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Office of Postsecondary Education
400 Maryland Ave., SW
Washington, DC 20202

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To Whom It May Concern:

Thank you for the opportunity to provide comments on the Department of Education's proposed rule (ED-2023-OPE-0004) on a new income-driven repayment (IDR) plan. The New America higher education program is a team of researchers, storytellers, and advocates who are focused on developing student-centered federal policy recommendations. We are dedicated to making higher education more equitable and accountable, fighting for inclusion rather than exclusivity, a college financing structure that promotes opportunity, a higher education ecosystem where all players are held accountable, and a transparent system where families and taxpayers understand outcomes. Our goal is to ensure that all students have the chance to obtain an affordable, high-quality education after high school.

Important Steps Forward

As we have noted in our previous work, as long as some students must take out loans to access higher education, ensuring the repayment system is accessible, affordable, and borrower-centered is critical. Despite significant improvements to IDR program design and generosity over time, the current IDR landscape is beset by administrative and structural challenges.[1] These include payments that can still be too high for some borrowers, in part because they don't take into account many aspects of family finances; balance growth over long periods of time if borrowers' payments do not cover the interest that accrues and capitalizes on their loans; and barriers to enrolling and remaining enrolled in an IDR plan, due to confusing and burdensome administrative requirements and the complexity of the system.[2]

We are pleased that, as a response to these and other issues that exist in the student loan repayment system, the Department is proposing important steps to reform income-driven repayment that target

[1] Sarah Sattelmeyer, Michele Shepard, and Jessica Thompson, "Income-Driven Repayment and Negotiated Rulemaking: Options for Consideration as Part of the Department of Education's 2021 Process," New America, September 30, 2021, https://www.newamerica.org/education-policy/edcentral/income-driven-repayment-neg-reg/.

[2] Sarah Sattelmeyer, "Borrowers' student loan balances are growing over time. And it's not just because of the interest rate," New America, May 12, 2022, https://www.newamerica.org/education-policy/edcentral/borrowers-student-loan-balances-are-growing-over-time-and-its-not-just-because-of-the-interest-rate/; The Pew Charitable Trusts, "Borrowers Discuss the Challenges of Student Loan Repayment," May 20, 2020, https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment; and Diane Cheng and Jessica Thompson, "Make it Simple, Keep it Fair: A Proposal to Streamline and Improve Income-Driven Repayment of Federal Student Loans," The Institute for College Access & Success, May 2017, https://ticas.org/wp-content/uploads/legacy-files/pub_files/make_it_simple_keep_it_fair.pdf.

those who are most vulnerable. These come in addition to other Biden administration initiatives to support struggling borrowers, including the Fresh Start program for those in default, the IDR account adjustment and Public Service Loan Forgiveness (PSLF) waiver to correct past failures in the system, ongoing work to reform collections and servicing, and new regulations that make it easier for borrowers to access loan discharges, among others.

Principles for Additional Reforms

Our comments highlight areas of support and focus on how the Department could strengthen its proposal. In making our recommendations, we were guided by the following key principles:

Further reducing complexity to ensure plans are easy to access and understand for borrowers and simple to administer for the Department and its contractors. We propose additional opportunities for automation, outreach to borrowers, and streamlining provisions of the Department's proposal.

Further ensuring reforms are borrower- and equity-focused. As we underscored in a recent analysis, some of the reasons why borrowers struggle in repayment—including systemic racism and labor market discrimination—can occur outside of the repayment system.[3] Regardless, the repayment system should account for and address known patterns of borrower distress. We propose additional provisions to support the most vulnerable borrowers and those often left out of conversations about student loan reform, including borrowers in default and those with graduate debt and Parent PLUS loans.

Borrowers in default: The punitive nature of default not only causes family financial insecurity, but it also contributes to the racial wealth gap and related economic disparities. Those most likely to default on their loans—including borrowers of color, particularly Black borrowers; low-income, low-wealth, and low-resource students; those who do not complete a degree or credential; and those that attend for-profit schools—are often least able to afford the severe financial consequences that come with default due to structural racism and discrimination that limit access to wealth-building, educational opportunities, and good jobs.[4] In our comments, we propose preventing the accrual of unpaid interest while a borrower is in default and using an IDR plan, ensuring borrowers entering and exiting default can be automatically enrolled in IDR plans, and lowering monthly payments for those in default.

Borrowers with graduate debt: Those who complete bachelor's degrees and attend graduate school make up a small portion of those who default. But in our recent focus groups with borrowers in default, borrowers indicated that the higher levels of student debt that come with such degrees could be devastating when they did not see the income growth or return on investment they expected.[5] This phenomenon occurs most frequently among already marginalized groups; discrimination and

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[3] Sattelmeyer, Shepard, and Thompson, "Income-Driven Repayment and Negotiated Rulemaking."

[4] Sarah Sattelmeyer and Tia Caldwell, "In Default and Left Behind: How Higher Education and the Student Loan System Are Failing the Most Vulnerable Borrowers," New America, November 30, 2022, https://www.newamerica.org/education-policy/reports/in-default-and-left-behind/.

[5] Ibid.

credentialization in the job market mean that women and students of color often need more education to earn amounts similar to their male and white peers.[6]

There are multiple pieces of the student loan system that currently or will, per the Department's proposal, treat borrowers with undergraduate and graduate loans differently.[7] In addition to being overly complex, these provisions disadvantage graduate borrowers. In our comments, we highlight simpler and more progressive ways of ensuring all borrowers have affordable, predictable payments and are not trapped in debt.

Parent PLUS borrowers: As we noted in a 2018 report, when parent loans and student loans are considered together, federal student loan policies are driving an intergenerational accumulation of debt that burdens the neediest families (and particularly Black families).[8] Importantly, the Department's proposal opens up additional benefits for Parent PLUS borrowers who consolidate their loans.[9] In our comments, we propose several additional flexibilities, including allowing access to ICR in default and preventing the accumulation of unpaid interest in ICR. The Department may also want to consider raising the income protection threshold in ICR for Parent PLUS borrowers who consolidate their loans.

Further protecting borrowers' and taxpayers' resources by creating a strong accountability structure that ensures that borrowers are not harmed by our student lending system or by predatory institutional actors. Repayment policy is a key element of accountability policy. At New America, we believe financial aid, including loans, must promote opportunity ***and*** that everyone, including institutions and the federal government, must be held accountable for that investment.

This accountability framework must consider the IDR program alongside and in conjunction with the Request for Information Regarding Public Transparency for Low-Financial-Value Postsecondary Programs (RFI, ED-2023-OUS-0140) and other initiatives that the Department has underway—like the development of strong gainful employment, financial responsibility, and administrative capability rules, among others—to ensure schools provide high-quality programs that do not leave students with low wages and unsustainable debt.[10] Therefore, we include similar language in our IDR and RFI comments.

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[6] Judith Scott-Clayton and Jing Li, "The Black-White Disparity in Student Loan Debt More Than Triples after Graduation," Brookings, October 20, 2016, https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/; Dorothy A. Brown, "College Isn't the Solution for the Racial Wealth Gap. It's Part of the Problem," Washington Post, April 9, 2021, https://www.washingtonpost.com/outlook/2021/04/09/student-loans-black-wealth-gap/; and Anthony P. Carnevale, Nicole Smith, and Artem Gulish, "Women Can't Win: Despite Making Educational Gains and Pursuing High-Wage Majors, Women Still Earn Less than Men," Georgetown University Center on Education and the Workforce, 2018, https://cewgeorgetown.wpenginepowered.com/wp-content/uploads/Women_FR_Web.pdf.

[7] These two groups (1) will pay a different percentage of their discretionary income, weighted based on the composition of their loans, (2) have different maximum periods in repayment based on whether borrowers have any debt from a graduate program, and (3) have different interest rates (which is outside of the scope of this rulemaking).

[8] Rachel Fishman, "The Wealth Gap PLUS Debt: How Federal Loans Exacerbate Inequality for Black Families," New America, May 15, 2018, https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/.

[9] These include being able to count additional payment pauses toward ICR forgiveness, automatic enrollment into an ICR plan for delinquent borrowers, a streamlined ICR process, and not losing credit for progress toward forgiveness after consolidation.

[10] 88 FR 1567

Per the Department's own calculations, "on average, borrowers in every quintile of the lifetime income distribution are projected to repay less (in present discounted terms) in the proposed REPAYE plan than in the existing REPAYE plan."[11] We support many of the progressive reforms driving these benefit changes: Borrowers should experience an easier-to-navigate system of repayment, one that is student-centered and promotes opportunity and equity. But we are concerned by the lack of front-end accountability to prevent institutions from exploiting students and taxpayers for monetary gain. A more generous IDR program can create perverse incentives for schools to increase tuition, enroll students in low-quality programs, or encourage students to take out unsustainable amounts of debt.

Lack of accountability in our higher education system hits disadvantaged and marginalized students the hardest as they are the ones who tend to enroll in low-financial-value programs. A decade-long longitudinal study, for example, found that Black youth in Baltimore's public-housing projects strived and enrolled in colleges just like their white peers, but were consistently drawn to, and aggressively recruited by, for-profit trade schools that didn't pay off.[12]

For institutions, loans are grants, which can be substantial. In fact, Parent PLUS and Graduate PLUS loans can be borrowed up to the cost of attendance, an amount set by the school.[13] Colleges face little to no consequence if their borrowers struggle to repay these loans. Our existing accountability measure for student loan repayment, the Cohort Default Rate (CDR), is easily gamed by institutions and all but moot at the moment given the payment pause.[14] Indeed, during the 2015 program integrity rulemaking, one college president admitted that colleges and universities used Parent PLUS loans as a no-strings-attached revenue source to avoid sanctions that come if students struggle to repay federal unsubsidized or subsidized loans.[15] The new IDR regulations will muddle default further as more borrowers will have lower payments and many borrowers who struggle to repay will be automatically enrolled in an IDR plan, decreasing rates of default across the board.

The Department has an obligation to monitor institutions that engage in potentially predatory behavior that could lead to the proliferation of low-value programs. To protect both students and taxpayers—and especially to guard against the unintended consequences of a more generous repayment plan, which could include tuition increases, enrollment increases, and increases in student loan borrowing—the Department must collect data and work toward developing measures and metrics that will flag:

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[11] 88 FR 1894 (p.1915)

[12] Melinda D. Anderson, "When For-Profit Colleges Prey on Unsuspecting Students," *The Atlantic*, October 24, 2016, https://www.theatlantic.com/education/archive/2016/10/when-for-profit-colleges-prey-on-unsuspecting-students/505034/.

[13] Office of Federal Student Aid, "Direct PLUS Loans are federal loans that parents of dependent undergraduate students can use to help pay for college or career school," U.S. Department of Education, accessed February 9, 2023, https://studentaid.gov/understand-aid/types/loans/plus/parent and Office of Federal Student Aid, "Direct PLUS Loans are federal loans that graduate or professional students can use to help pay for college or career school," U.S. Department of Education, accessed February 9, 2023, https://studentaid.gov/understand-aid/types/loans/plus/grad.

[14] Ben Miller, "Now is the Time to Fix Cohort Default Rates," Center for American Progress, October 27, 2020, https://www.americanprogress.org/article/now-time-fix-cohort-default-rates/ and U.S. Government Accountability Office, "Actions Needed to Improve Oversight of Schools' Default Rates," April 26, 2018, https://www.gao.gov/products/gao-18-163.

[15] Rachel Fishman, "The Parent Trap: Parent PLUS Loans and Intergenerational Borrowing," New America, January 2014, https://static.newamerica.org/attachments/748-the-parent-trap/Corrected-20140110-ParentTrap.pdf.

- Programs that have large increases in net tuition.[16] Even though debt will be more affordable for many borrowers via the new REPAYE plan, IDR cannot ensure borrowers will fully recoup the cost of their education, particularly given the time and personal financial investment they've put into postsecondary education.
- Programs that have substantial increases in student loan borrowing, with particular attention paid to the types of borrowing, types of loans, and types of borrowers and loans over a certain period of time.
- New programs and programs that have substantial increases in enrollment over certain periods.[17]
- Outcomes for Parent PLUS and Graduate PLUS borrowers. The Department must publish repayment, delinquency, and default information related to these loans by program and by institution.
- Outcomes for borrowers who default on their loans. The Department and Congress must re-envision how to understand default and how it could be used to flag low-value programs and institutions.

Our detailed comments on the Department's proposed regulations are included below. We would be happy to engage further if you have any questions.

Sincerely,

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[16] For this, and the next two suggestions, we encourage the Department to add some flexibility in cases of national emergency or economic instability as seen during the Great Recession and COVID-19 pandemic.

[17] For example, the Department could align what it considers substantial growth with what triggers an accreditation review of distance education programs (34 CFR § 602.19).

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Important Steps to Reform IDR

We are pleased that the Department is proposing important steps to reform income-driven repayment that target those who are most vulnerable, and we strongly support a host of key provisions that the Department included in its IDR proposal, including:

Streamlining plans: The streamlining of IDR plans makes it clear that one plan—the new REPAYE plan—is the best plan for most borrowers who are eligible. This will reduce confusion and make it easier for borrowers to select a plan and for the Department and its contractors to administer the program.

Lowering payments and reducing time spent in repayment: The Department's adjustments to the REPAYE formula to raise the income protection threshold and decrease time to forgiveness for those with lower debt balances are progressive and effective ways to protect borrowers from unaffordable debt.

Helping borrowers manage balance growth: Waiving accrued, unpaid interest for borrowers making payments in the REPAYE plan will help address the financial and psychological toll of growing balances—which disproportionately affect borrowers of color—and may also encourage borrowers to make payments on their loans.[18] In addition, it ensures that borrowers with smaller incomes pay less in interest than those with larger incomes, even at the same overall interest rate.

Allowing additional deferments and forbearances to count as qualifying IDR payments: This will reduce confusion in the system; ensure that borrowers are not forced to choose among conflicting benefits; provide retroactive credit, addressing past system failures and bringing many closer to forgiveness; and ensure the IDR and PSLF programs are better aligned.

Automatically enrolling delinquent borrowers into IDR plans and streamlining access to the IDR enrollment and certification processes: The proposal to auto enroll borrowers into an IDR plan after 75 days of non-payment and the provisions that make it easier to access and remain in IDR plans will greatly reduce the number of defaults, especially among low-income borrowers.[19] This will allow borrowers—many of whom will have a low or $0 IDR payment—to avoid the severe financial consequences that can come with missing payments.[20]

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[18] Sattelmeyer, Shepard, and Thompson, "Income-Driven Repayment and Negotiated Rulemaking;" Sattelmeyer, "Borrowers' student loan balances are growing over time;" The Pew Charitable Trusts, "Borrowers Discuss the Challenges of Student Loan Repayment;" JPMorgan Chase Institute, "Student Loan Debt: Addressing Disparities in Who Bears the Burden," October 2020, https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/jpmcinstitute-student-loan-debt-policy-brief.pdf.

[19] Sarah Sattelmeyer, "The Department of Education can Protect Borrowers at Risk of Defaulting on their Student Loans," New America, November 3, 2021, https://www.newamerica.org/education-policy/edcentral/the-department-of-education-can-protect-borrowers-at-risk-of-defaulting-on-their-student-loans/.

[20] U.S. Government Accountability Office, "Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options," September 17, 2015, https://www.gao.gov/products/gao-15-663.

Providing an IDR option for borrowers in default: Providing borrowers in default with access to IBR allows eligible borrowers to receive credit toward IDR forgiveness for voluntary and involuntary payments, provides a pathway to exit for some, and is an important building block as policymakers consider larger reforms to student loan collections.

Counting periods before consolidation toward IDR forgiveness: This provision will remove a major penalty and barrier—losing credit for time accrued toward forgiveness—that borrowers previously faced in consolidating their loans. As a result, some borrowers were not taking advantage of the opportunity to access more generous IDR plans, the PSLF program, and other benefits offered to borrowers with Direct Loans.[21]

The remainder of our comments focus on how the Department could strengthen its proposal.

Borrower Eligibility for IDR Plans (§685.209(c))

Allow IBR enrollment after ten years in REPAYE for borrowers who default (§685.209(c)(3)(ii))

The Department proposes to limit borrowers' ability to enroll into IBR once they have completed 120 payments on REPAYE.[22] We appreciate the rationale that the Department provides for this provision but request that an exception be made for those who default on their loans. If borrowers make 10 years' worth of payments on REPAYE and then subsequently default, they must still be allowed to access IBR in default.

Provide outreach for existing REPAYE borrowers to switch to IBR (§685.209(c)(3)(ii))

The Department proposes that the provision limiting borrowers' ability to access IBR after 10 years in REPAYE be applied retroactively: §685.209(c)(3)(ii) indicates that "a borrower who has made 120 or more qualifying repayments under the REPAYE plan on or after July 1, 2023, may not enroll in the IBR plan." Borrowers have been eligible to enroll in the current REPAYE plan only since July 2016, although many will have accrued additional time towards forgiveness in other statuses or IDR plans.

This means that those who have been enrolled in REPAYE since its creation will have approximately three years remaining to make the decision about whether to change plans and enroll in IBR once these regulations go into effect. (We encourage the Department to specify that the additional time towards forgiveness accrued in other statuses or IDR plans does not count against this 10-year window.) It is likely that many borrowers will be unaware of this policy change. Thus, the Department should make this timing clear to borrowers via outreach and notices on its website and the websites of its contractors, among other mechanisms.

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[21] We encourage the Department to clarify that this provision applies to all qualifying periods accrued before a consolidation, including IBR credit in default and credit earned from the proposed additional periods of deferment and forbearance.
[22] 88 FR 1894 (p.1901)

Consider further sunsetting IBR for new borrowers

While IBR is provided in statute, the Department may want to explore whether it has the authority to restrict eligibility for additional future borrowers (other than borrowers in default) in order to further simplify repayment. This might also reduce the cost of the proposal by ensuring high-income graduate borrowers use the new REPAYE plan.

Payment Amounts (§685.209(f))

Support for a higher income protection threshold with a standardized repayment rate

The Massachusetts Institute of Technology's living wage calculator averages close to 250 percent of the federal poverty guideline for a single person.[23] The Department's proposed discretionary income threshold of 225 percent of the poverty guideline is slightly lower, but aligned with a wage of at least $15 an hour, a widely used measure of a living wage, for a single person. The protected income for a family of four ($59,625 in 2021) is close to but below the 2021 median household income of $70,784.[24] We would support a slightly higher income protection threshold paired with a discretionary income payment rate of 10 percent for all borrowers.

As noted earlier, the Department's adjustment to the REPAYE formula to raise the income protection threshold is a progressive and effective way to protect borrowers from unaffordable debt. Raising the income protection threshold further would provide a greater benefit for the most vulnerable borrowers than reducing the percentage of discretionary income that some borrowers owe.[25] In fact, cutting the percentage paid saves wealthier borrowers more money.

Further, ensuring that all borrowers owe the same percentages of their incomes in REPAYE—as opposed to the current proposal that requires those with undergraduate debt to pay five percent, those with graduate debt to pay 10 percent, and those with both to pay a weighted average—would decrease complexity in the system. Borrowers could easily understand their repayment formula and their assessment rate would not need to be recalculated each time they return to school. Research and analyses tell us that going straight through school is increasingly the exception rather than the norm. Many students cycle in and out of school—including graduate school—and repayment.[26] As borrowers

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[23] Massachusetts Institute of Technology, "Living Wage Calculator," accessed February 9, 2023, https://livingwage.mit.edu/.

[24] Jessica Semega and Melissa Kollar, "Income in the United States: 2021," U.S. Census Bureau, September 13, 2022, https://www.census.gov/library/publications/2022/demo/p60-276.html#:~:text=Real%20median%20household%20income%20was,and%20 Table%20A%2D1.

[25] Urban Institute, "Who Should Pay? Designing a More Equitable Income-Driven Repayment Plan," June 1, 2022, https://www.urban.org/features/who-should-pay and Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers, "Memorandum: IDR Proposals: Structure of Forgiveness and Discretionary Income Threshold," U.S. Department of Education Negotiated Rulemaking, November 2, 2021, https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/idrproposal.pdf.

[26] National Center for Education Statistics, "Postbaccalaureate Enrollment," U.S. Department of Education, Institute of Education Sciences, 2022, retrieved February 9, 2023, from https://nces.ed.gov/programs/coe/indicator/chb; Sattelmeyer and Caldwell, "In Default and Left Behind;" and The Pew Charitable Trusts, "Borrowers Discuss the Challenges of Student Loan Repayment."

return to school and borrow, the percentage of income paid toward their loans might need to be adjusted multiple times.

Consider raising the income protection threshold for ICR

As we noted in our introduction, too many Parent PLUS borrowers are saddled with debt that is unaffordable. The income protection threshold is currently set at 100 percent of the federal poverty guideline in the ICR plan, a level both we and the Department agree is much too low to protect families from material hardship and unaffordable debt. Raising the income protection threshold for ICR is a progressive way to protect the Parent PLUS borrowers who are struggling the most with their debt.

Explore lowering IBR monthly payments in default

The Department notes that, "allowing borrowers in default access to IBR provides them a path to forgiveness and also results in a higher payment amount than the borrower would owe under REPAYE."[27] It seeks comments on addressing tradeoffs between payment size and credit toward forgiveness for borrowers in default. We agree that IBR is the appropriate plan for borrowers in default, given the tradeoffs, and encourage the department to explore whether it could use its regulatory authority to set lower monthly payments for defaulted borrowers enrolled in IBR, apply additional credits toward REPAYE (for eligible borrowers) for the larger payments made in IBR once they exit default, or (at the very least) ensure unpaid interest is not accruing as borrowers make IBR payments in default (as we recommend below).

In addition, the use of IBR is limited, per statute, to borrowers with a partial financial hardship. We would expect most borrowers in default to have a partial financial hardship, but the Department should explore whether that is the case to ensure that a sizable percentage of these borrowers would not be excluded from IBR.

Interest Benefits (§685.209(h))

We encourage the Department to include two additional groups in the provision to prevent the accrual of unpaid interest for borrowers making REPAYE payments: borrowers in default and Parent PLUS borrowers.

Prevent interest accrual for borrowers making IBR payments in default

Given that the interest benefits described in these proposed regulations only apply to the REPAYE plan, unpaid interest will continue to accrue on borrowers' loans when they are in IBR plans, which is the plan that the Department has proposed making available to borrowers in default. Thus, borrowers' balances may grow in default even if they are making IBR payments.

[27] 88 FR 1894 (p.1910)

We encourage the Department to consider extending the proposed interest benefit available for REPAYE borrowers to those using IBR plans in default. This would help these borrowers manage balance growth and the negative outcomes that come with it. In addition, accruing interest in default is not standard practice for other forms of credit.

Applying this new provision would have several benefits. First, it would ensure that borrowers' balances are not growing faster in default than they would if a borrower were in good standing and using the REPAYE plan. (Even with our suggestion, balance growth in default would still be possible though interest accrual during periods of nonpayment and through collection fees. While these items are outside of the scope of the proposed regulations, we include some ideas for more holistic default reform below.)

Second, while interest would continue to accrue for borrowers in IBR plans in good standing, our recommendation would decrease the unpaid interest that accrues for almost all borrowers in default. Direct Loan borrowers in IBR plans in good standing would be able to select—and FFEL borrowers in IBR plans in good standing would be able to consolidate their loans (now largely without penalty) to access—REPAYE and its new interest benefits.

Finally, if no unpaid interest accrues while borrowers are in IBR in default then there is no interest (or at the very least, less interest) to capitalize when they exit IBR, which they may choose to do to use the more generous REPAYE plan after exiting default. Below, we recommend automatically enrolling all borrowers exiting default into the lowest cost IDR plan. (While the Department eliminated all regulation-related instances of interest capitalization in a previous rule, interest capitalization when a borrower exits IBR is still required in statute.[28])

Prevent the accrual of unpaid interest for Parent PLUS borrowers in ICR

Parent PLUS borrowers who consolidate their loans have access to ICR plans, but not IBR or REPAYE, meaning that they do not have access to the interest provisions mentioned above or IDR in default. The Department should consider not allowing unpaid interest to accrue when Parent PLUS borrowers with consolidated loans are making payments on ICR plans. In addition, the Department should also allow Parent PLUS borrowers who consolidate to access IDR in default through an ICR plan, which we discuss more fully below, and it should eliminate the accrual of unpaid interest for Parent PLUS borrowers repaying through ICR in default. This would ensure that all borrowers have access to IDR in default and all borrowers making payments on IDR plans while in default would not experience unpaid interest accruing from month to month.

[28] 87 FR 65904

Periods that count towards forgiveness (§685.209(k))

Standardize the treatment of deferments and forbearances for forgiveness (§685.209(k)(4)(i))
In proposed §685.209(k)(4)(i), the Department indicates that, "for all IDR plans, a borrower receives a month of credit toward forgiveness by— (i) Making a payment under an IDR plan, including a payment of $0, except that those periods of deferment or forbearance treated as a payment under (k)(4)(iv) of this section do not apply for forgiveness under paragraph (k)(3) of this section," meaning that a borrower cannot count periods of deferment or forbearance that would otherwise count toward forgiveness in IDR if they borrowed a small enough amount to qualify for early forgiveness.

While the Department may have made this choice so as not to encourage the use of deferments and forbearances, the Department should allow these periods to count toward IDR forgiveness no matter the amount of time spent in repayment for several reasons. First, many borrowers will already be disincentivized from using deferments and forbearances because unpaid interest will accrue during these periods but will not during periods that a borrower is making REPAYE payments. This can lead to borrowers paying more over the life of their loans.

Second, this proposed provision especially harms the lowest-balance borrowers—who often have lower incomes, sometimes as a result of not completing a degree or credential—compared to higher-balance borrowers by subjecting them to different, less generous forgiveness rules.[29] In addition, and as a result of their financial insecurity, those with low balances are most likely to need to use unemployment and economic hardship-related deferments. As noted by the Department, this provision would also disadvantage cancer patients, veterans, and others who serve the country. It also fails to protect borrowers placed in administrative forbearances for issues that are outside of their control.

Third, this will create needless complexity, including problems if borrowers return to school and borrow more, accumulating enough debt to no longer receive early forgiveness. In these cases, borrowers' early periods of deferments and forbearances will need to be updated to count towards forgiveness. Or, borrowers may have not used a much-needed deferment or forbearance benefit earlier in repayment because it would not have counted toward forgiveness. But after returning to school and borrowing more, that time would now count. (As we noted earlier in our comments, it is common for borrowers to cycle in and out of school.) This will be confusing for borrowers, as they may not be able to predict their future situations, and difficult for servicers to explain and implement.

Finally, not allowing select deferments and forbearances to count toward IDR forgiveness when they are used during shorter periods in repayment would still create situations in which borrowers have to choose between two competing benefits. The Department itself says it wants "to avoid situations in which a borrower is presented with conflicting benefits, in these cases an opportunity to pause payments or make progress toward ultimate loan forgiveness…This can create unintended

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[29] Susan Dynarski, "Why Students With Smallest Debts Have the Larger Problem*," Upshot: The New York Times,* August 31, 2015, https://www.nytimes.com/2015/09/01/upshot/why-students-with-smallest-debts-need-the-greatest-help.html.

consequences, such as confusing choices for borrowers by putting in conflict the benefits of pausing payments for specific activities or conditions, such as types of national service or receiving certain medical care and making progress toward forgiveness."[30] The Department should be focused on preventing conflicting benefits no matter whether borrowers are eligible for forgiveness after 10 or 20 years' worth of payments.

Automate "catch up" periods (§685.209(k)(6)(i))

In addition to counting additional periods of deferment and forbearance toward IDR forgiveness, the Department also proposed "catch up" periods in which a borrower would be able to, essentially, buy back periods spent in deferment and forbearance where they could have had low or $0 payments on an IDR plan. The Department notes that it is "deeply concerned about ensuring that borrowers receive accurate counseling on the best repayment option for them" and this provision would address concerns, "that many borrowers may have paused their payments through deferments or forbearances because of misinformation or actions by their servicer."[31]

As the Department further notes, in April 2022, it announced an administrative account adjustment to award credit towards IDR forgiveness when a borrower spent more than 12 months consecutive or more than 36 months cumulative in forbearance.[32] The proposed catch-up period is intended to complement this account adjustment and the list of proposed, additional deferments and forbearances that would count toward IDR forgiveness when these regulations go into effect. Many periods of earlier deferments and forbearances are covered by those other policies, and §685.209(k)(6)(i) would be most useful for borrowers who were in a non-counting status for fewer than 12 consecutive months or 36 cumulative months.

As a result, the catch up provision would be helpful for a relatively small number of cases, and for shorter periods of time. But it would be a large and complex administrative undertaking for borrowers, the Department, and its contractors. First, and most importantly, it will be hardest for the most vulnerable groups to provide the documentation needed to access the benefit. For instance, they may not have filed taxes or have easy access to past pay stubs or employers.

In addition, servicers will have to adjudicate all claims. This will involve parsing through old pay stubs, old tax returns, and old loan repayment decisions—similar to what they must do now for the alternative documentation of income process and the PSLF process—in order to determine what a borrower's past payments, likely from years ago, would be. This kind of work will be hard to automate and labor intensive, and without detailed guidance from the Department, borrowers with different servicers may be treated differently.

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[30] 88 FR 1894 (p.1906)
[31] 88 FR 1894 (p.1907)
[32] 88 FR 1894 (p.1906)

A similar provision included in the IDR account adjustment already allows some borrowers to apply to have some additional periods of past paused payment statuses count if they experienced forbearance steering. Instead of creating two separate but similar and equally confusing and administratively burdensome processes, the Department could consider issuing an administrative action that automatically counts all periods of past paused payment status.[33]

Going forward, the Department should strengthen oversight of and contracts with servicers to hold them accountable when they provide misinformation instead of relying on borrowers to identify the problem and apply for a remedy. (We acknowledge that the Department has made some important steps in that direction. It recently announced the first stages of a procurement that envisions a new role for and stronger oversight of contractors across the repayment and default systems.[34] The Department has partnered with other government entities on enforcement actions, and as part of contract extensions until the new system is in place, it strengthened performance standards, transparency, and oversight for existing servicers.[35])

Count retrospective time in default towards forgiveness

We encourage the Department to explore opportunities to allow borrowers who experienced past periods in default to also count those periods, which could include voluntary and involuntary payments, toward IDR forgiveness. Through recent focus groups with defaulted borrowers, we heard that many financially distressed borrowers spend years in default.[36] If these borrowers had been better served by the student loan system, many would have spent years in a $0 IDR plan instead. Ensuring that past time in default counts towards forgiveness for these disadvantaged and poorly served borrowers—just like past time in select deferments and forbearances counts for those in good standing on their loans—is an issue of equity: Low-resource borrowers and borrowers of color, particularly Black borrowers, are most likely to default on their loans.[37]

The Department could pursue an administrative action, akin to the IDR account adjustment, that counts previous time in default—and both voluntary and involuntary payments—towards forgiveness.[38] Given

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[33] If the Department retains the buy-back provision, we urge it to clarify that these periods should count towards early forgiveness for those with lower balances. In addition, the Department must increase transparency and ensure borrowers are notified about access to this benefit. It should adjust §685.209(k)(vi)(6)(ii) to clarify that the periods eligible for catch up payments must be clearly published on each borrowers' online loan portal, regardless of whether the borrower asks for the information.

[34] U.S. Department of Education, "Unified Servicing and Data Solution (USDS) Solicitation," May 19, 2022, https://sam.gov/opp/37c3f8bddecd4e89bb85b6569ea6477b/view and Sarah Sattelmeyer, "The Department of Education Seeks Bids for a Fifth Iteration of the Student Loan Servicing System Since 2016. How did we get here?" New America, May 20, 2022, https://www.newamerica.org/education-policy/edcentral/the-department-of-education-seeks-bids-for-a-fifth-iteration-of-the-student-loan-servicing-system-since-2016-how-did-we-get-here/.

[35] U.S. Department of Education, "U.S. Department of Education Increases Servicer Performance, Transparency, and Accountability Before Loan Payments Restart," press release, October 15, 2021, https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart and Sattelmeyer, "The Department of Education Seeks Bids for a Fifth Iteration."

[36] Sattelmeyer and Caldwell, "In Default and Left Behind."

[37] Ibid.

[38] Office of Federal Student Aid, "Income-Driven Repayment Account Adjustment."

that many of these borrowers likely had incomes low enough to qualify for a $0 IDR payment (even before the generous new provisions), this would be justice, not a giveaway.

Another option could be to add default to the list of statuses in §685.209(k)(6)(i) for which a borrower is allowed to receive retrospective credit toward forgiveness. While the Department proposes that borrowers be able to use IBR in default going forward, it could explore whether the HEA (Sec. 439C(b)(1)) could allow time in default to be counted, and IBR credit to be applied, retroactively.

Clarify that voluntary lump sum payments count towards forgiveness

We hope that the Department will clarify and codify that up to 12 months of forgiveness can be credited for voluntary lump sum payments in any IDR plan. A November rule adopted this policy for the PSLF program in §685.219(c)(1)(iii).[39] Similar language should be included in these IDR regulations to provide guidance, reduce confusion, and more formally align PSLF and IDR policies.

Count garnishments toward forgiveness using the most generous formula (§ 685.209(k)(5))

We appreciate the proposed provision that allows borrowers in default to "enroll in IBR so that they may receive credit toward forgiveness…both for payments made through the IBR plan and any amounts collected through administrative wage garnishment, the Treasury Offset Program, or any other means of forced collection that are equivalent to what the borrower would have owed on the 10-year standard plan."[40]

If borrowers are required to enroll in IBR to access these benefits, then the Department will have access to their income information and could also count involuntary payments in increments of the borrower's IBR payment amount instead of in increments equal to the borrower's standard payment amount. This would require a change to the language in § 685.209(k)(5) to allow payments that are equivalent to a borrower's IBR payment or standard plan payment, and the Department may want to explore whether to allow smaller payments to count when they add up to one of these amounts.

Per our "Clarify that voluntary lump sum payments count towards forgiveness" recommendation above, presumably lump sum payments in IDR could be counted for up to one year, in this case using the IBR formula, as they are in PSLF. This would allow more qualifying payments to be made at once. For example, if a borrower's IBR payment was $10 and their standard payment was $50, a $100 garnishment would be 10 payments under the IBR amount but only two payments under the standard amount.

The Department should only use the standard plan amount if that avenue would allow more payments to count at once. If borrowers are only allowed to credit 12 months towards forgiveness under IBR lump sum payments, forced collections, even if above the amount a borrower would otherwise pay in a year, would only count for 12 payments. However, if a borrower's standard plan payment was $50 per month

[39] 87 FR 65904
[40] 88 FR 1894 (p.1910)

and a borrower's $3,000 tax refund was withheld, then the borrower would get credit for 60 payments instead of 12 using this formula.

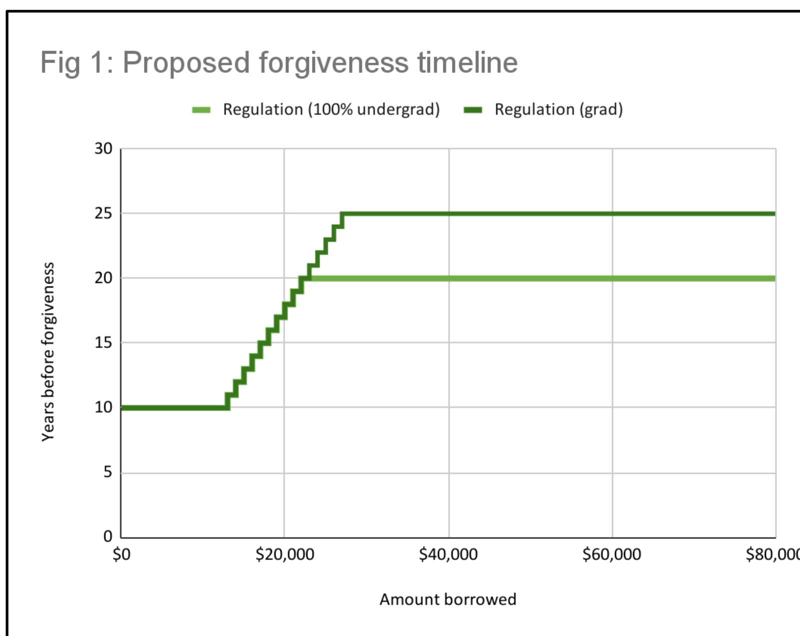
Forgiveness timeline (§685.209(k))

Automatically (re)calculate forgiveness timeliness when loans enter repayment (§685.209(k))

We suggest that the Department clarify how the forgiveness timeline is calculated for a student who begins repayment and later returns to school and takes out new loans. §685.209(k)(4)(v)(B) provides a good solution—prorating the amount of forgiveness based on the weighted average of the forgiveness acquired for each of the set of loans by the original balance.

However, we are concerned that §685.209(k)(4)(v)(B) only applies to consolidated loans. Many borrowers will take out a new set of loans without consolidating afterwards (and consolidating these loans may leave borrowers unable to use a consolidation later to, for example, exit default). The current regulations are unclear about how these borrowers' forgiveness timeline will be calculated if they do not consolidate.

We propose that language similar to §685.209(k)(4)(v)(B) be used to clarify that the repayment timeline for all borrowers with multiple cohorts of loans will be recalculated whenever they re-enter repayment, whether or not they consolidate their loans when doing so. Making the update automatic would standardize repayment timelines and is an issue of equity. Administrative hurdles—such the consolidation process—are hardest for low-income and historically disadvantaged borrowers.[41]



Calculate the forgiveness schedule in months not years

The Department's proposed early forgiveness timeline (**Figure 1**) creates cliffs around each extra $1,000 of borrowing between $12,000 and $22,000 (for undergraduate debt) or $27,000 (for graduate debt). Imagine that a student borrows $13,999. Under the proposal, this borrower would reach forgiveness after 11 years. If they borrow another dollar, they

[41] Pamela Herd Donald P. Moynihan, *Administrative Burden*, December 2018, https://www.russellsage.org/publications/administrative-burden.

must repay for an entire extra year. A borrower earning $50,000 at the start of their career would pay about $1,700 more for this extra dollar of debt.

To avoid this issue (and potential confusion among borrowers), the Department should design a formula that measures the time to forgiveness in months, not years.[42] The Department notes that a monthly schedule "would be confusing to explain to borrowers."[43] However, the Department counts time toward IDR and PSLF forgiveness in months—and has pledged to keep track of and publish borrowers' progress towards forgiveness—so borrowers are already (and will become increasingly) accustomed to thinking about forgiveness in this way. If the Department believes that it is clearer, it could continue to discuss the forgiveness timeline in terms of the dollar amount that leads to a year extra before forgiveness, even while using a more precise formula.

Adjust the forgiveness schedule for inflation

The Department asked for feedback on whether the forgiveness schedule should be indexed to inflation, or alternatively, tied to the cumulative loan limits for a second-year dependent student.[44] We think that the forgiveness thresholds should be adjusted for inflation.

Loan limits are an unsuitable anchor because they can only be raised through legislation. Unfortunately, Congress has a poor track record of increasing the limits to keep up with inflation. It has not increased the loan limits since 2008, 15 years ago, during which time the value of the loan limits decreased 22 percent. Prior to 2008, Congress had not raised rates since the 1990s.[45]

If the forgiveness timeline is tied to rarely adjusted loan limits, over time more and more undergraduates would borrow up to the student loan limits (since more students will need that amount of money to pay for rising costs of living and college). As a result, fewer and fewer students would receive forgiveness before 20 years. Students who borrow up to the limit will have to repay for 20 years even if they borrow an amount that is small in terms of purchasing power. This is unfair—borrowers who take out small loans (in terms of real value) should have short repayment periods. But, if the forgiveness schedule were anchored to loan limits, then the policy of early forgiveness would be slowly eroded.

One solution is to inflate the borrowing thresholds for forgiveness.[46] A borrower's time until forgiveness would be set only once, when entering repayment. For example, say a student acquired $20,000 in debt over three years in school. The time until forgiveness that corresponds to $20,000 in debt would be

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[42] To completely eliminate cliffs, in the last month before forgiveness, the amount due could be prorated based on the fraction of time left in the formula.

[43] 88 FR 1894 (p.1909)

[44] 88 FR 1894 (p.1909)

[45] Jason Delisle and Kristin Blagg, "Federal Undergraduate Loan Limits and Inflation What Borrowing Patterns and Evidence Reveal about Current Policy," Urban Institute, June 2022, https://www.urban.org/sites/default/files/2022-07/Federal%20Undergraduate%20Loan%20Limits%20and%20Inflation.pdf.

[46] This should include the increment of one year more of repayment for each extra amount borrowed as well as the starting amount (i.e., 10 years for $12,000 in debt).

calculated using the forgiveness timeline in effect when the student entered repayment. A given students' repayment timeline would not be recalculated again, unless the student returned to school and borrowed more.

While the concept of an inflation adjustment to the forgiveness timeline occurring once a borrower enters repayment might be confusing—especially when a student is trying to plan how much to borrow and assess how much they would repay—one solution would be for the Department to publish yearly adjustments to the forgiveness timeline ahead of time. For example, the Department could make 6-year tables of the upcoming forgiveness timeline, based on the rolling average of inflation in previous years. Each year, the Department would publish the timeline for another year, and the Department could include this information in entrance counseling, on its website, and in communications with borrowers like it does with the yearly changing interest rates for Direct Loans.

There is precedent for adjusting for inflation across the government and in the federal loan system specifically. Discretionary income for IDR plans is based on poverty guidelines, which adjust for inflation each year.[47] The calculation of payments under ICR also includes an adjustment factor for inflation.[48] Problems emerge in places where the loan system does not adjust for inflation. For instance, the amount of social security that is protected from offsets among defaulted borrowers is not indexed to inflation. As a result, the threshold no longer protects enough income to ensure social security recipients in default stay out of poverty.[49]

In addition, tying forgiveness to the loan limit thresholds would counterproductively make it *more* difficult for Congress to raise loan limits. A variety of rules and incentives makes it easier for Congress to pass legislation that has low costs according to the Congressional Budget Office. If the Departments' regulations specify that higher loan limits mean earlier forgiveness, the budgetary costs of raising the loan limits will increase.

Adjusting to inflation will ensure that the forgiveness timeline keeps pace with the real value of the debt. Unlike a loan limit adjustment, this adjustment would ensure that the forgiveness policy works well for years in the future, without relying on further action from Congress or the Department of Education.

Align the undergraduate and graduate debt forgiveness schedule

We recommend that the forgiveness timeline treat undergraduate and graduate debt in the same way. The Department should choose a forgiveness formula that reaches the maximum years of repayment at a certain level of debt, regardless of the type of loan. This would go a long way towards simplifying the repayment schedule for borrowers and for servicers. It also fits with our IDR principles of treating similar

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[47] 87 FR 3315

[48] §685.209(f)(4)(i)

[49] U.S. Government Accountability Office, "Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief," December 20, 2016, https://www.gao.gov/products/gao-17-45.

borrowers in similar ways unless there is a compelling reason to treat them differently. By choosing to reach 20 to 25 years until forgiveness at levels of debt that are unusual for undergraduate students, the Department could still ensure the average graduate student pays more and for longer than the average undergraduate.

The change would also remove another repayment cliff. Under the proposal (and some existing plans), students with only undergraduate debt have to pay for a maximum of 20 years. But if they take out any amount of graduate loan debt, they will not get forgiveness until repaying for 25 years. Imagine a student with $50,000 in undergraduate debt and a starting income of $65,000. This borrower will pay about $56,000 over 20 years. But if they took out $1,000 more of graduate debt, they would pay an extra $24,000 over five additional years. This might discourage continued education among students who need to borrow to afford college. While New America agrees with the Department that undergraduates should have access to generous borrowing terms, we do not think that loan policy should actively discourage graduate education, especially because groups like women and students of color often need more education to earn amounts similar to their male and white peers.

Tie years of repayment to higher levels of debt

There are several reasons why the maximum years of repayment should be tied to higher levels of debt than currently proposed. First, the forgiveness schedule should be generous enough to grant early forgiveness to many relatively low-balance borrowers. But under the proposed plan, only two percent of graduate borrowers would get forgiveness before 25 years. And only 30 percent of undergraduate borrowers would get forgiveness before 20 years.[50] An early forgiveness formula should allow more than a minority of students to receive earlier forgiveness.

Second, it is easier to understand and incorporate into borrowers' finances when the forgiveness timeline roughly matches with those of other (albeit underwritten) types of consumer debt. Car loans average between $30,000 and $40,000 and are typically paid over six year terms. Meanwhile, mortgages are often over $200,000 and are usually paid over 30 years. Given this, consumers could expect student loan repayment to range from five years for low debt loads to 25 years for payments approaching mortgage size.

Additionally, the forgiveness timeline should reach its maximum at a point above the amount most undergraduates borrow. This would ensure that most undergraduates pay for less than 20 years, create parity between undergraduate and graduate borrowers, and simplify the repayment schedule.

Lastly, a repayment schedule that stretches to a higher level of debt would solve a design issue with the current formula. Under the proposed formula, the plurality of undergraduates and many middle-income graduate students will have no reason to limit their borrowing above $22,000–$27,000, which is close to

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[50] 88 FR 1894 (p.1921)

the median amount borrowed for undergraduates and well below the median borrowed by graduate students.[51]

The fact that many students would not pay a cent more for more borrowing could supercharge the problem of tuition hikes and predatory recruiting. We are not suggesting that many students will take the time to model their repayment trajectories or that this is a perfect market; rather we expect that schools will figure out and adjust to students' borrowing incentives.[52] College counselors, financial aid employees, and recruitment officers will accurately advise students to not worry about accruing high amounts of debt.

Under an adjusted forgiveness timeline, some borrowers would repay less over the life of the loan compared to the proposed forgiveness schedule, potentially incentivizing additional borrowing among some students (which, as the Department notes, could help some "enroll, stay in school, and complete their degrees").[53] However, each borrower would be more price conscious, perhaps leading to restrained tuition rises and less borrowing, which could, in turn, limit costs. Tying maximum forgiveness to higher debt levels achieves the goal of ensuring low-balance and middle-balance borrowers have access to early relief while better aligning the incentives of the government and colleges.

To demonstrate this phenomenon, think about an example borrower who made $40,000 the year they entered repayment on their loans.[54] **Figure 2** shows the entire amount a student would pay, at various levels of borrowing, in terms of net present value. When this borrower takes out less than $5,500 in debt, they are able to repay the whole loan before they reach forgiveness after ten years. But since their income is only high enough to pay a maximum of $5,500 in ten years under the parameters of the proposed plan, they will repay only this amount regardless of whether they borrow $5,500 or more—up to $12,999.

Once they borrow $13,000, they trigger an extra year of repayment under the proposed forgiveness timeline. The borrower is still unable to repay their whole loan before reaching forgiveness; but now they pay more for an extra $1,000 of borrowing because they accrue an extra year of repayment. This pattern holds until the borrower accrues $22,000 of debt, at which point they pay about $13,000 over

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[51] For example, in 2016, the median master's degree completer borrowed approximately $60,000. See: Kristin Blagg, "Have Earnings for Graduate Degree Recipients Changed?," Urban Institute, November 2022, https://www.urban.org/sites/default/files/2022-11/Have%20Earnings%20for%20Graduate%20Degree%20Recipients%20Changed%3F.pdf.

[52] Alexander Holt and Jason Delisle, "Georgetown LRAP: In Their Own Words," New America, August 7, 2013, https://www.newamerica.org/education-policy/federal-education-budget-project/ed-money-watch/ georgetown-lrap-in-their-own-words/.

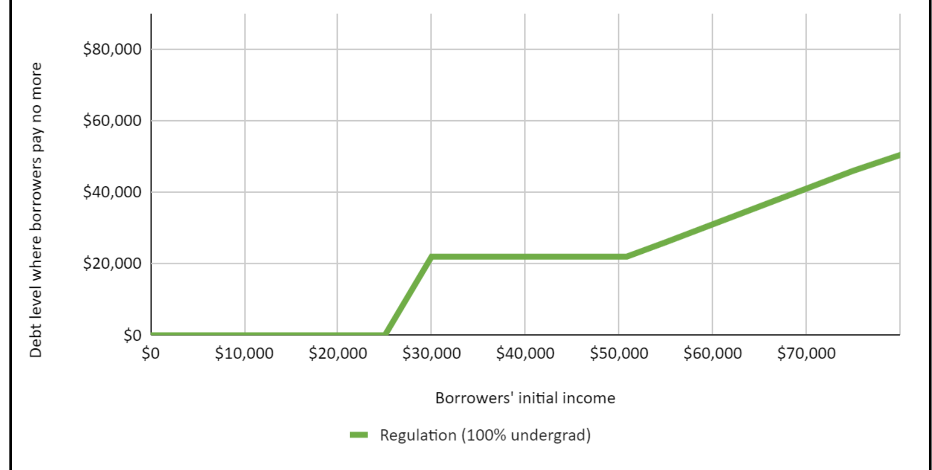
[53] 88 FR 1894 (p.1895)

[54] We made several assumptions from there, including inflating wages at four percent per year, using a four percent interest rate, inflating the poverty threshold at three percent per year, and using a three percent discount rate. These assumptions change the exact numbers—but the trends hold across various rates.

20 years. And no matter whether this borrower takes out $22,000 or more (say, $57,500—the independent undergraduate borrowing limit), they will only ever repay about $13,000.

Figure 3 shows the debt level at which the total amount a borrower repays stops going up, by the borrowers' initial income. For instance, we just saw that a borrower making $40,000 does not repay any extra for more debt once they borrow $22,000, a point that shows up on **Figure 3**.

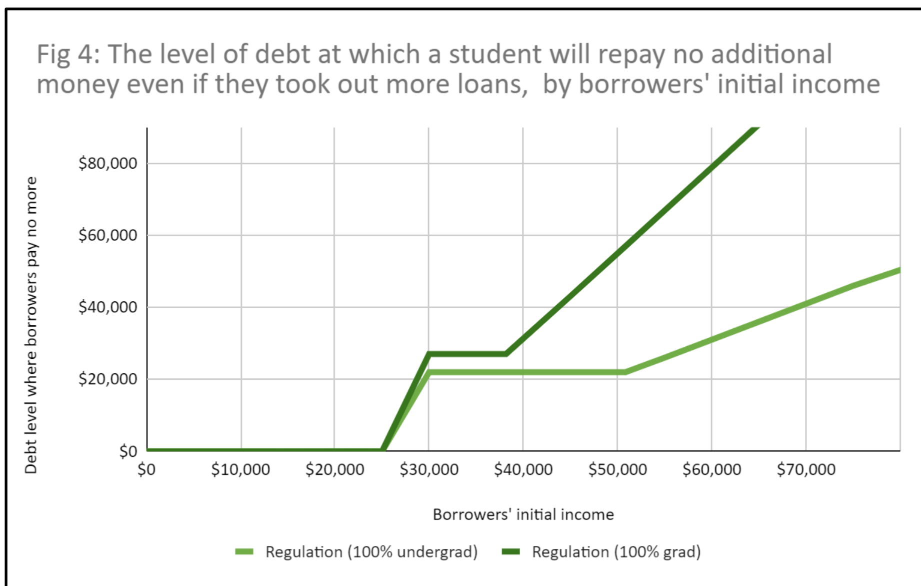
Many students expect to earn solid middle-class incomes after completing college, so the forgiveness schedule should encourage future middle-income borrowers to care about their debt loads. Yet Figure 3 shows that, under the proposed plan, an undergraduate borrower who starts her career earning between approximately $30,000 and $50,000 will pay no extra for each additional dollar of debt above $22,000. For context, 80 percent of bachelor's completers make less than $50,000 when they start their career. And 43 percent of bachelor's completers borrow more than $22,000 over their undergraduate career.[55] This means that the new IDR plan will leave a large fraction of undergraduates with no incentive to limit borrowing. Undergraduate loan limits will mitigate the problem by capping how much



[55] National Center for Education Statistics, "Baccalaureate and Beyond 2016-17," U.S. Department of Education, Institute of Education Sciences, accessed February 2023.

undergrads can borrow. This will ensure that schools do not charge unlimited tuition, but schools will still experience incentives to increase tuition up to the loan limits.

Similar problems arise for graduate loans, although the 25 years of repayment and 10 percent assessment rate raise the point at which borrowers pay no more for extra borrowing. **Figure 4** again shows that point at which borrowers do not pay any more even if they borrow more by income. The new dark line is graduate borrowers. Graduate borrowers earning above the discretionary income threshold but under $38,000 pay the same amount whether they borrow $27,000 or higher. Even borrowers who expect to make $65,000 will not repay more for debt over $91,000. This is a problem because the average debt load for graduate students is over $80,000 but can be much higher.[56] As a result, graduate schools that serve middle-class professionals, such as teachers colleges and social work schools, may be tempted to raise tuition.[57]



The Department can raise the level at which students face $0 costs for more borrowing by increasing the dollar amount that corresponds with the maximum years of repayment. For example, imagine that forgiveness occurs at 25 years for $60,000 in debt. This forgiveness schedule would ensure that any borrower with a high enough income to repay *anything* would pay more for each dollar of debt until they accumulated at least $60,000 in debt. This is graphed in the next chart, **Figure 5**, which is another version of Figures 3 and 4. The purple lines are the adjusted formula.

The solution works by extending the early forgiveness to higher debt levels. Imagine an undergraduate borrower who makes $40,000 after college. Under an updated formula, $22,000 would correspond with less than 13 years before forgiveness. If the undergraduate borrowed $10,000 more for a total of $32,000 of debt, they have to repay for almost 16 years. In these extra years, the borrower would repay

[56] National Center for Education Statistics, "Percentage of graduate degree completers with student loan debt and average cumulative amount owed," U.S. Department of Education, Institute of Education Sciences, accessed February 9, 2023, https://nces.ed.gov/programs/digest/d20/tables/dt20_332.45.asp.
[57] See, for example, Harriet Ryan and Matt Hamilton, "Online degrees made USC the world's biggest social work school. Then things went terribly wrong," *Los Angeles Times*, June 6, 2019, https://www.latimes.com/local/lanow/la-me-usc-social-work-20190606-story.html.

an extra $5,000. In contrast, under the proposed REPAYE formula, the borrower would repay $13,000 over 20 years whether they take out $22,000 or $32,000.

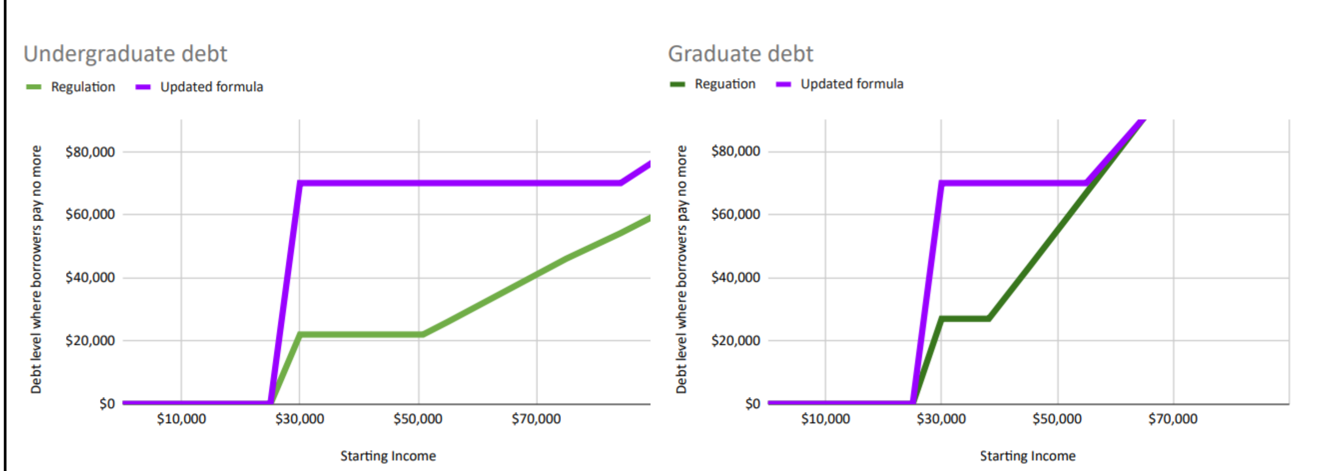


Fig 5: The level of debt at which a student will repay no additional money even if they took out more loans, by borrowers' initial income

Consider forgiveness before ten years for very low levels of debt

The Department could also consider offering earlier forgiveness for very low levels of debt. We agree with the Department about the benefits of requiring borrowers who borrow smaller amounts to repay for shorter periods of time.[58] Since low-balance borrowers tend to be lower income, forgiving low-balances before ten years is progressive.

Starting forgiveness before ten years could also remove the discontinuity seen in the current forgiveness schedule such that the formula could be linear before reaching 25 years of forgiveness. This would fix the problem of some borrowers not repaying any more for more borrowing until they hit $13,000 in debt (described above).

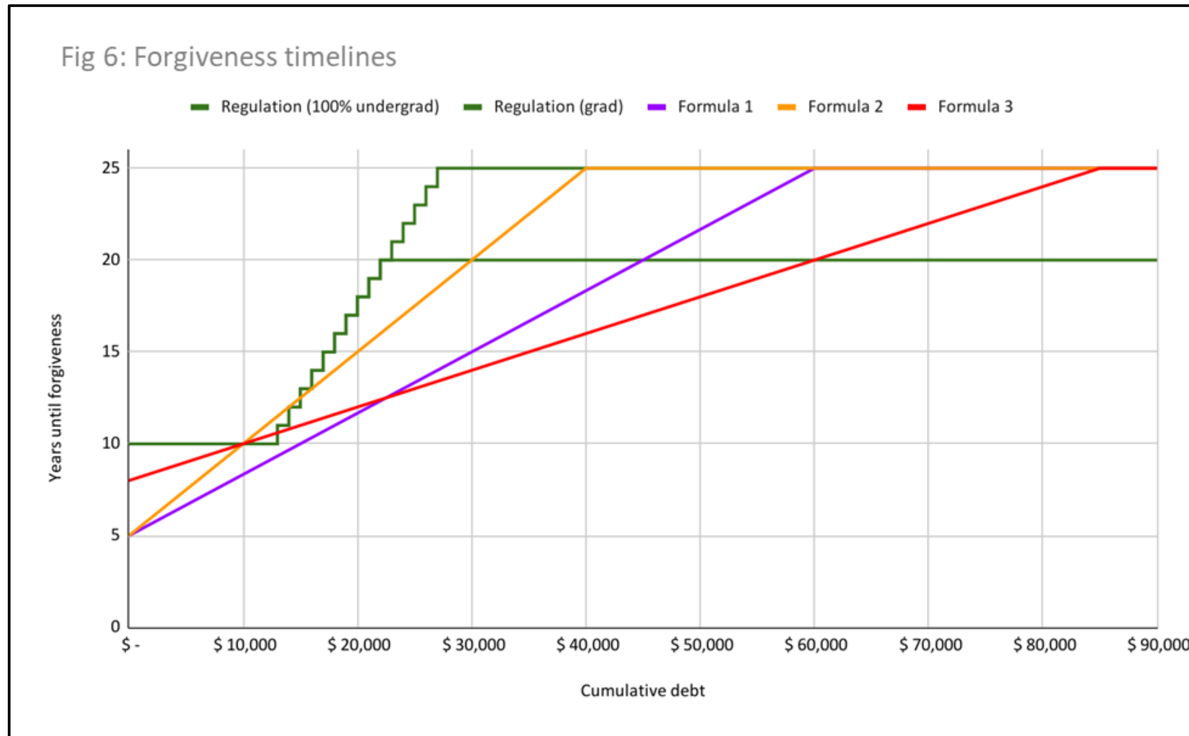
Putting it all together: Choosing a forgiveness schedule

Many forgiveness formulas could adhere to all of our suggestions: using a smooth month-based formula, adjusting for inflation, treating undergraduate and graduate debt in the same way, reaching 25 years of forgiveness at higher levels of debt, and offering forgiveness before ten years for low levels of debt. With three examples (see **Figure 6** and **Table 1**), we show how the Department could ensure certain students reach repayment at certain times by designing timelines to cross points of interest.

Our first proposed timeline, Formula 1, reaches forgiveness at the minimum of 25 years or [*total debt * 1/3,000 + 5*]. Under this schedule (plotted in purple above), a borrower with almost no debt would receive forgiveness after five years. Each $3,000 extra in debt would lead to an extra year of repayment, until the forgiveness timeline reached 25 years at $60,000 of debt. A borrower with $15,000 in student

[58] 88 FR 1894 (p.1909)

loans would receive forgiveness at 10 years, $30,000 at 15 years, and $45,000 at 20 years. This formula is calibrated to the debt levels of undergraduate students—a dependent undergraduate would not pay much more than 16 years and an independent undergraduate would not pay much more than 24 years—while still reaching a level of debt that affects some graduate students.



Formula 2 (plotted in orange) would make the years until forgiveness the minimum of 25 years or [*total debt * 1/2,000 + 5*]. Repayment would begin at five years and increase an extra year for each $2,000 in debt. A borrower with $10,000 in cumulative debt would repay for 10 years and the median borrower—who takes out around $20,000—would repay for 15 years.[59] 25 years would be reached at $40,000 in debt, making this a less progressive and less costly than Formula 1.

The years until forgiveness in Formula 3 (plotted in red) would be the minimum of 25 years or [*total debt * 1/5,000 + 8*]. Repayment would start at eight years and increase by a year for each $5,000 before reaching 25 years at $85,000 in debt. This formula crosses 10 years at $10,000 and 20 years at $60,000. It would ensure that no undergraduate pays for longer than under the proposed REPAYE plan. By reaching forgiveness at a higher debt level, it would raise the point at which graduate students pay no more for extra borrowing. With the exception of low levels of debt, it is more progressive and likely more expensive than Formula 1.[60]

[59] Alyssa Fowers and Danielle Douglas-Gabriel, "Who has student loan debt in America?," *Washington Post*, August 24, 2022, https://www.washingtonpost.com/education/2022/05/22/student-loan-borrowers/.

[60] *Inflation adjustments:* Any forgiveness formula could be easily adjusted for inflation by inflating the point at which borrowers reach 25 years of repayment. By rounding that inflated amount to a multiple of 25 minus the y-intercept times 100, the

Table 1: Level of debt that corresponds to certain years until forgiveness

Years until forgiveness	Regulation	Formula 1	Formula 2	Formula 3
5	N/A	$0	$0	N/A
10	$12,000	$15,000	$10,000	$10,000
15	$17,000	$30,000	$20,000	$35,000
20	$22,000	$45,000	$30,000	$60,000
25	$27,000	$60,000	$40,000	$85,000

IDR Enrollment and Recertification (§685.209(l), (b), (m))

Obtain consent from borrowers to share their information in more places (§685.209(l)(2))

Auto enrollment of delinquent borrowers into an IDR plan requires consent for data sharing from the borrower far before the point of delinquency, and indeed, §685.209(l)(2) indicates that this is possible "as part of the process of completing a Direct Loan Master Promissory Note or a Direct Consolidation Loan Application and Promissory Note." And §685.209(l)(3) indicates that the borrower can also provide consent on the IDR application. The Department must ensure that borrowers also have the ability to provide consent for data sharing on applications for other programs offered by the Department, through the borrower's online accounts with their servicer and the Department, in writing to the Department or servicers, and at other times when they engage with the Department and its contractors.

This early consent would also allow the Department and its contractors to tell borrowers what they *would* owe on an IDR plan if they were to enroll, a powerful tool[61] that the Department must use as it implements the provisions of the FUTURE Act.[62] This law facilitates the secure sharing of relevant data between the Internal Revenue Service (IRS) and the Department of Education to allow borrowers to more automatically enroll and reenroll in IDR plans.

Department could ensure that the increment for each extra year of repayment is divisible by 100. The updated forgiveness schedule would then be determined by finding the slope between two points: this inflated value and 25 years and $0 and the y-intercept.

Returning to school: The forgiveness timeline of a borrower who goes back to school should be the formula in §685.209(k)(4)(v)(B) adjusted for inflation, and the Department and its contractors should automatically: (1) calculate the borrower's cumulative outstanding principal balance (in current dollars) to find the maximum time until forgiveness under the current forgiveness timeline, (2) calculate the amount of forgiveness already accrued, and (3) subtract the amount of forgiveness accrued from the maximum years of repayment. While this may seem complicated, these formulas are preferable to creating inequitable forgiveness timelines for borrowers who return to school.

[61] Sattelmeyer, "The Department of Education can Protect Borrowers;" Lesley Turner, "The Importance of "Choice Architecture" for Student Loan Repayment Decisions & Outcomes," Postsecondary Equity & Economics Research Project, 2021, https://www.peerresearchproject.org/peer/research/body/Turner-Paper-Choice-Architecture.pdf; and James C. Cox, Daniel Kreisman, and Susan Dynarski, "Designed to fail: Effects of the default option and information complexity on student loan repayment," *Journal of Public Economics*, Volume 192, December 2020, https://www.sciencedirect.com/science/article/abs/pii/S0047272720301626.

[62] Public Law 116–91.

In addition, the Department must ensure there are easy, early, and multiple ways to gain consent from a borrower's spouse if they choose to file their taxes jointly. The Department must also ensure that it only needs to get spousal consent one time (unless the borrower's marital or tax filing status changes).

Streamline the IRS's and the Department's definitions of family size (§685.209(b))

The IRS (for filing taxes) and Department of Education (for calculating an IDR payment amount) have slightly different definitions of household size.[63] The Department should use the IRS definition of household size in order to avoid having to confirm borrowers' family sizes each time a borrower must begin or recertify IDR enrollment.

According to the proposal, "when the Department has the borrower's approval, it will rely on tax data to provide a borrower with a monthly payment amount and offer the borrower an opportunity to request a different payment amount if it is not reflective of the borrower's current income or family size." Borrowers should be permitted to request a different payment amount if using the Department's definition is more beneficial. (If the Department's definition of household size would be more beneficial for a large percentage of borrowers, the Department may wish to consider applying a multiplier to the IRS household size or some other mechanism to ensure the process can be automated without disadvantaging many borrowers.)

Extend automatic IDR enrollment to other points in repayment (§685.209(m))

There are other points in the repayment process where borrowers would also benefit from automatic enrollment in an income-driven repayment plan. We urge the Department to include a provision allowing eligible borrowers who default (and who have given consent) to be automatically enrolled in an IBR plan. This would involve a language change to §685.209(m)(3) to allow automatic enrollment for more borrowers than those who are "in repayment."

Borrowers exiting default should also be automatically enrolled in the IDR plan with the lowest payment. Previous research shows that too few borrowers who exit default are placed in IDR plans, leading to redefaults. For example, the Consumer Financial Protection Bureau found that borrowers who leave default and enroll in an IDR plan are five times less likely to redefault over the next three years.[64]

While the proposed regulations would allow Parent PLUS borrowers with consolidated loans who have given consent for data sharing to be auto enrolled in an ICR plan if they miss 75 days' worth of payments, these borrowers should also be automatically enrolled in ICR plans during transition periods whenever possible. For instance, a PLUS borrower in default should be auto enrolled in ICR if their monthly payment is lower. And Parent PLUS borrowers exiting default should also be auto enrolled in ICR. (In these comments, we advocate for Parent PLUS borrowers to have access to ICR in default.)

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[63] Internal Revenue Service, "Publication 501 (2022), Dependents, Standard Deduction, and Filing Information," U.S. Treasury Department, accessed February 9, 2023, https://www.irs.gov/publications/p501 and 88 FR 1894.

[64] Consumer Financial Protection Bureau, "Update from the CFPB Student Loan Ombudsman: Transitioning from default to an income-driven repayment plan," May 16, 2017, https://files.consumerfinance.gov/f/documents/201705_cfpb_Update-from-Student-Loan-Ombudsman-on-Redefaults.pdf.

The regulations should require additional outreach at these same transition points (delinquency, default, and exiting default) to Parent PLUS borrowers with loans that have not been consolidated (i.e., Parent PLUS borrowers without access to ICR plans). This outreach should explain the benefits of consolidating and entering an ICR plan.

This falls within the Department's current authority under the FUTURE Act. For example, Sec. 3(a) indicates that "the Secretary shall, upon written request from the Secretary of Education, disclose to any authorized person, only for the purpose of (and to the extent necessary in) determining eligibility for, or repayment obligations under, income-contingent or income-based repayment plans."[65] Per its proposal, the Department can use its authority to determine borrowers' eligibility for and enroll them into IDR plans when they are at least 75 days behind on their loans. The Department could also use this authority to automatically enroll borrowers into IDR plans once they enter default and into IDR plans as they exit default, assuming borrowers are eligible for those plans.

Display progress towards IDR forgiveness (§685.209(l)(12))

Section 685.209(l)(12) of the proposed regulations indicates that "the Secretary tracks a borrower's progress toward eligibility for forgiveness under paragraph (k) of this section." The regulations should require that progress towards forgiveness not only be tracked but also be displayed to the borrower, via an online portal or other mechanism, an initiative already underway at the Department.[66]

Protect progress towards forgiveness for those who fail to recertify (§685.209(l)(10)(iii), (k))

While we appreciate that the proposed provision for REPAYE borrowers who fail to recertify—and are thus put into an alternative plan—is simpler than the current rule, we are worried about the provision preventing borrowers from accruing more than 12 months of forgiveness in an alternative plan. The alternative plan was meant to be generous—by offering a lower monthly plan than a standard plan and providing a bit of a safety net for borrowers who do not recertify for REPAYE—but it may end up harming vulnerable borrowers by limiting their progress towards forgiveness. We are worried that some borrowers may spend years in the alternative plan without realizing that they are not working towards forgiveness.

We urge the Department to consider putting borrowers who fail to recertify back into the standard plan so that borrowers can always accrue credit towards forgiveness. This will simplify the repayment options for borrowers, making it clear that the way to get a lower payment is by sharing tax and family data to enroll in an IDR plan. It would also be easier for servicers to implement and better align the terms of PSLF and IDR. (PSLF regulations do not count any time—not even 12 months—in an alternative plan towards forgiveness under §685.219(b)(iii).[67])

[65] Public Law 116–91.
[66] Office of Federal Student Aid, "Income-Driven Repayment Account Adjustment."
[67] 87 FR 41878

Defaulted Loans

Permit ICR enrollment for Parent PLUS loans in default (§685.209 (d)(3))

As noted above, we agree that the IBR plan is a better choice for those in default than the ICR plan, given the ability to accrue time toward forgiveness. But this provision leaves out Parent PLUS borrowers who, if they consolidate, only have access to the ICR plan. Thus, we encourage the Department to allow Parent PLUS borrowers with consolidated loans to access ICR plans in default. While this option might not always give borrowers a lower payment in default, and it would not count toward forgiveness, it could provide more affordable payments for some borrowers, and it could be an important provision to have in place if the Department is (or becomes) able to only charge borrowers the amount equivalent to an IDR payment in default.

Other safeguards for defaulted borrowers

We have proposed a variety of important ways to help defaulted borrowers: ensuring defaulted borrowers can access IBR even if they have made 10 years of qualifying payments in REPAYE, lowering the IBR payment in default, preventing the accrual of unpaid interest in default, automating IDR enrollment when borrowers enter and exit default, retrospectively counting periods in default towards forgiveness, and offering ICR for Parent PLUS borrowers with consolidated loans in default. While perhaps outside of the scope of the Department's proposal, in addition to the suggestions made in these comments, ultimately policymakers should explore ways to:

- Ensure borrowers never pay more in default than they would in repayment, including under an IDR plan. This could include eliminating forced collection activity for those making payments on an IDR plan. It would also ensure forced collection could be no higher than an IDR payment. (In the proposed rule, it is unclear how enrollment in an IBR plan when a borrower defaults would affect involuntary collections. We encourage the Department to explore whether this recommendation could be implemented via the proposed regulations.)
- Establish a fast, flexible pathway out of default that borrowers can use multiple times.
- Expand access to and automatic uptake of forgiveness and discharge programs and provide additional loan discharges for those spending lengthy periods in default or repayment or who remain eligible for means-tested government benefits over time.
- Remove defaults from the credit history of any borrower who exits default, not just those who rehabilitate their loans.
- Create a statute of limitations on collections.
- Reduce or eliminate collection fees.

Initial plan selection (§685.210(a))

Provide more information during the initial plan selection

We recommend that §685.210(a)(1) be updated to specify the information that must be conveyed about IDR plans, including the forgiveness timelines, an area the U.S. Government Accountability Office recently flagged for improvement.[68]

[68] U.S. Government Accountability Office, "Education Needs to Take Steps to Ensure Eligible Loans Receive Income-Driven Repayment Forgiveness," April 20, 2022, https://www.gao.gov/products/gao-22-103720.