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February 10, 2023

The Honorable Miguel Cardona
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Richard Blasen
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Docket ID ED-2023-OPE-0004

Dear Secretary Cardona and Mr. Blasen,

We, the undersigned Attorneys General of Massachusetts, California, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin write to share our views on the U.S. Department of Education's ("ED") proposed rulemaking regarding income-driven repayment ("IDR"). We commend ED for proposing meaningful improvements to IDR that have the potential to provide critical support to struggling borrowers. At the same time, we believe these regulations can and should go further. Accordingly, as described in detail below, we call on ED to adopt additional regulatory improvements to maximize the potential of IDR as an affordable and equitable avenue for student loan repayment and forgiveness.

Federal student loans were designed to increase educational access and equity by permitting any interested student to pursue higher education, regardless of their financial circumstances.[1] In practice, however, borrowers across the country—particularly lower-income

[1] *See, e.g.*, Lyndon B. Johnson, Remarks Upon Signing the Higher Education Act of 1965 (Nov. 8, 1965) (discussing goal of preventing any student from being "turned away" from a college or university "because his family is poor"), https://tinyurl.com/3wmv8cct.

borrowers and borrowers of color—have struggled under the burden of insurmountable student loan debt.[2] IDR plans, first introduced in the 1990s, aim to ensure that borrowers' monthly payments are affordable and that borrowers are not saddled with burdensome debt in perpetuity. Nonetheless, despite the importance of these goals, IDR has failed to live up to its promise.

The current IDR regime is rife with unnecessary complexity and has been gravely mismanaged by ED's student loan servicers. Borrowers have difficulty choosing between IDR plans and other payment-relief options, face administrative hurdles when enrolling in IDR, and once enrolled, struggle to complete their annual recertification successfully.[3] The needless complexity of IDR has been compounded by years of misconduct by federal student loan servicers and failed Departmental oversight of these companies.[4]

Recognizing the importance of IDR, State Attorneys General have spent considerable time investigating and seeking to address mismanagement of these plans by student loan servicers. Among other efforts, States have brought enforcement actions against two of ED's prior student loan servicers, alleging that these servicers mishandled the IDR program to the detriment of borrowers.[5] Following an extensive multistate investigation and multiple lawsuits, Navient —formerly the largest servicer of federal student loans—entered a $1.85 billion settlement with 39 states to resolve allegations including that it steered struggling borrowers into forbearance rather than IDR.[6]

Beyond these implementation failures, current IDR plans are flawed in their design. Many borrowers still struggle to afford their monthly payments under IDR. The existing income thresholds designed to protect borrowers' ability to pay for necessities often fail to cover their actual cost of living. Additionally, IDR borrowers with $0, or very low, monthly payments face ever-growing loan balances and the prospect of devastating interest capitalization, due to ED's current policy of allowing unpaid interest to accrue.[7]

As a result, many borrowers who could benefit from IDR instead end up trapped in a cycle of spiraling debt, relying on forbearances and staying in extended or graduated repayment plans with worse terms. Such borrowers regularly miss payments, compounding the total cost of

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[2] *See, e.g.,* West et al, *Student Loan Borrowers With Certain Demographic Characteristics More Likely to Experience Default*, Pew (Jan. 24, 2023), https://tinyurl.com/ycyhbzta (finding higher rates of default among Black and Latino borrowers, older borrowers, borrowers with disabilities, and female borrowers).

[3] 88 Fed. Reg. 1894, 1911 (noting that, per ED data, under half of borrowers recertify on time)

[4] Press Release, U.S. Dep't of Education, *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 19, 2022), https://tinyurl.com/3fuvhr4c.

[5] *See, e.g.*, *Commonwealth of Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784-cv-02682-BLS2 (Mass. Super. Ct. filed Aug. 23, 2017); *Commonwealth of Pennsylvania v. Navient Corp.*, No. 17-1814, (M.D. Pa. filed Oct. 5, 2017); *People of the State of California v. Navient Corp.*, No. CGC-18-567732, 2018 WL 3199474 (Cal. Super. Ct. filed June 29, 2018); *People of the State of New York v. Pa. Higher Educ. Assistance Agency*, No. 1:19-cv-09155, 2019 WL 5095707 (S.D.N.Y. filed Oct. 3, 2019).

[6] Navient Multi-State Settlement, *39 State Attorneys General Announce $1.85 Billion Settlement with Student Loan Servicer Navient* (updated Jun. 22, 2022), https://navientagsettlement.com/Home/portalid/0.

[7] The Department recently finalized a rule designed to end the practice of interest capitalization in most circumstances, *Affordability and Student Loans Final Rule*, 87 Fed. Reg. 65,904 (Nov. 1, 2022). This rule does not prevent borrowers in Income-Based Repayment ("IBR") from being subjected to interest capitalization in certain circumstances.

their loans and sometimes resulting in preventable default. Even borrowers who have successfully enrolled in IDR plans face delinquency and default due to the challenges of recertifying their income annually.[8] Additionally, a recent CFPB analysis revealed that "a large share of borrowers continue to struggle while on an IDR plan, and many move in and out of forbearance."[9]

State Attorneys General have been calling on ED to reform IDR for years, and we commend ED for undertaking its present regulatory efforts. ED's proposals will improve IDR affordability, reduce disincentives to IDR enrollment, and help prevent needless defaults. In particular, we applaud ED's proposals to raise the discretionary income threshold, prevent negative amortization, facilitate automatic IDR enrollment for delinquent borrowers, and count certain periods of forbearance towards IDR forgiveness.

However, we call on ED to adopt additional measures to better serve struggling borrowers and ensure the success of the IDR program. In particular, we ask that ED create a simple path for borrowers in default to enroll in Income-Based Repayment ("IBR") or REPAYE, count all past forbearance and repayment periods and certain deferment periods towards loan forgiveness, and make consolidated Parent PLUS loans eligible for REPAYE.

Additionally, we generally encourage ED to expand the reach of its proposals and provide more retroactive relief to borrowers who have suffered from the historical mismanagement and needless complexity of existing IDR plans. The problems that have plagued the student loan system have had significant, and in many cases, catastrophic consequences for borrowers who have struggled to navigate IDR and stay current on their student loans. While we are hopeful that ED's current regulatory initiatives will help prevent the widespread challenges that have burdened borrowers for years, more needs to be done to address the harms already caused to borrowers. For example, ED should seize the opportunity to eliminate arbitrary deadlines for relief and to retroactively count all past forbearances, certain deferments, and past payments toward loan forgiveness in recognition of the widespread servicing errors that impeded many borrowers from enrolling in IDR.

ED has recently undertaken several key initiatives to provide significant relief to borrowers—including the One-Time IDR Adjustment, the Limited PSLF Waiver, and Fresh Start. But these efforts will not fully address the harms caused to borrowers who ended up in preventable defaults or ill-advised forbearances as a result of poor loan servicing. Likewise, remedial efforts that require borrowers to take actions by a specific deadline to obtain relief will necessarily fail to reach all entitled borrowers. Placing such deadlines on borrowers—particularly FFELP borrowers—is both unnecessary and inappropriate. We ask that ED use the opportunity presented by this rulemaking to comprehensively address past IDR failures as it sets the stage for a more equitable and effective IDR framework going forward.

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[8] Thomas Conkling & Christa Gibbs, *Data Point: Borrower Experiences on Income-Driven Repayment*, Consumer Financial Protection Bureau (Nov. 2019), https://tinyurl.com/2xkspvta, at p. 6 (finding that, among borrowers who did not recertify, 25% were in forbearance and 7% were delinquent six months after recertification date).

[9] *Id.* at p. 5.

1. **Raising the Discretionary Income Threshold Will Make Debt More Manageable for Borrowers with the Greatest Need**

It is essential that IDR plans adequately protect the income that borrowers rely on to care for themselves and their families. Absent such protections, IDR will not achieve the goals of keeping struggling borrowers out of delinquency and default and minimizing the use of forbearance and deferment. The current IDR income-exemption threshold of 150 percent of the federal poverty guideline has been woefully inadequate. In practice, this threshold protects only $21,870 annually for a single borrower or $45,000 for a family of four[10]—barely enough to cover rent in many parts of the country.[11] Over the past decade, the cost of necessities such as housing, food, and healthcare have risen dramatically and outpaced lower- and middle-class wage growth, rendering ED's existing income thresholds increasingly insufficient.[12]

We are heartened by ED's recognition that the amount of protected income must be raised in order to allow borrowers to remain in repayment while affording their basic living expenses. ED's proposal to increase the amount of income exempted in the REPAYE plan from 150 percent to 225 percent of the applicable poverty guideline will materially improve the lives of those borrowers struggling the most. Efforts to model the effects of increasing the discretionary income threshold have demonstrated that "changing the threshold of protected income had the most pronounced effect on the monthly payment amounts of low- and moderate-income borrowers over the course of their repayment term."[13] In addition to making all monthly payments under REPAYE more affordable, this proposal will enable more low-income borrowers to qualify for $0 payments, will help prevent defaults, and will protect vulnerable borrowers from the severe economic consequences that follow default.

We commend ED for proposing this critical change and ask that it implement policies to periodically reassess whether the 225% threshold protects enough income for basic living expenses.

2. **Proposed Accrued Interest Treatment Will Eliminate Disincentive to IDR Enrollment**

We also support ED's proposal to eliminate the harmful and counterproductive policy of reverse amortization of IDR loan balances. This reform is necessary to ensure that IDR plans intended to help lower-income borrowers afford their student loan debt do not ultimately result in greater financial burdens for borrowers.

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[10] U.S. Dep't of Health & Human Services, *2023 Poverty Guidelines: 48 Contiguous States*, https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf.
[11] *See, e.g., Zumper National Rent Report* (January 30, 2023), https://www.zumper.com/blog/rental-price-data/ (reporting median asking rent of $1,492 nationwide for a one-bedroom rental,).
[12] *See, e.g.*, Lawrence Mishel, et al., *Wage Stagnation in Three Charts*, Econ. Policy Inst. (Jan. 2015) https://www.epi.org/publication/charting-wage-stagnation/.
[13] The Institute on College Access and Success, *How Reforming Income-Driven Repayment Can Reduce the Burden of Student Debt* (April 2022), https://ticas.org/wp-content/uploads/2022/04/How-Reforming-Income-Driven-Repayment-Can-Reduce-the-Burden-of-Student-Debt.pdf.

Under existing IDR plans, lower-income borrowers whose required monthly payment amounts do not cover all of their accrued interest face rapidly growing loan balances. ED estimates that 70% of borrowers on IDR have experienced loan balance growth while enrolled in these plans.[14] Such borrowers face the risk of repaying more than their original balance, even in the absence of interest capitalization.[15] This risk is particularly salient for those borrowers who spend some period of time making payments under IDR but who do not ultimately reach loan forgiveness. For those borrowers who do experience debt forgiveness under IDR, ballooning balances may result in considerably higher tax bills.[16]

Several studies have found that negative amortization significantly deters IDR enrollment and recertification.[17] It may also increase the risk of default.[18] For many borrowers, the short-term significance of ballooning debt may be more concrete than the prospect of possible loan forgiveness years or decades down the line. Moreover, negative amortization may have significant near-term consequences in borrowers' lives by increasing their debt burden, thereby harming their credit profile, which in turn may limit their access to affordable lines of credit, affect their ability to pay for housing, and constrain their employment options.[19]

Addressing the short-term costs of student debt while simultaneously allowing overall debt loads to grow is unequivocally counterproductive and contrary to the stated goals of IDR. Participation in IDR should never increase borrowers' debt burden. For these reasons, ED's proposal to end negative amortization is a critical component of its IDR overhaul. Indeed, in the absence of this proposed change, many more borrowers on IDR would see their student loan balances grow as a direct result of the lower monthly payment obligations proposed by ED in this Notice of Proposed Rulemaking ("NPRM").

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[14] Prior to the Department's recent rulemaking regarding interest capitalization, such interest accrual often resulted in catastrophic interest capitalization for borrowers who defaulted on their loans, changed IDR plans, consolidated their loans, or failed to recertify for IDR. *Affordability and Student Loans Final Rule*, 87 Fed. Reg. 65,904 (Nov. 1, 2022).

[15] 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/.

[16] While Congress included a provision in the American Rescue Plan Act of 2021 guaranteeing that any student loan discharges effectuated by the Secretary between 2021 and 2025 will be tax-free, for those borrowers reaching IDR forgiveness after 2025, loan discharges will still constitute taxable events. Pub. L. No. 117-2, § 9675, 135 Stat. 4, 185-86 (Mar. 11, 2021).

[17] *See, e.g.*, Pew Charitable Trusts, *Borrowers Discuss the Challenges of Student Loan Repayment* (May 2020), https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf; Mark Huelsman, *Driving Runaway Debt: How IDR's Current Design Buries Borrowers Under Billions of Dollars in Unaffordable Interest*, Student Borrower Protection Center (Sept. 2021), https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf.

[18] The Institute for College Access and Success, *Make It Simple, Keep It Fair: A Proposal to Streamline and Improve Income-Driven Repayment of Federal Student Loans* (May 2017), https://ticas.org/wp-content/uploads/legacy-files/pub_files/make_it_simple_keep_it_fair.pdf.

[19] *See* Mark Huelsman, *Driving Runaway Debt: How IDR's Current Design Buries Borrowers Under Billions of Dollars in Unaffordable Interest*, Student Borrower Protection Center (Sept. 2021), https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf.

3. Shorter Terms to Forgiveness Should Be Considered

We ask that ED consider shortening the period in which borrowers must make payments to receive forgiveness under REPAYE. While ED has made allowances for borrowers with low loan balances, most borrowers making payments under REPAYE will continue to face lengthy 20- to 25-year terms. As ED acknowledged in its NPRM—and as our offices have experienced firsthand—some borrowers are disinclined to enroll in IDR because they perceive it as guaranteeing decades of student loan debt. Further, since borrowers are often unable to anticipate how their income will change over the course of decades, it is difficult for them to evaluate how much their monthly payments could change in the future or how IDR enrollment will ultimately affect their total loan costs.

We are also concerned that the differing forgiveness terms for graduate borrowers under REPAYE and PAYE may ensnare uninformed borrowers in an extra five years of payments. Specifically, under PAYE, graduate school borrowers can receive forgiveness after 20 years of qualifying payments, whereas in REPAYE, these same borrowers must make 25 years of qualifying payments. ED's proposed regulations eliminate access to PAYE for borrowers who are not enrolled in it as of the regulation's effective date. Creating arbitrary deadlines that dramatically affect how long federal loan borrowers must repay their loans results in different outcomes for similarly situated borrowers. It also introduces unmanageable complexity for borrowers by forcing them to choose between paying for a longer term versus paying a lower amount.

We urge the Department to reconsider the terms to forgiveness, with an eye towards shortening forgiveness periods, reducing complexity, and eliminating inequitable outcomes.

4. IDR Is a Critical Tool for Preventing Default and Minimizing its Harm

For IDR to truly be effective, the program must provide a viable repayment option for borrowers at the greatest risk of default. Indeed, a major weakness of the existing IDR framework has been its failure to prevent default for many struggling borrowers. We therefore applaud ED's efforts to expand access to IDR for delinquent borrowers. We simultaneously call on ED to do more to ensure that borrowers who default are able to fully participate in IDR.

The consequences of default for student loan borrowers can be devastating. Borrowers in default, or with past periods of default, are among the most vulnerable borrowers: they are particularly likely to come from an economically disadvantaged background, to have attended a predatory for-profit school, and to have left their program without completing a degree.[20] Defaulting on federal student loans causes borrowers' credit scores to crater and remain depressed for years, with long-lasting consequences that tend to compound. Defaulted borrowers are more likely to face housing and employment insecurity due to their low credit scores and

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[20] *See* Jennie H. Woo et al., *Repayment of Student Loans as of 2015 Among 1996–96 and 2003–04 First-Time Beginning Students*, Nat'l Cntr. for Educ. Stats. (2017) https://nces.ed.gov/pubs2018/2018410.pdf.

may also be unable to obtain a car loan, set up utilities, purchase insurance, or secure an affordable line of credit for emergency expenditures.[21]

Defaulting on student loans may also block borrowers from access to critical anti-poverty programs. Borrowers in default face the seizure of payments they would have otherwise received under programs such as the Earned Income Tax Credit and the Child Tax Credit.[22] These programs are designed to safeguard families, and children in particular, from extreme poverty. But these benefits—received as a tax refund—are unavailable to defaulted borrowers facing offsets by the Department of the Treasury.[23] Older borrowers in default similarly face withholding of a portion of their Social Security retirement benefits, often their sole source of income.[24] The cumulative impact of losing these benefits leaves defaulted borrowers less able to afford necessities, more likely to face housing insecurity and job loss, and less able to care for dependent family members. In light of these substantial harms, we commend ED's goal of preventing default, and we urge ED to consider additional reforms.

a. Automatic Enrollment of Delinquent Borrowers Is Necessary to Prevent Default

Under proposed § 685.209, subsection (m)(3), borrowers who are at least 75 days delinquent on their loan payments will be automatically enrolled in the IDR plan for which they are eligible that results in the lowest monthly payments. In proposing this change, ED correctly acknowledged that "far too often borrowers end up in default on a student loan when they would have had a low or even a $0 payment on an IDR plan."[25] In our efforts to assist borrowers struggling under the burden of student loan debt, we have repeatedly seen borrowers who are eligible for IDR but did not enroll due to misinformation from their loan servicers, errors made by such servicers, and difficulty navigating the extraordinarily complex repayment system that presently exists. As a result, borrowers who would otherwise be eligible for affordable payments or $0 payments under IDR instead may be pushed to default.

ED's proposal to automatically enroll delinquent borrowers in IDR plans *before* they face negative credit reporting and default is critical to ensuring that the borrowers most in need of assistance have access to the program and avoid these devastating outcomes. However, the success of ED's proposal will be limited if ED fails to facilitate and streamline automatic enrollment to the fullest extent possible. ED is presently proposing to make automatic enrollment available only to those delinquent borrowers who have "provided approval for the IRS to share

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[21] *See, e.g.,* Diana Elliott & Ricki Granetz Lowitz. *What Is the Cost of Poor Credit?*, Urban Institute (2018), https://tinyurl.com/yujt5k96; Michelle Conlin, *Student Loan Borrowers, Herded into Defaults, Face a Relentless Collector: the US*, Reuters (July 25, 2017) https://tinyurl.com/bddjmvnp.

[22] U.S. Dep't of the Treasury, *What is the Treasury Offset Program?*, Bureau of the Fiscal Service, https://fiscal.treasury.gov/top/how-top-works.html.

[23] *See* 26 U.S.C. § 6402(d) (collection of debts owed to federal agencies through tax refund offsets); 31 U.S.C. § 3720A (reduction of tax refunds by the amount of debt owed); 31 C.F.R. 285.2 (implementing such offsets); *see also* National Consumer Law Center *et al.*, *Group Letter to Secretary Yellen Regarding CTC and EITC Protection from Offset* (Feb. 17, 2022), https://tinyurl.com/2dk9dw86.

[24] 31 U.S.C. § 3716 (administrative offsets of federal benefits payment to collect debts owed to federal government); *see also* AARP, *Student Loan Debt Can Sink Your Retirement Plan* (Sept. 18, 2018), https://tinyurl.com/5334w9nv.

[25] 88 Fed. Reg. 1894, 1910.

their tax information with the Secretary."[26] The 2019 Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), (Pub. L. 116–91) was designed to facilitate such information-sharing in order to streamline IDR enrollment and retention. To date, implementation of the FUTURE Act remains a work in progress. We strongly urge ED to prioritize full implementation of this law in a manner that maximizes the number of borrowers who can be automatically enrolled in IDR to prevent default.

b. ED Should Ensure that Defaulted Borrowers Have a Simple Path to REPAYE

While we are optimistic that ED's proposed IDR overhaul will substantially reduce defaults, it is inevitable that some borrowers—albeit a smaller number—will still fall into default. More must be done to ensure that borrowers who do default have a path to *full* IDR participation. ED's IDR regulations and default regulations are intrinsically linked, and accordingly, ED's goal of facilitating student loan repayment and reducing borrower default through improvements to IDR will only be accomplished if ED simultaneously reforms its archaic and counterproductive approach to defaulted loans.

Under ED's existing default regime, struggling borrowers are subjected to a system of punitive fines and draconian involuntary collection methods. As noted above, for those borrowers with the greatest need, these methods include the seizure of federal benefits intended to pull children out of poverty. Borrowers trying to get out of default often struggle to do so through the available avenues, including loan consolidation and rehabilitation. And if they are unsuccessful, defaulted borrowers lose the opportunity to get their loans back on track. These policies trap struggling borrowers in a devastating cycle of default and financial distress.

In its NPRM, ED acknowledges some of the statutory limitations preventing IDR from best serving defaulted borrowers, but fails to acknowledge the regulatory hurdles that it can, and should, eliminate. For example, in describing its concerns about the statutory framework surrounding IBR, Income-Contingent Repayment ("ICR"), and loan forgiveness, ED characterizes its options for addressing defaulted loans as a "tradeoff between lower monthly payments versus credit toward forgiveness."[27] However, ED could mitigate the consequence of this tradeoff by creating a pathway out of default status directly into REPAYE or IBR, thereby minimizing the time spent in default and maximizing the number of months that will count toward loan forgiveness. Once a borrower makes a payment, or qualifies for a $0 payment, under such a plan, the borrower's loan should no longer be considered in default. The borrower should then be permitted to switch from their current IDR plan into another available IDR plan if the borrower finds its terms more advantageous.

Critically, the Higher Education Act ("HEA") places no limitations on how borrowers can get out of default. In particular, the process for rehabilitating a defaulted Direct Loan is set forth in regulations: § 685.211(f) allows a borrower to rehabilitate their loan by making nine "reasonable and affordable" payments within a 10-month period, via an application and income-

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[26] *Id.*

[27] *See* 88 Fed Reg. 1894, 1910 (explaining that, under the Higher Education Act, borrowers cannot make progress toward ICR forgiveness while in a default status).

verification process substantially similar to applying for an IDR plan. Moreover, the HEA gives ED substantial discretion to collect on a defaulted loan in the manner it deems appropriate, including to "designate the income-contingent repayment plan or the income-based repayment plan for the borrower."[28] Thus, ED has authority to make enrollment in an IDR plan a path *out of default* similar to, or in place of, rehabilitation, including by automatically enrolling defaulted borrowers in IBR or REPAYE if their income information can be accessed.

We recognize that some borrowers—including those facing the most significant personal and economic challenges, such as housing insecurity—may enter or remain in default even with the availability of REPAYE. As such, ED should place defaulted borrowers in IBR automatically in order to ensure that defaulted borrowers are able to make progress towards loan forgiveness. However, these borrowers should immediately be informed of the option to get their loan out of default status through enrollment in REPAYE, or another IDR plan with lower monthly payments.

We urge ED to continue developing solutions to help defaulted borrowers—including extending to them the benefits of every reform that, going forward, will serve to keep other borrowers *out* of default in the future.

5. ED Should Automatically Count All Past Forbearance and Repayment Periods and Certain Deferment Periods Toward Forgiveness

We commend ED's efforts to remedy the effects of past servicing misconduct and the resulting inability of many borrowers to access IDR. However, to fully address the long history of IDR mismanagement and unnecessary complexity, we believe these remedies must be expanded and simplified. Specifically, we believe that *all* forbearance and repayment periods occurring prior to June 1, 2023 and certain deferment periods should automatically count toward IDR forgiveness.

As our offices are all too familiar, federal student loan servicers have historically failed to counsel borrowers about the benefits of IDR plans, steering financially distressed borrowers into voluntary forbearances instead. State and federal lawsuits against Navient focused squarely on the practice of forbearance steering, alleging that Navient pushed struggling borrowers into forbearance, rather than helping them navigate the complex web of repayment options, because forbearances were fast and easy to process and reduced call-center costs. While Navient benefitted, borrowers paid the price: their balances skyrocketed due to interest capitalization, and they lost months that could have counted toward IDR forgiveness. As previously noted, a group of 39 state Attorneys General recently reached a $1.85 billion settlement with Navient over improper forbearance steering practices, among other issues.[29] As the Department has acknowledged, Navient was not the only federal loan servicer to engage in forbearance steering: "FSA reviews suggest that loan servicers placed borrowers into forbearance in violation of

[28] 34 C.F.R. § 685.211(d)(3).
[29] *Attorney General Healey Announces $1.85 Billion Settlement with Student Loan Servicer Navient*, Massachusetts Attorney General's Office, Jan. 13, 2022, *available at* https://www.mass.gov/news/ag-healey-announces-185-billion-settlement-with-student-loan-servicer-navient.

Department rules, even when their monthly payment under an IDR plan could have been as low as zero dollars."[30]

Forbearance steering is only one of many harms that resulted from the failures of servicers to help distressed borrowers enroll in IDR. As our offices have learned from helping struggling borrowers, servicers also pushed borrowers into extended and graduated repayment plans, or suggested consolidation as a means of lowering monthly payments. These repayment plans and consolidations often added to overall loan costs and spiraling debt, while simultaneously failing to provide a path toward loan forgiveness. Many struggling borrowers who did not receive proper IDR counseling also made chronic late payments, thereby dramatically increasing their loan costs.

To address forbearance steering and federal loan servicers' failures to advise, ED is presently pursuing a piecemeal three-pronged approach. First, it plans to implement the One-Time IDR Adjustment in July 2023, which will give borrowers with loans owned by ED credit toward IDR forgiveness for past periods that would not otherwise count toward forgiveness. This includes past repayment periods, regardless of payment amount or repayment plan, as well as forbearance periods of 12 or more consecutive months or 36 or more cumulative months.[31] Second, through its proposed IDR regulations, ED intends to allow specific types of forbearance to count toward IDR forgiveness, including two types of administrative forbearance (*i.e.,* for emergencies and processing paperwork connected to repayment requests). Third, ED's proposed IDR regulations create a mechanism for borrowers to "buy back" months spent in other types of forbearance, if they supply past income information and pay the amount that the Secretary determines would have been charged under an IDR plan.

Taken together, we believe these remedies—while a step in the right direction—are incomplete and overly complex. As an initial matter, borrowers with privately held federal loans who do not consolidate into the Direct Loan Program by May 1, 2023 will not receive the extensive remedial benefits of the One-Time IDR Adjustment. If these borrowers consolidate into the Direct Loan Program *after* the May 1, 2023 deadline, ED's newly proposed IDR regulation fails to provide them with credit for significant periods of past forbearance, deferment, and repayment time that would have been covered by the One-Time IDR Adjustment. Inevitably, many borrowers will not meet this deadline, thereby potentially adding more than a decade to their debt obligations.

It is patently unfair to require borrowers to make years of additional payments due to their inability or failure to meet an arbitrary administrative deadline. We cannot fix our broken student loan repayment system by creating these types of traps for the unwary. For reasons both within ED's control, and beyond it, borrowers over the past several months have heard numerous competing messages about loan forgiveness, cancellation, and other forms of relief, and we are concerned that this environment will make it harder for borrowers to take appropriate action on

[30] *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs*, April 19, 2022 press release, *available at* https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.
[31] The One-Time Adjustment for certain types and periods of deferment.

the One-Time IDR Adjustment.[32] To ensure that all borrowers receive appropriate and due remedial relief, we believe that the terms of the One-Time IDR Adjustment must be fully reflected in the new IDR regulation, so that regardless of when a borrower obtains a Direct Consolidation Loan, the borrower receives the full scope of remedial benefits available through the One-Time IDR Adjustment.

Additionally, because servicer-driven forbearance use does not exclusively involve long-term forbearance, we believe the new IDR regulation should go further than the One-Time IDR Adjustment and grant borrowers credit toward IDR for *all* forbearance periods prior to June 1, 2023. Failures to advise have frequently pushed borrowers into short-term forbearances, resulting in missed opportunities to make qualifying payments toward IDR forgiveness. There are many struggling borrowers who will fail to meet the One-Time IDR Adjustment's 12-month consecutive or 36-month cumulative forbearance standards because they were advised to use a combination of short-term forbearances, deferments, repayment plan changes, and consolidation— all "band-aids" applied in place of IDR— as a mechanism for coping with chronically unaffordable student loan debt.

Additionally, servicing errors have also forced borrowers into unnecessary short-term forbearances. When servicers miscalculate IDR payments or fail to timely communicate paperwork deficiencies, borrowers are typically placed in forbearance to avoid delinquency.[33] For example, one borrower who has been in touch with her Attorney General's office submitted her recertification in January 2016, three days prior to the deadline given by her servicer. Three weeks later, she received notice that her paystub, which had been accepted by her servicer in years past, did not adequately demonstrate the frequency of her pay. Despite promptly faxing in the additional requested documentation, the borrower's monthly payment increased from $480 to $3,136, and the borrower was advised to use forbearance while her new paperwork was processed. Due to a combination of even more processing errors, this borrower ultimately spent three months in hardship forbearance before belatedly getting back on IDR.

Faulty servicer communications concerning annual recertification, such as those described in state and federal lawsuits against Navient, have also led to chronic late IDR

[32] There are significant hurdles to accessing relief through the One-Time IDR Adjustment, which has not been well-marketed. Even if borrowers are aware of the Adjustment, most are unaware of what types of federal loans they have or who owns them, and some do not even know whether they have federal or private loans. Obtaining this information is not simple. Borrowers' personal information must be verified through a multiday process before they can gain access to their federal student aid accounts. Once logged in, they must navigate to separate screens to identify their loan types and loan ownership. If borrowers identify that they have loans that need to be consolidated to access the Adjustment, some are reluctant to do so as its benefits are not easily quantifiable. Many are concerned that consolidation will change their interest rates, extend their loan terms, or cause them to lose qualifying months toward PSLF or IDR. Some are aware that consolidating the federally and privately owned federal loans together could jeopardize their access to the $10,000 or $20,000 in One-Time Debt Relief. Additionally, the loan repayment estimator that borrowers see as part of the consolidation process does not take the One-Time IDR Adjustment into consideration and provides inaccurate estimates of total time in repayment, projected forgiveness amounts, and total loan costs. Even when borrowers decide to move forward with consolidation, married borrowers must go through the added step of getting their spouses to set up federal student aid accounts to consent to the release of joint tax returns for IDR enrollment. Adding to these difficulties, the federal student aid website has been plagued by technological glitches that often require borrowers to repeatedly restart these time-consuming processes.

[33] *See Settlement Backs Up Overhaul of Loan Forgiveness Program*, Inside Higher Ed, October 14, 2021, *available at* https://www.insidehighered.com/news/2021/10/14/department-education-settles-loan-forgiveness-lawsuit

recertifications and use of retroactive short-term forbearances to cover delinquency. Similarly, many borrowers have been placed into short-term forbearances when trying to switch from the IBR plan to new and more advantageous plans like PAYE and REPAYE. While regulations effectively require borrowers to make one $5 forbearance payment to exit IBR,[34] borrowers often experienced at least two months of forbearance due to the practice of requiring the $5.00 payment to be made and its due date to pass before servicers would begin processing the IDR request and generating a billing statement for the new annual payment period.[35]

Additionally, servicers have routinely experienced backlogs and delays in processing IDR plan change requests. For example, one borrower asked to change to REPAYE in an application submitted to FedLoan Servicing in December 2017. The servicer did not process the borrower's request for three months, and then increased the borrower's payment from $93 under IBR to $2,087 under the standard repayment plan. FedLoan Servicing subsequently told the borrower the billing was inadvertent, instructed the borrower not to pay, and placed the borrower into forbearance for four months.

While some of the above-described short-term forbearance periods should have been administrative forbearance types that would count toward forgiveness under ED's proposed IDR regulation, servicers have failed to reliably use administrative forbearance for its intended purposes. In our efforts to aid borrowers, we have observed the misapplication of other forbearance types, such as general forbearance and reduced payment forbearance, to address servicing delays and errors. In 2017, the Massachusetts Attorney General sued ED's PSLF servicer, FedLoan Servicing, alleging that, among other things, the company had delayed in processing IDR applications, causing borrowers to be placed into forbearance and thereby robbed of the opportunity to make qualifying payments towards forgiveness. Such improper periods of forbearance included periods that would not automatically count towards IDR under the proposed regulations.

Rather than counting all past forbearance time, ED's proposed IDR regulations enable borrowers to "buy back" forbearance time so that it can count toward IDR. We believe this process will be complex, underutilized, and place unreasonable burdens on borrowers. While allowing forbearance buybacks could be reasonable for forbearances that occur in the future, we do not believe it is an appropriate retroactive solution given the significant history of servicing misconduct. Additionally, the proposed regulation's buyback provisions unfairly burden borrowers of privately owned federal loans since all other borrowers will have their forbearance time counted for free toward IDR forgiveness through the One-Time IDR Adjustment. Further, since most privately owned federal loans were originated more than 12 years ago, it may prove quite difficult for these borrowers to produce necessary income documentation.

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[34] 34 C.F.R. § 685.221(d)(2)(ii).

[35] For example, to facilitate a switch from IBR to REPAYE, a Massachusetts borrower was billed $5 for a reduced payment forbearance, which was due on September 7, 2018. The borrower made the $5 payment on time. However, due to the time needed for processing and generating a billing statement, the servicer was unable to establish the borrower's REPAYE annual payment period to begin until the *November 7, 2018* due date, and the servicer applied a second forbearance to cover the month of October 2018.

It is also counterproductive to require borrowers who have been placed into forbearances of less than 12 months at a time, or less than 36 months cumulatively, to seek account review by filing a complaint with the FSA Ombudsman. Not only will this approach result in many borrowers not obtaining relief to which they should be entitled, it will administratively burden FSA and require intricate and unnecessarily complex line-drawing as between similarly situated borrowers. Borrowers should not be required to affirmatively apply to have periods of forbearance counted toward IDR. Rather than burdening borrowers and taxpayers with an unnecessary and inherently flawed claims process, we urge ED to give borrowers the benefit of any doubt and credit their forbearance time toward IDR.

Accordingly, we ask that ED revise its proposed IDR regulations to automatically count all forbearance and repayment periods occurring prior to June 1, 2023 toward IDR forgiveness. We also believe that the deferment periods that would have been covered by the One-Time IDR Adjustment should also count toward forgiveness, including all deferments prior to 2013 (other than in-school deferments).[36] Additionally, for the forbearance, deferment, and repayment periods that ED ultimately elects to count toward IDR, we believe the regulations should clarify that such periods will be counted back to the first date a borrower could have been making payments under an IDR plan.

6. ED Should Include Parent PLUS Loans in the New REPAYE Plan

We were disappointed by the unjustified exclusion of Parent PLUS borrowers from IDR reforms and call on ED to amend its proposed regulations to enable Parent PLUS borrowers to access the new REPAYE plan through consolidation.[37] Although Parent PLUS Loans are available in large sums and made without regard to the borrower's ability to repay, they offer the fewest repayment options. The historic exclusion of Parent PLUS borrowers from the more favorable IDR plans, including IBR, PAYE, and REPAYE, has resulted in unaffordable payments for many Parent PLUS borrowers, a lack of meaningful options for them to avoid default, and in some cases, their inability to pursue PSLF. ED's longstanding failure to provide Parent PLUS borrowers with an affordable repayment plan is unconscionable and constitutes a threat to the retirement security of millions of Americans—many of whom owe more than they borrowed due to their inability to afford payments, and some of whom are at risk of default and offset of Social Security benefits.

Approximately 3.7 million parents collectively owe over $108 billion in Parent PLUS loans.[38] Because Parent PLUS loans are used to finance a child's higher education, Parent PLUS borrowers are typically older. It is likely that over 40 percent of the 9.03 million federal student

[36] The Department is counting all pre-2013 deferments (other than in-school deferments) toward forgiveness through the One-Time IDR Adjustment because it cannot distinguish economic hardship deferments from other deferment types.
[37] While unconsolidated Parent PLUS loans are statutorily excluded from IBR and income-contingent repayment plans like PAYE, ICR, and REPAYE, a Direct Consolidation Loan disbursed after July 1, 2006, that repaid a parent PLUS loan may be repaid under an ICR plan. Thus, there is no statutory basis for excluding Parent PLUS loans that have been consolidated into the Direct Loan program from the new REPAYE plan.
[38] Federal Student Aid, U.S. Dep't of Education., *Federal Student Loan Portfolio by Loan Type*, 2022 Q4, https://studentaid.gov/data-center/student/portfolio.

loan borrowers over the age of 50 are Parent PLUS borrowers.[39] Older borrowers face unique challenges while making monthly payments, such as living on fixed or reduced incomes or contending with declining health.

Parent PLUS loans are the costliest federal loan type and are made without regard to the parent's income and ability to afford monthly payments. Interest rates on Parent PLUS loans have been as high as 8.99%[40] and are currently 50% higher than loans taken by undergraduate students.[41] Further, because Parent PLUS borrowers can borrow amounts up to the full cost of attendance (less other financial aid received), their balances can be quite large.

Despite their high costs, borrowers of Parent PLUS loans currently have very limited access to IDR. The only IDR plan available to Parent PLUS Loan borrowers is the ICR Plan, and only after consolidating into a Direct Consolidation Loan. Monthly payments under ICR are typically higher than current IDR plans. A single borrower with an income of $40,000 and a $60,000 Direct Consolidation Loan with an 8.5% interest rate,[42] would pay $440 per month under ICR—more than twice what a borrower with the same income and family size would pay under the existing REPAYE plan.[43] A married borrower with the same loan, filing taxes jointly without dependents, and with an income of $80,000 per year, would have a $691 monthly ICR payment. Our offices regularly hear from Parent PLUS borrowers for whom ICR payments are completely out of reach.

Parent PLUS borrowers who cannot afford ICR payments do not have meaningful options to avoid default and can only postpone default through use of forbearance or deferment. Some Parent PLUS Loan borrowers consolidate, even repeatedly, to extend the amount of forbearance time available. However, long term forbearance use ultimately leads to ballooning balances through interest capitalization. Many parents report feeling trapped and afraid for their futures. Often, the only good news our offices are able to give Parent PLUS loan borrowers is that these debts will be extinguished when they die.

There are significant reasons to be especially concerned about Parent PLUS borrowers, and there is no legitimate reason to exclude lower-income borrowers from affordable repayment plans merely because they took out loans *on behalf of* students. Borrowers over the age of 65 are the fastest growing demographic of borrower.[44] They also have higher default rates than younger

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[39] Federal Student Aid, U.S. Dep't of Education., *Federal Student Loan Portfolio by Borrower Age and Debt Size* (Sept. 30, 2022), https://studentaid.gov/data-center/student/portfolio (showing 6.45 million borrowers aged 50 to 61 and 2.58 million borrowers aged 62 and older).
[40] Mark Kantrowitz , *Historical Federal Student Loan Interest Rates and Fees* (May 12, 2020) https://www.savingforcollege.com/article/historical-federal-student-interest-rates-and-fees.
[41] Federal Student Aid, U.S. Dep't of Education, *Interest Rates and Fees for Federal Student Loans,* https://studentaid.gov/understand-aid/types/loans/interest-rates.
[42] 8.5% is the statutory interest rate for Parent PLUS Loans disbursed between July 1, 2006–June 30, 2010.
[43] Unlike undergraduate students, parent borrowers can borrow up to the full cost of attendance, so long as they do not have an adverse credit history. This has resulted in parents of limited means, but good credit, taking on debts that may exceed $100,000. These debts often balloon further when the parents are unable to pay.
[44] See generally, Kate Lang, Bethany Lilly, & John Whitelaw, *Ensuring Debt Relief for Older Borrowers* in *Beyond Fresh Start: Addressing the Flaws of the Current Student Loan Collection System* (Aug. 2022), https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf#page=57 (noting that the number of borrowers over 65 grew by 885% from 2005 to 2021).

borrowers: 37% for borrowers over 65 compared to 29% for those aged 50 to 64, and 17% for those under 50.[45] As a result of defaulting on federal student loans, a growing number of older federal student loan borrowers have had their Social Security benefits offset. According to the Government Accountability Office ("GAO"), one-in-three retirement-aged borrowers whose Social Security payments are offset to collect on their federal student loans have had a Parent PLUS Loan.[46] The number of borrowers age 65 and older who experienced Social Security offsets to repay a federal student loan increased more than fourfold from 2005 to 2015.[47] Since Social Security benefits are the only source of regular retirement income for 69 percent of beneficiaries age 65 and older,[48] offsets can impose serious financial hardships for affected borrowers. For the period from 2001 to 2015, the GAO found that the offset of Social Security benefits due to defaulted student loans had pushed tens of thousands of seniors further into poverty.[49]

The Consumer Financial Protection Bureau's ("CFPB") analysis of survey data similarly shows that older borrowers with student loan debt are more likely than borrowers without student loan debt to report that they could not afford daily necessities such as doctor's visits, medications, and dental care.[50] Student loan debt also has significant implications for retirement saving. The CFPB found that among household heads nearing retirement, those with outstanding student loan debt had saved less than those without student debt. In 2013, student loan borrowers aged 50 to 59 also had a lower median amount in their employer-based retirement account or an Individual Retirement Account than their counterparts without student loan debt.[51]

Additionally, for Parent PLUS Loan borrowers who work in public service, the lack of an affordable IDR plan often precludes them from making payments that qualify for PSLF—thus robbing Parent PLUS Loan borrowers of an important debt relief opportunity.

For all of these reasons, it is critical that ED end its inequitable treatment of Parent PLUS borrowers by granting them access to the same student loan safety net as other federal loan borrowers. We are encouraged by ED's recent decision to include Parent PLUS loan borrowers in the One-Time IDR Adjustment for PSLF purposes, and hope that this change reflects ED's commitment to equal treatment of Parent PLUS borrowers.

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[45] See GAO, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief* (Dec. 2016), https://www.gao.gov/assets/gao-17-45.pdf (default rates for fiscal year 2015).

[46] See *id.* at 14; *see* Peter Granville, The Century Foundation, *Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis* (May 31, 2022), https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/.

[47] See GAO, *Social Security Offsets*, *supra* note 45 at 5.

[48] See CFPB, *Issue Brief: Social Security claiming age and retirement security* (Nov. 2015), at 7, http://files.consumerfinance.gov/f/201511_cfpb_issue-brief-social-security-claiming-ageand-retirement-security.pdf.

[49] *Id.*

[50] See CFPB, *Snapshot of Older Consumers and Student Loan Debt* at 13 (Jan. 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf.

[51] *Id.* at 12.

7. ED Should Implement a Regulatory Notification Regime and Reduce Burdens on Borrowers

The State Attorneys General applaud ED's objectives to "simplify borrowers' repayment options" and promote REPAYE as the "most affordable [plan] for a large majority of student borrowers."[52] However, ED's regulations must set forth detailed notification standards to ensure successful implementation and accountability. Time and again, we have seen student loan reforms fall short of their full potential because borrowers were not given complete or accurate information by their servicers, did not see critical notices, did not understand how a program could benefit them, or had difficulty meeting burdensome application requirements.

To make optimal choices, borrowers need proactive, crystal-clear messaging. We urge ED to require effective communications about the benefits of IDR and the actions borrowers must take to avail themselves of an IDR plan. These notices should be targeted to borrowers based on their repayment status and whether they are presently enrolled in IDR. Among the notices that ED should undertake, it is of particular importance to provide targeted outreach to borrowers whose account histories indicate difficulty making payments, either contemporaneously or in the past—keeping in mind that some of these borrowers may have considered IDR earlier but declined to enroll because their estimated IDR payment was not affordable.

Clear outreach remains vital once a borrower is enrolled in REPAYE or another IDR plan. If borrowers do not understand how enrollment in IDR is benefitting them—not only through lowered or $0 payments, but also through progress toward loan forgiveness—they are less likely to take the steps needed to stay in their IDR plan by recertifying their income annually or by opting-in to IRS data sharing. In particular, we recommend that ED require monthly billing statements to identify whether the borrower is in an IDR plan, which plan the borrower is in, whether the borrower's income is being used to calculate payments[53] (and if not, the steps the borrower must take to recertify), and the number of payments the borrower has already accrued toward IDR forgiveness—even if they are not presently enrolled in an IDR plan.[54] This information should also be provided in borrowers' online account summaries on their servicer's website, updated in real time, to reinforce the positive decision borrowers make when enrolling in IDR.

We are also quite concerned that ED's proposed regulations eliminate the detailed notification regimes that are presently enumerated in IDR regulations[55]—without proposing adequate replacements. While these notice regimes are imperfect, they were implemented in the IDR regulations that became effective in June 2013 and were intended to help borrowers

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[52] 88 Fed Reg. 1897, 1899.

[53] Borrowers in PAYE and IBR remain in the plan after failing to recertify, but their payment amount is no longer calculated based on income. This has been a point of confusion for borrowers because their account information may reflect that they are still in PAYE or IBR.

[54] Many borrowers will have accrued a substantial number of qualifying payments through the One-Time IDR Adjustment despite having never enrolled in IDR. For these borrowers to continue earning credit toward forgiveness, in most cases, they need to enroll in an IDR plan.

[55] 34 C.F.R. § 685.209 subsection (c)(4) for REPAYE, 34 C.F.R. § 685.209 subsection (a)(5) for PAYE, 34 C.F.R. § 685.209 subsection (b)(3)(v)-(vi) for ICR, and 34 C.F.R. § 685.221 subsection (e) for IBR.

understand plan terms, incentives to recertify, and recertification processes. Notwithstanding ED's commendable plan to streamline IDR enrollment and recertification through IRS data-sharing, a robust regulatory notification regime remains vital, even for borrowers already in IDR, since not all borrowers will opt into data-sharing and data-sharing service outages may arise.[56]

While comprehensive in theory, the existing notice regime has failed to adequately serve borrowers due to servicer failures and inadequate design. As ED acknowledged in its NPRM, timely IDR recertification rates have been well under 50%.[57] Servicers have greatly contributed to these abysmal rates through notice practices that undermine the ability of borrowers to understand and avail themselves of the benefits of IDR. These failings are reason to enhance the regulatory notice regime, rather than eliminate it. Some of the defective notice practices our offices have observed include:

- Sending emails that failed to alert borrowers as to the nature and time sensitivity of the IDR renewal notices that had been posted to their account inbox on their servicer's website, causing borrowers to miss renewal notices entirely.
- Failing to provide at least sixty days' notice of the need to recertify and providing considerably shorter notice periods instead (*e.g.,* 25 days).
- Sending recertification notices that did not include an IDR application and instead instructed borrowers to navigate through multiple pages on websites to find the application.
- Sending renewal notices that did not explain the consequences of failing to recertify, including the specific amount to which the borrower's payment would increase. For example, rather than listing the payment amount, one servicer instead stated the borrower's payment would change to the "permanent standard" amount.[58]
- Sending renewal notices that did not contain recertification deadlines, or that contained differing deadlines or deadlines that left the servicer inadequate time to process income and family size information prior to capitalization events or payment increases.
- Sending IDR enrollment notices that made it sound as though borrowers could only be in IDR for twelve months, thereby undermining their ability to understand the program. For

[56] The IRS opt-in process may not be straightforward for all borrowers, as their personal information must be verified through a multiday process before they can gain access to their federal student aid accounts. Some borrowers who set up accounts long ago have difficulty accessing them due to changes in contact information. Complicating matters, married borrowers must go through the added step of getting their spouses to set up federal student aid accounts to consent to the release of joint tax returns for IDR enrollment. *See, also, e.g.*, Kim Clark, *Applying for Financial Aid Just Got Harder. Blame the IRS,* Money (Mar. 10, 2017) https://money.com/fafsa-security-concerns-irs/ (discussing technological problems with IRS-FAFSA integration).
[57] 88 Fed. Reg. 1894, 1911.
[58] Some notices tried to explain the consequences of recertification failure under multiple IDR plans, thereby creating complexity and confusion.

example, one notice stated: “Federal regulations require that a borrower re-apply for the Partial Financial Hardship (PFH) amount on the IBR payment plan up to 12 months.”[59]

- Sending IDR denial notices that failed to inform borrowers that they could be eligible for IDR if they consolidate their loans (*e.g.*, Parent PLUS loans are eligible for ICR if consolidated) or that listed multiple potential reasons as to why the application or recertification was denied.

We believe that having a robust regulatory notice regime is a critical step toward ensuring servicer accountability and borrower engagement, and that this rulemaking provides an opportunity to assess and improve upon existing notice requirements. **Exhibit A** sets forth some of the notice types and level of specificity that we believe ED should consider implementing as part of an updated regulatory regime.

ED will also need to mandate, and set forth specific criteria for, notices regarding proposed § 685.209, subsection (k)(6)(1), which allows borrowers to count months spent in certain forbearance or deferment statuses toward loan forgiveness by making buy-back payments or by seeking retroactive credit of a $0 IDR payment. As already discussed, due in part to servicer misconduct, millions of borrowers nationwide have spent time in a forbearance or deferment when they could have been making an affordable or $0 payment in IDR and progressing toward loan forgiveness. These borrowers will benefit only if ED ensures that they are accurately identified and affirmatively notified of the opportunity to count these past periods of non-payment toward loan forgiveness.

While not directly addressed in the regulations ED is amending, we also encourage the Department to engage in a proactive outreach and information campaign to ensure that borrowers with FFELs are aware of the benefits of REPAYE. Although IBR will remain an option for these borrowers, the overwhelming majority of FFEL borrowers would be far better served by consolidating their loans and enrolling in REPAYE.[60] As FFELs stopped being issued in 2010, it is likely that a particularly high proportion of borrowers with still-outstanding FFELs have had difficulty paying them off, causing them to pause payments or seek out an extended repayment schedule. We urge ED to affirmatively contact FFEL borrowers to ensure they understand the advantages of REPAYE and that they must consolidate into the Direct Loan Program to access it. ED must also ensure that borrowers can consolidate and switch to REPAYE with minimal administrative burden to them.

* * *

We commend ED for the substantial reforms it has proposed and are optimistic that they will improve the lives of student loan borrowers. In particular, the more generous discretionary

[59] Servicers also regularly send repayment disclosures that reinforce the notion that borrowers can only be in IDR for one year by listing 12 payments at the IDR amount and all the remaining payments at a much higher payment amount.

[60] Moreover, it is likely that a substantial proportion of borrowers with outstanding FFEL loans have experienced financial difficulties requiring them to pause their payments or move into an extended repayment plan, as FFEL loans stopped being issued in 2010.

income threshold and lower monthly payment amounts available under REPAYE, coupled with the removal of unpaid interest accrual, will allow many more borrowers to take advantage of IDR and offer a realistic alternative to deferment, forbearance, delinquency, default, and ballooning student loan debts.

As explained in detail above, we also urge ED to expand the scope and reach of these reforms, particularly where doing so would remedy past harms, or improve future outcomes, for borrowers who have suffered the most from servicing failures and policy half-measures. Given the considerable benefits of REPAYE, we hope to see ED end its unwarranted differential treatment of Parent PLUS borrowers and extend the plan's benefits to them. We further urge ED to make IDR plans a viable path out of default, akin to rehabilitation, so that borrowers experiencing the most extreme hardships are not stuck making excessive involuntary payments that they cannot afford. Finally, we recommend that ED use its regulatory authority to mandate certain key acts of implementation, and in particular, to ensure that servicers send timely and accurate communications to borrowers. We appreciate the Department's consideration of our comments.

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Charity R. Clark
Vermont Attorney General

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EXHIBIT A

Annual Enrollment Notice

For borrowers who are enrolled in an IDR plan and making payments based on income, an annual enrollment notice that explains:

- the name of the IDR plan in which the borrower is enrolled;
- the amount of the borrower's calculated monthly payment under that plan and the twelve-month period in which those payments apply;
- the number of qualifying payments the borrower has already accrued and the number of remaining qualifying payments the borrower must make to receive forgiveness of any remaining balance under that plan;
- the income and family size that was used to calculate the borrower's monthly payment and the source of that information (*i.e.,* tax return and year or alternative documentation of income);
- the method through which the borrower can request recalculation of their monthly payment amount if the listed income and family size are no longer accurate;
- for borrowers who have provided the applicable IRS authorization(s):
    - that the borrower's payment under the IDR plan will be automatically recalculated in each year in which ED can access their return and that if, for some reason, ED is unable to access the borrower's tax return, ED will instead send a recertification notice in a specified month and year to request that the borrower provide income and family size information;
- for borrowers who have not completed the applicable IRS authorization:
    - the method through which the authorization(s) may be completed, so that ED can annually access their federal tax returns and recalculate their payment each year;
    - that if the applicable IRS authorization(s) is not completed by a specified date, or if ED is unable to access the borrower's tax return, ED will instead send a recertification notice in a specified month and year to request that the borrower provide income and family size information; and
    - the consequences of failing to respond to the recertification notice deadline contained therein, including the amount to which the borrower's monthly payment will change and, if applicable, the expected amount of interest that will capitalize.

Annual Recertification Notice

For borrowers who are enrolled in an IDR plan and making payments based on income but for whom ED cannot access the applicable tax information, a series of at least three annual recertification notices. These notices should contain a deadline by which borrowers must submit their income and family size information ("annual deadline"). To allow sufficient time for IDR processing, issuance of billing statements, and correspondence concerning application deficiencies, this deadline should be no later than 20 days and no earlier than 30 days before the borrower's 12th scheduled IDR payment. The first notice should be sent around 60 to 75 days before the annual deadline; the second around 40 to 55 days before the annual deadline; and the third around 20 to 35 days before the annual deadline (however, the second and third notices need not be sent if the borrower has already submitted recertification documents). Any email communications concerning these notices should be required to clearly state the purpose and urgency in the email's subject line (*e.g.*, "Take Action Now or Your Monthly Payment May Increase"). The recertification notices should identify and include:

- the annual deadline by which the borrower must send or provide the requested recertification information;
- the consequences if the borrower does not send or provide the information by that deadline, including the borrower's estimated new monthly payment amount, the effective date for the recalculated monthly payment amount, the amount of any unpaid interest that is expected to capitalize, and the date on which it will capitalize; and
- a copy of any application required to recertify income and family size information as well as a description of any electronic process that may be used to complete the application.

Further Recertification Notice Outreach

For borrowers who do not respond to the recertification notices, at least two phone call and/or text message attempts should be made prior to the annual deadline to urge the borrower to recertify. If the borrower remains unresponsive, one attempt should be made after the annual deadline and before the borrower's 12th scheduled IDR payment, and another should be made within 10 days of issuing the billing statement that follows the 12th scheduled payment. On all of the aforementioned phone calls or text messages, an offer or attempt should be made to walk borrowers through any application necessary to recertify, so that borrowers can receive a pre-filled application by either postal or electronic means, depending on the borrower's preference. The pre-filled application should include instructions for how to return the application by either postal or electronic means. Electronic signatures on these applications should be accepted.

Annual Loss of PFH Notice

For borrowers who have lost partial financial hardship ("PFH") status for IBR or PAYE but remain enrolled in the plan, an annual notice regarding the loss of PFH status that identifies:

- the fact that the borrower has lost PFH status and that their payments are no longer being calculated based on income;
- if the borrower lost PFH status due to failure to recertify, a statement clearly indicating this fact and explaining the method through which the borrower can recertify; and
- if the borrower lost PFH status based on an actual review of income and family size information, the income and family size that was used to determine that the borrower no longer has PFH, the source of that information, and the method through which the borrower can request recalculation of their monthly payment amount if the listed income and family size are no longer accurate.

Eligibility Rejection Notice
For borrowers who apply for an IDR plan but are found to be ineligible for one or more plans, a rejection notice that identifies:

- each reason the borrower was found to be ineligible;
- any other IDR plan for which the borrower may be eligible, including through consolidation; and
- the steps the borrower must take to access any other IDR plan for which they may be eligible, including, if applicable, explaining the steps to consolidate.

Deficient Application Notice
For borrowers who apply for a new IDR plan or to recertify their income, but are rejected due to application or income documentation deficiencies, a notice that identifies:

- the specific application or income documentation deficiency; and
- the steps the borrower needs to take to correct each deficiency.

60-Day Delinquency Notice
When a borrower becomes 60 days delinquent, a notice that identifies:

- for borrowers with IDR-eligible loans who have completed the applicable IRS authorization:
  - that their loans are 60 days past due and will be automatically enrolled in IDR once they become 75 days delinquent; and
  - that IDR may make their payment significantly more affordable;
- for borrowers with IDR-eligible loans who have not completed the applicable IRS authorization:
  - that their loans are 60 days past due and will become subject to negative credit reporting once they become 90 days delinquent;
  - that an IDR plan may make their payment significantly more affordable; and
  - the method through which the borrower can apply for IDR or opt into IRS data sharing to allow an IDR plan to be selected for them;
- for borrowers with non-IDR eligible Parent PLUS Loans:
  - that their loans are 60 days past due and will become subject to negative credit reporting once they become 90 days delinquent;
  - that the ICR plan (or REPAYE, to the extent Parent PLUS loans are made eligible) could make their payment more affordable;
  - that they must consolidate their loans into a Direct Consolidation Loan to be eligible for ICR (or REPAYE, to the extent Parent PLUS loans are made eligible).

90-Day Delinquency Notice
When a borrower becomes 90 days delinquent, a notice that identifies:

- for borrowers with IDR-eligible loans who have not completed the applicable IRS authorization:

    - that their loans are now 90 days or more past due and subject to negative credit reporting;
    - that default will occur when their loans become 270 days past due;
    - that an IDR plan may make their payment significantly more affordable; and
    - the method through which the borrower can apply for IDR or opt into IRS data sharing to allow an IDR plan to be selected for them;
- for borrowers with non-IDR eligible Parent PLUS Loans:
    - that their loans are now 90 days or more past due and subject to negative credit reporting;
    - that default will occur when their loans become 270 days past due;
    - that the ICR plan (or REPAYE, to the extent Parent PLUS loans are made eligible) could make their payment more affordable; and
    - that they must consolidate their loans into a Direct Consolidation Loan to be eligible for ICR (or REPAYE, to the extent Parent PLUS loans are made eligible).