makes payments under the graduated and alternative repayment plans or periods of authorized deferment or forbearance, unless otherwise indicated. The repayment period also does not include periods in which the borrower makes payments under an extended repayment plan in which payments are based on a repayment period that is longer than 12 years.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 20 ~~25~~[56]-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period under the income contingent repayment plan, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

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schedule and/ or uses the new partial economic hardship deferment) would count toward the maximum (proposed) 20 years of repayment required for loan forgiveness.

[56] Those who reach the 20 year maximum have very low income relative to their debt burden. They did not benefit financially from their student loans and should be allowed to move on at 20 years rather than 25 years.

Exhibit 2

Exhibit 2: Text of 20 U.S.C. § 1085(o)
Economic Hardship

Title 20. Education
Chapter 28. Higher Education Resources and Student Assistance Programs
Student Assistance
Federal Family Education Loan Program

§ 1085. Definitions for student loan program

As used in this part:

* * *

(o) Economic hardship.

(1) In general. For purposes of this part and part E [20 USCS §§ 1071 et seq., 1087aa et seq.], a borrower shall be considered to have an economic hardship if—

(A) such borrower is working full-time and is earning an amount which does not exceed the greater of—

(i) the minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 [29 USCS § 206]; or

(ii) an amount equal to 100 percent of the poverty line for a family of 2 as determined in accordance with section 673(2) of the Community Service Block Grant Act [42 USCS § 9902(2)];

(B) such borrower is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of such borrower's adjusted gross income, and the difference between such borrower's adjusted gross income minus such burden is less than 220 percent of the greater of—

(i) the annual earnings of an individual earning the minimum wage under section 6 of the Fair Labor Standards Act of 1938 [29 USCS § 206]; or

(ii) the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act [42 USCS § 9902(2)]) applicable to a family of two; or

(C) such borrower meets such other criteria as are established by the Secretary by regulation in accordance with paragraph (2).

(2) Considerations. In establishing criteria for purposes of paragraph (1)(C), the Secretary shall consider the borrower's income and debt-to-income ratio as primary factors.

Exhibit 3

Exhibit 3: Excerpted Text of 20 U.S.C. § 1087e Economic Hardship

Title 20. Education
Chapter 28. Higher Education Resources and Student Assistance Programs
Student Assistance
William D. Ford Federal Direct Loan Program

§ 1087e. Terms and conditions of loans

* * *

(f) Deferment.

(1) Effect on principal and interest. A borrower of a loan made under this part [20 USCS §§ 1087a et seq.] who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest--

(A) shall not accrue, in the case of a--

(i) Federal Direct Stafford Loan; or

(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 428 [20 USCS § 1078]; or

(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(ii).

(2) Eligibility. A borrower of a loan made under this part [20 USCS §§ 1087a et seq.] shall be eligible for a deferment during any period—

(A) during which the borrower—

(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 435(a) [20 USCS § 1085(a)]) the borrower is attending; or

(ii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,
except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part [20 USCS §§ 1087a et seq.] (other

than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

(C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o) [20 USCS § 1085(o)], that the borrower has experienced or will experience an economic hardship.

(3) Definition of borrower. For the purpose of this subsection, the term "borrower" means an individual who is a new borrower on the date such individual applies for a loan under this part for which the first disbursement is made on or after July 1, 1993.

(4) Deferments for previous part B loan borrowers. A borrower of a loan made under this part, who at the time such individual applies for such loan, has an outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV [20 USCS §§ 1071 et seq.] prior to July 1, 1993, shall be eligible for a deferment under section 427(a)(2)(C) or section 428(b)(1)(M) [20 USCS § 1077(a)(2)(C) or § 1078(b)(1)(M)] as such sections were in effect on July 22, 1992.

* * *

Exhibit 4

Exhibit 4: Excerpted Text of 20 U.S.C. § 1087e Income Contingent Repayment

Title 20. Education
Chapter 28. Higher Education Resources and Student Assistance Programs
Student Assistance
William D. Ford Federal Direct Loan Program

§ 1087e. Terms and conditions of loans

* * *

(d) Repayment plans.

(1) Design and selection. Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part [20 USCS §§ 1087a et seq.] a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part [20 USCS §§ 1087a et seq.]. The borrower may choose--

(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L) [20 USCS § 1078(b)(1)(L)];

(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan.

(2) Selection by Secretary. If a borrower of a loan made under this part [20 USCS §§ 1087a et seq.] does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

(3) Changes in selections. The borrower of a loan made under this part [20 USCS §§ 1087a et seq.] may change the borrower's selection of a repayment plan under paragraph (1), or the

Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

(4) Alternative repayment plans. The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part [20 USCS §§ 1087a et seq.] who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

(5) Repayment after default. The Secretary may require any borrower who has defaulted on a loan made under this part [20 USCS §§ 1087a et seq.] to--

(A) pay all reasonable collection costs associated with such loan; and

(B) repay the loan pursuant to an income contingent repayment plan.

(e) Income contingent repayment.

(1) Information and procedures. The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part [20 USCS §§ 1087a et seq.] that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of the Internal Revenue Code of 1986 [26 USCS § 6103]) may be obtained under the preceding sentence only to the extent authorized by section 6103(l)(13) of such Code [26 USCS § 6103(l)(13)]. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

(2) Repayment based on adjusted gross income. A repayment schedule for a loan made under this part [20 USCS §§ 1087a et seq.] and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986 [26 USCS § 62]) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

(3) Additional documents. A borrower who chooses, or is required, to repay a loan made under this part [20 USCS §§ 1087a et seq.] pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

(4) Repayment schedules. Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the

appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

(5) Calculation of balance due. The balance due on a loan made under this part [20 USCS §§ 1087a et seq.] that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

(6) Notification to borrowers. The Secretary shall establish procedures under which a borrower of a loan made under this part [20 USCS §§ 1087a et seq.] who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower--

(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(l)(13) of the Internal Revenue Code of 1986 [26 USCS § 6103(l)(13)]; and

(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.