May 17, 2024

Submitted via Regulations.gov

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

Re: Legal Aid Comments in Response to Proposed Student Debt Relief Rules—Docket ID ED-2023-OPE-0123; RIN 1840-AD93

To whom it may concern:

These comments, submitted on behalf of organizations across the country that provide free legal assistance to low-income people, address the Department's proposed student debt relief rules to authorize the Secretary of Education to waive all or part of a borrower's federal student loan balance under a number of specified circumstances.[1] Our comments are informed by our work as legal aid attorneys and our experience assisting low-income borrowers who seek help managing their student loan burdens. In the below comments, we explain our support for the Department's proposed debt relief rules, and we offer recommendations to further strengthen provisions on which the rulemaking committee did not reach consensus.

I. Introduction and Statement of Support

At legal aid organizations, our clients are often from low-income families and are often the first in their family to pursue higher education. Working towards a better future, they rely on student loans to access education and career training. For some, their student loans pay off as hoped, with increased earnings and economic security. But for too many of our clients, the student loans used to fuel upward economic mobility do the reverse, burdening them and their families with unaffordable, snowballing, and long-lasting debt. Many cannot afford both their student loan payments and basic necessities, including food, housing, and healthcare for themselves and their children. Although most of our clients would qualify for a $0 payment in income-driven repayment (IDR), too few know about this option or have been able to navigate the process to enroll and stay enrolled. Many clients come to us with their loans already in default. In fact, prior to the payment pause, 1 million borrowers defaulted every year on federal student loans, with default concentrated among those from low-income backgrounds.[2]

Existing student debt relief programs are important, but have failed to offer sufficient relief to many of the low-income borrowers we represent and have been insufficiently accessible to millions of low-income borrowers like them across the country who lack legal assistance.

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[1] Student Debt Relief for the Direct Loan Program, FFEL Program, Perkins Program, and HEAL Program, 89 Fed. Reg. 27564 (April 17, 2024) (requesting comments on proposed debt relief regulations).
[2] Abby Shafroth & Kyra Taylor, "Delivering Distress to Borrowers in Default" at 72 (2023), https://www.nclc.org/wp-content/uploads/2023/10/Delivering-Distress-to-Borrowers-in-Default.pdf.

Further, while the Department has recently made significant strides to improve IDR and to reduce student loan balance growth from negative amortization and interest capitalization *going forward*, further action is needed to address the harms from past failed policies that continue to burden low-income borrowers with outsized debt burdens today.

We therefore commend the Department's proposal to expand eligibility for debt relief to more borrowers whose investment in education has not paid off as hoped and to improve access to existing debt relief programs by strengthening the Secretary of Education's authority to provide relief to borrowers it can identify as eligible for loan cancellation without requiring applications. We support the Department's proposals to provide the following relief:

- Canceling all or part of the amount that borrowers' balances have grown since they began repayment due to past interest policies;
- Canceling the remaining balances for over 3 million borrowers who began repayment more than two decades ago yet are still trapped in debt;[3]
- Canceling loans eligible for forgiveness based on having made the requisite number of qualifying payments in an income-driven or alternative repayment plan, even if those loans are not currently enrolled in the relevant plan;
- Canceling certain loans taken out to attend failing programs that either lost Title IV eligibility or closed following failure to meet outcome or value standards for the cohort of students that took out such loans; and
- Extending much of this relief to borrowers with commercially held FFEL loans, who have too often been left out and left behind in improvements to the student loan safety net.

These proposed rules largely represent a consensus compromise among stakeholders in the student loan system—including the Department of Education, FFEL lenders, borrowers, schools, states, as well as legal aid, consumer, disability, and veteran advocacy groups. The proposed relief is not nearly as far-reaching as the Department's prior plan, blocked by the U.S. Supreme Court, to cancel up to $20,000 in debt for low- and middle- income borrowers. However, these targeted relief provisions would offer common-sense redress for many of the most egregious past failures of the student loan system that have trapped people in debt that should have been canceled had the system worked properly and that have caused balances to go up rather than down during repayment.

While the scope of the provisions is limited, the Department's proposal would nonetheless provide important relief to millions of people struggling with student loan debt. According to the Department's projections, the proposed rules have the potential to provide full debt relief to over 4 million borrowers and to reduce balances that have ballooned for over 23 million borrowers.[4]

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[3] The Department proposes to cancel Department-held loans that entered repayment before July 1, 2005 for borrowers who only borrowed for undergraduate education (20 years), to cancel Department-held loans that entered repayment before July 1, 2000 for borrowers who took out any loans for graduate school (25 years), and to cancel commercially held FFEL loans that entered repayment before July 1, 2000 (25 years).

[4] Press Release, President Joe Biden Outlines New Plans to Deliver Student Debt Relief to Over 30 Million Americans Under the Biden- Harris Administration (Apr. 8, 2024),

We urge the Department to move forward with finalizing and swiftly implementing these common-sense relief provisions now, even as we recognize that more will need to be done to address the scope of the student debt crisis for low-income borrowers.

While we support the Department's proposals, most of which reflect consensus compromises of the rulemaking committee, some of the proposals that did not achieve consensus support should be further strengthened in the final rule. In the remainder of these comments, we offer recommendations for strengthening specific provisions to better support the needs of low-income borrowers. In particular, we urge the Department to:

- Cancel the full amount that student loan balances have grown since entering repayment for *all* borrowers from low-income households or with other indicia that they will struggle to repay their loans in a reasonable amount of time, regardless of whether they are currently enrolled in an income-driven repayment (IDR) plan. This should at minimum include waiving all balance growth for borrowers who are currently in default, previously defaulted, did not complete a Bachelor's degree, or received a Pell Grant. Additionally, since Parent PLUS loans are ineligible for IDR but low-income parent borrowers may have also experienced balance growth as a result of past interest policies, Parent PLUS borrowers who were low-income at the time they borrowed or who have other indicia of financial distress should also be eligible for full waiver of balance growth.

- Ensure that borrowers who will otherwise be trapped in debt for more than 20 or 25 years due to past time in default prior to recent improvements in income-driven repayment (IDR) have a path to relief by improving the terms of proposed § 30.83 to address the cliff effect that would otherwise impact this population.

- Ensure that proposed § 30.83, which waives debts that entered repayment more than 20 or 25 years ago, is drafted in a manner that does not penalize borrowers who consolidated old loans over the past year to be included in the one-time payment count adjustment by excluding those loans from relief if they were consolidated with younger loans.

Finally, we note that while these proposals would provide important relief and progress in reforming the student loan system, the job is not done. In particular, we urge the Department to ensure that it delivers sufficient relief to low-income borrowers who have already suffered tremendously as a result of default. It may do this both by strengthening its current and forthcoming hardship waiver provisions or by relying on its existing compromise authority.[5] And we urge the Department to act swiftly in finalizing and implementing its debt relief rules.

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https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/08/president-joe-biden-outlines-new-plans-to-deliver-student-debt-relief-to-over-30-million-americans-under-the-biden-harris-administration

[5] *See* Abby Shafroth & Kyra Taylor, "Delivering Distress to Borrowers in Default" at 72 (2023), https://www.nclc.org/wp-content/uploads/2023/10/Delivering-Distress-to-Borrowers-in-Default.pdf.

II. §§ 30.81-30.82: Recommendations to Further Strengthen Proposals for Waiver of Balance Growth When the Current Balance Exceeds the Balance When the Borrower Entered Repayment

Support: We strongly support the Department's goal of providing relief to borrowers whose balances have gone up, rather than down, since they entered repayment. This balance growth is the result of past interest accrual and capitalization policies that created rampant negative amortization at the expense of the most distressed borrowers, and especially low-income borrowers and people of color.[6] Low-income borrowers like those who come to our offices for help have borne the brunt of these policies: their balances have ballooned because the income-driven payments they made did not cover the interest they were charged each month, or they were steered into interest-accruing and capitalizing forbearances when they could not afford standard payments, or they defaulted because they could not afford standard payments or successfully access relief programs. We commend the Department for ending negative amortization going forward in the SAVE plan and for ending most instances of interest capitalization. But, as the Department correctly recognizes, the borrowers whose balances have already ballooned as a result of these past practices need relief. We therefore support the Department's proposal to waive the amount that most borrowers' balances have grown since entering repayment, but recommend that it be strengthened.

Recommendation: Expand full relief from balance growth to distressed student and Parent PLUS borrowers not currently enrolled in IDR.

While we support the thrust of the Department's proposals, we encourage the Department to ensure that *all* low-income and financially-distressed borrowers receive full waiver of the amount their balance has grown since entering repayment, not just those who are currently enrolled in IDR. Under the Department's proposal, only borrowers who are currently enrolled in IDR and who have income below $120,000 per year (or up to $240,000 per year for married borrowers filing jointly) will qualify for waiver of the full amount that their balance has grown since entering repayment. Borrowers who are not enrolled in IDR will have only the first $20,000 of the amount that their balance has grown waived, meaning that borrowers whose balances have grown by more than $20,000 since entering repayment would still owe more than they did when they started repayment after receiving interest relief under the Department's proposal.

Student borrowers: While only a small portion of the student loan portfolio has experienced more than $20,000 in balance growth since entering repayment,[7] and we acknowledge the Department's point that those who borrow for graduate school may be more likely to experience such growth because they have higher borrowing limits yet are statistically more likely to ultimately be successful in repayment, those facts do not justify capping interest relief at $20,000 for everyone not in IDR. There are also very financially distressed, low-income

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[6] *See, e.g.,* 87 Fed. Reg. 41,878, 41,952–53 (2022); 88 Fed. Reg. 1894 at nn. 26, 45, 46 (Jan. 11, 2023).
[7] The Department notes that the $20,000 cap on balance growth relief for borrowers not enrolled in IDR "represents the 90th percentile of the amount by which balances exceed what borrowers originally owed upon entering repayment." 89 Fed. Reg. at 27,574.

borrowers who are not in IDR who have experienced substantial balance growth and who will be ill-served by limiting interest relief to only the first $20,000.

For example, the Legal Aid Foundation of Los Angeles had a low-income client in 2019 who would have qualified for a $0 IDR plan but had not been told about IDR by her servicer. Her servicer had instead cycled her through a series of deferments, forbearances, and consolidations. Though the client had originally borrowed only $5,425 to attend a for-profit school (which she withdrew from during her first semester), by the time she was connected with legal assistance her balance had ballooned to over $100,000. Waiving $20,000 of this borrower's balance growth would be woefully insufficient relief and would do little to improve her ability to successfully repay her debt in the future. Further, it is hard to see how waiving more than $20,000 in balance growth for this borrower would amount to an "unnecessary windfall benefit[s]" for her, as the Department argues.[8]

This borrower's story, though perhaps extreme, is exemplative of the experience of many low-income borrowers who have not yet been successfully connected with IDR. As the Department acknowledges in several portions of the NPRM, many low-income and distressed borrowers who would benefit from IDR do not enroll because they do not know about the program or have difficulty navigating the enrollment and re-enrollment processes.[9] Therefore, categorically excluding all borrowers not enrolled in IDR from full relief from balance growth will not only exclude higher income borrowers, but will also exclude low-income and distressed borrowers who have not succeeded in accessing IDR.

The most foolproof and easily administrable way for the Department to ensure that *all* low-income and financially-distressed borrowers receive full relief from runaway balance growth is to simply eliminate the relief cap in § 30.82, making all borrowers eligible for waiver of the full amount by which their current balance exceeds their balance when they started repayment.[10]

However, should the Department wish to exclude borrowers with better prospects for successful repayment from full relief from balance growth, it could do so while still expanding access to full balance growth relief for borrowers from low-income households or with other indicia of difficulty in ability to repay. This should at minimum include borrowers who:

- did not complete a Bachelor's degree (meaning they borrowed only for a shorter-term program or did not complete an undergraduate program),
- are in default now or previously experienced default;
- had 36+ months in forbearances, or

[8] 89 Fed. Reg. at 27,574.
[9] *See, e.g.,* 89 Fed. Reg. at 27,574, 27,577-78.
[10] As negotiators noted during the rulemaking, because the Department has phrased the debt relief provisions as discretionary ("the Secretary may waive"), the Department could also eliminate the relief cap in § 30.82 while retaining its discretion to cap relief for borrowers below the full amount.

- received Pell grants.

Each of these is well-documented to correlate with difficulty with student loan repayment, such that full waiver of any amount that balances have growth since entering repayment is justified to provide a sufficient level of debt relief and to increase the likelihood of successful repayment.[11] Further, the cost of this expansion should be small, since, as the Department acknowledges, few borrowers have balances that have grown by more than $20,000.

Parent PLUS borrowers: Expanding full balance growth relief beyond those enrolled in IDR is also important to ensure that low-income Parent PLUS borrowers receive meaningful relief from ballooned student debt balances. Since Parent PLUS loans are categorically ineligible for IDR, denying full relief from balance growth for all borrowers not enrolled in IDR will automatically exclude most Parent PLUS borrowers from relief, regardless of their income level or need for relief. This is particularly problematic because low-income Parent PLUS borrowers—who are disproportionately Black and Brown as a result of systemic inequities in wealth, income, and school funding[12]—face an especially challenging repayment environment. Compared to low-income students, low-income Parent PLUS borrowers have far fewer options to repay their loans and often have much larger balances.

Further, the policy case for providing relief from past balance growth to low-income students also applies to low-income parents: low-income Parent PLUS borrowers, just like low-income students, often have inflated balances today as a result of past interest capitalization policies that caused balances to balloon when borrowers in distress used forbearances or defaulted. While we applaud the Department for eliminating such interest capitalization going forward, we encourage it to provide relief to Parent PLUS borrowers whose balances have already ballooned as a result of these repudiated past policies. The Department can do so either by waiving all balance growth for all Parent PLUS borrowers, or at minimum by targeting full relief from balance growth to Parent PLUS borrowers who are low-income or have other indicia of repayment distress. This could include some of the same indicia of distress in repayment

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[11] *See, e.g.*, Ben Miller, "Who Are Student Loan Defaulters," Center for American Progress (2017), https://www.americanprogress.org/article/student-loan-defaulters/; Ama Takyi-Laryea and Phillip Oliff, "Who Experiences Default?" PEW (2024), https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default?utm_campaign=LM+-+SLI+-+Who+Experiences+Default+-+05.03.24&utm_medium=email&utm_source=Pew&subscriberkey=0037V00002c1vNtQAI; Department of Education default data (2023) at https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/data-on-borrowers-in-default.pdf (showing that Pell grant recipients and non-completers are overrepresented among borrowers in default); Press Release, Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs (April 2022), https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.

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

identified above for student borrowers, as well as additional indicia specific to Parent PLUS borrowers. For example, the Department could provide full relief from past balance growth to:

- parents who borrowed on behalf of a student who received a Pell Grant—which is indicative of the parent's low income and limited financial resources;
- parents who were determined by Federal Student Aid to lack the financial ability to contribute to the cost of college (e.g., a $0 "Expected Family Contribution," or ECF);
- parents who are in default now or previously experienced default; or
- parents who spent 36+ months in forbearance.

In summary, we support the Department's goal of canceling the amount that most borrowers' balances have grown since they entered repayment, and we recommend that the Department further strengthen the proposal by eliminating the relief cap for borrowers who are not enrolled in IDR but have strong indicia of financial distress and limited ability to repay their loans in a reasonable amount of time absent relief.

III. §§ 30.83 (Direct), § 682.403(b)(1) (FFEL): Recommendations to Further Strengthen Proposals for Waiver of Outstanding Balances of Loans that Entered Repayment More Than 20 or 25 Years Ago

Support: We strongly support the Department's efforts to provide debt relief to borrowers who have spent two decades or more in repayment.

While the one-time payment count adjustment goes a long way towards redressing past systemic failures that prevented many low-income borrowers from obtaining the intended benefits of IDR, it is an incomplete solution. The most significant shortcoming of the one-time payment count adjustment is that it fails to count past time in default toward the IDR forgiveness timeline, despite the facts that (1) low-income borrowers often wound up in default as a result of the same IDR servicing failures that gave rise to the account adjustment, and (2) many borrowers paid as much or more while in default compared to what they would have owed in an IDR plan. The exclusion of time in default from the one-time payment count adjustment has resulted in many of the lowest income and most vulnerable borrowers remaining stuck in debt that they began repayment on over 20 years ago and have little hope of ever successfully repaying. We also note that providing relief to borrowers who have been unable to successfully repay their debt over the course of more than two decades is consistent with longstanding authority under the Federal Claims Collection Standards, which allows government agencies to compromise debts that are not repaid in full in a reasonable amount of time.[13]

Recommendation 1: Address the Cliff Effect that May Otherwise Result from the Proposed Rule Specifically for Borrowers with Significant Past Time in Default

[13] *See* Abby Shafroth & Kyra Taylor, "Delivering Distress to Borrowers in Default" at 72 (2023), https://www.nclc.org/wp-content/uploads/2023/10/Delivering-Distress-to-Borrowers-in-Default.pdf.

During the rulemaking meetings, negotiators representing legal aid, consumers, and borrowers expressed concern that providing debt relief on a one-time basis to borrowers who entered repayment 20/25+ years ago, but no relief to borrowers who entered repayment shortly thereafter, risked creating a cliff effect that would deprive many borrowers of much-needed relief. The Department has now requested feedback on how it might address that concern.

First, we want to clarify that our concern is primarily limited to borrowers who have spent significant time in default. Due to the one-time payment count adjustment going on now, borrowers will receive credit toward loan cancellation through existing IDR programs for most of their past time since they entered repayment, including all time in a repayment status and significant time in deferments and forbearances. Because the IDR plans provide for cancellation after 10 to 25 years of qualifying time in repayment, most borrowers who just miss the cut for relief under this provision because they entered repayment just shy of the 20 or 25-year cut-off dates will nonetheless be able to qualify for loan cancellation through an IDR program after a little more time in repayment in IDR. Most borrowers will therefore not experience any cliff.

But borrowers who have spent significant time in default since entering repayment long ago (but not quite 20+ years) may still be quite far from reaching loan forgiveness even following the payment count adjustment. That is because time in default is not counted as qualifying time toward the 10 to 25 year IDR forgiveness timeline under the terms of the payment count adjustment, even though time in default is counted for the purpose of this debt relief waiver rule. As a result, a low-income borrower who entered repayment on undergraduate loans 19 years ago, but spent 10 years in default, would just miss out on relief under this waiver proposal and would still have to spend 11 more years in repayment in IDR before they could finally be debt-free, for a total of 30 years in repayment. It is these borrowers that concern us, as they are likely to continue to struggle with repayment and to be unable to pay off their loans in a reasonable amount of time under this proposal. And as recent research shows, many borrowers have spent a significant amount of time in default—New America estimates that 1.5 million borrowers in default in 2020 had already spent 10 years in default.[14]

Alternative (A) for addressing the "cliff effect": We reiterate the recommendation made by the legal aid representative during the rulemaking meetings to address this cliff effect for borrowers with past time in default.[15] As laid out in that proposal, which includes draft regulatory text, the

[14] Tia Caldwell and Sarah Sattelmeyer, "Millions of Student Loan Borrowers Are Trapped in Long-Term Defaults" (Jan. 2024), https://www.newamerica.org/education-policy/edcentral/millions-spend-years-in-student-loan-default/.

[15] Kyra Taylor, Negotiator for Legal Assistance Organizations, Memo to U.S. Department of Education Re: Proposed amendments to § 30.83 (Dec. 11, 2023), https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/2023-12-11-proposed-regulatory-text-submitted-by-kyra-taylor.pdf; *see also* Jessica Ranucci, Memo to U.S. Department of Education re Proposed Regulatory Text Amendments (Dec. 11, 2023), https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/2023-12-11-proposed-regulatory-revisions-submitted-by-jessica-ranucci.pdf (suggesting in the alternative that the Department simply establish discretion to provide waiver after 20/25 years on a rolling basis) .

Department could amend proposed § 30.83 to provide relief now to borrowers who have already spent 20 or 25 years in repayment, and to provide relief going forward to borrowers who have accrued a total of 20 or 25 years in qualifying repayment time calculated as follows:

- All time between the date the borrower first entered repayment and the effective date of the final rules would count as qualifying time toward waiver after 20/25 years;
- Additionally, any months after the effective date of the final rules that would qualify toward forgiveness under an IDR program would also count as qualifying time toward waiver after 20/25 years.

This approach would give low-income borrowers who spent significant past time in default before the Department took steps to improve and expand access to IDR a realistic path to successfully breaking free of their student loan debt in 20 to 25 years. It may also make it more appealing for borrowers with past defaults to enroll in IDR now, as it would put debt relief in sight where it might otherwise still be decades away. It would also reduce the significant risk that these borrowers would otherwise remain in debt for much longer than two decades total as a result of their inability to repay the loans in a reasonable amount of time. At the same time, because this approach would require qualifying IDR payments to continue accruing credit toward waiver going forward, it would avoid the concern the Department has raised that continuing to provide a waiver on an ongoing basis after 20 years in repayment might lead borrowers to strategically avoid payments going forward, counting on future waiver regardless of whether they make required payments.

Alternative (B) for addressing the "cliff effect": Alternatively, the Department could provide *partial* debt relief now to borrowers who entered repayment a long time ago, but less than the 20 or 25 years required for full relief, and could limit such relief to borrowers who have not made substantial progress in paying down their debt and thus are unlikely to successfully repay in a reasonable amount of time absent intervention.

For example, the Department could exercise its waiver authority to reduce loans that entered repayment 15 to 20 years ago to no more than half of the amount originally borrowed (and could do the same for people who borrowed for graduate programs who entered repayment 20 to 25 years ago).[16] People who still owe more than half of what they originally borrowed 15 or 20 years into repayment are unlikely to successfully repay the loans in full in a reasonable amount of time absent intervention. Reducing their balances to a more realistic amount makes it more likely that they will be able to repay in full in a reasonable amount of time. Further, reducing their balances to more realistic amounts may ultimately cost the government little—as it may simply

[16] If the Department wishes to align its individualized balance analyses here with the analyses it is already undertaking for purposes of waiving balance growth under §§ 30.81 - 30.82, it could instead reduce balances to half of the balance upon entering repayment for borrowers who entered repayment 15/20 years ago. In this way, the proposed partial relief for borrowers not making progress in paying down their loans despite years in repayment would simply increase for borrowers who had spent a significant amount of time in repayment without making sufficient progress towards repayment in full.

shift forward in time the forgiveness that would otherwise occur later through IDR—while reducing the psychological and financial burden of unaffordable debt on borrowers now.

Similarly, if the Department has capacity to get more granular, it could model the percentage of progress toward paying off debt that borrowers generally must meet every year after 10 years in repayment to be on track to successfully pay off their debt in 20 (or 25 for grad borrowers) years, and use its waiver authority to reduce debts to those levels for any borrowers whose current balances exceed them.

If the Department is unwilling to adopt one of these approaches for § 30.83, then we urge it to ensure that the plight of low-income borrowers who defaulted prior to recent system fixes—and thus are not on track for IDR cancellation—is addressed in other relief actions. The Department could provide relief to such borrowers directly through its forthcoming financial hardship proposed rule,[17] in recognition of the fact that default is both caused by and exacerbates financial hardship.[18] Or it could provide relief to borrowers with significant past time in default through other authorities outside of the current rulemaking, such as through its existing authority to compromise debts that it has been unable to collect in full in a reasonable amount of time.[19]

Recommendation 2: Do not define the repayment start date differently for borrowers who consolidate their loans on or after July 1, 2023.

We oppose the Department's suggestion to define the repayment start date differently for borrowers who consolidate on or after July 1, 2023. The Department has proposed that for Direct Consolidation Loans, the Department will define the date that the loan entered repayments as the first date the oldest underlying loans entered repayment if the borrower consolidated before July 1, 2023. This approach has the benefit of ensuring that old loans that were subsequently consolidated are canceled. But the Department has proposed that for loans consolidated anytime on or after July 1, 2023, the repayment start date will instead be defined as the date the youngest underlying loan entered repayment. This would exclude otherwise qualifying loans from relief if they were consolidated with younger loans since July 1, 2023.

The Department justifies this July 1 change in treatment on the basis that it will prevent borrowers from engaging in "strategic consolidation" of new loans with old loans to make the new loans eligible for discharge under the proposed rule.

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[17] U.S. Dep't of Education, Proposed Regulatory Text, Student Debt Relief (Feb. 2024), https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/sdr-negotiated-rulemaking-section-30-91-final-text-consensus-reached.pdf.

[18] *See* Sarah Sattelmeyer, "Trapped by Default," New America (2022), https://www.newamerica.org/education-policy/briefs/trapped-by-default/; Abby Shafroth & Kyra Taylor, "Delivering Distress to Borrowers in Default" at 78-81 (2023), https://www.nclc.org/wp-content/uploads/2023/10/Delivering-Distress-to-Borrowers-in-Default.pdf.

[19] *See* Abby Shafroth & Kyra Taylor, "Delivering Distress to Borrowers in Default" at 78-81 (2023), https://www.nclc.org/wp-content/uploads/2023/10/Delivering-Distress-to-Borrowers-in-Default.pdf.

While we understand the government's desire to avoid a structure that encourages "strategic consolidation," the July 1, 2023 date is unnecessarily early for that purpose. The Department justifies the selection of July 1, 2023 on the basis that it is the day after the Department announced its intent to engage in this rulemaking in a press release, and "there was no way a borrower could have known to consolidate and receive this benefit." But neither the press release nor the subsequent formal notice of intent to engage in rulemaking put borrowers on notice that the Department would propose rules providing relief on consolidation loans to borrowers whose earliest loan in a consolidation loan entered repayment 20 or 25 years earlier. Further, even if a borrower were to have somehow, against all odds, found out that the Department was considering relief for such loans, making any consolidation decisions on the basis of a potential rule that has not even been finalized, much less implemented, would be more aptly characterized as "premature" than "strategic." Indeed, legal aid attorneys regularly counsel borrowers to make their loan management decisions on the basis of the law as it is, rather than any predictions about the law as it may (or may not) one day be. Therefore, there was no basis for borrowers to begin strategic consolidations for purposes of the current debt relief rule beginning July 1, 2023–or any time thereafter to date.

On the other hand, the Department, the media, legal aid, and many borrower education and financial counseling organizations have been encouraging borrowers to consolidate older loans between July 1, 2023 and April 30, 2024 to be included in the one-time payment count adjustment. While only borrowers with some types of older loans had to consolidate to benefit from the account adjustment, the intricacies of that distinction are complex and lost on most people. As a result, many borrowers with older loans of all types have consolidated their loans to make sure they are included in payment count adjustment. It would create unnecessary confusion, mistrust, and inequitable outcomes if the Department subsequently punishes borrowers who followed the Department's guidance—and widespread media encouragement—and consolidated old loans by April 30, 2024 by then excluding them entirely from relief on their 20+ year old loans if their consolidation also included even one loan with less than 20 years in repayment. It will also be more difficult to explain this relief plan and what loans are eligible for cancellation if the relevant repayment start date changes depending on whether consolidation occurred before a seemingly random date in 2023.

In lieu of its current approach, we recommend that instead the Department either:

> (a) Define the repayment start date for *all* consolidation loans as the first date any of the underlying consolidated loans entered repayment, regardless of consolidation date, or
>
> (b) Define the repayment start date as the first date any of the underlying consolidated loans entered repayment for all loans consolidated before the date the final rules are published in 2024, which is the earliest that a borrower could reasonably "strategically consolidate" for the purpose of benefiting from this provision.

At minimum, the Department should not redefine the relevant start date for loans that were consolidated prior to the April 30, 2024 deadline (or the new June 30, 2024 deadline announced

days before the comment period ended) for consolidation of certain older loans to be included in the one-time payment count adjustment.

IV. Conclusion

Thank you for considering these comments. If you have any questions, please contact Abby Shafroth, ashafroth@nclc.org.

Submitted by:

Bay Area Legal Aid
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Community Service Society of New York
Consumer Bankruptcy Assistance Project
Housing and Economic Rights Advocates
Indiana Legal Services, Inc.
Legal Aid Center of Southern Nevada
Legal Aid Foundation of Los Angeles
Legal Aid of Nebraska
Legal Services of Eastern Missouri
Legal Services of Northern Virginia
Maryland Volunteer Lawyers Service
Mississippi Center for Legal Services Corporation
Montana Legal Services Association
National Consumer Law Center (on behalf of its low-income clients)
New York Legal Assistance Group
Pine Tree Legal Assistance
Virginia Legal Aid Society
Virginia Poverty Law Center
Volunteer Lawyers Project