



**National
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*Fighting Together
for Economic Justice*

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May 5, 2025

James P. Bergeron
Acting Under Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC, 20202

**RE: Comment on Notice of Intent to Establish A Negotiated Rulemaking Committee
on Student Loan Repayment, Docket ID ED-2025-OPE-0016**

The National Consumer Law Center,¹ on behalf of its low-income clients, submits this comment in response to the Department of Education's announcement of intent to establish a negotiated rulemaking process to make changes to the Pay As You Earn (PAYE) and Income-Contingent Repayment (ICR) repayment plans, Public Service Loan Forgiveness (PSLF) and potentially other topics that would streamline current federal financial assistance programs.² Our comments focus on the timing and substance of any potential rulemaking.

**1. Timing of Rulemaking and Alternative Option to Use Interim Final Rule for
Targeted Restoration of 2023 Income-Driven Repayment Provisions**

We urge the Department to carefully consider the timing of any rulemaking on the student loan program so as to minimize additional disruption and confusion for borrowers, and to avoid creating short-lived changes for the Department and its servicers to implement only to roll back again. The student loan system, and repayment in particular, has gone through dramatic and unprecedented change over the past year and a half, with the return to repayment of tens of

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit corporation, founded in 1969, specializing in low-income consumer financial issues. NCLC provides legal and technical consulting and assistance on consumer law issues, including student loan issues, to legal aid attorneys representing low-income consumers across the country. NCLC also publishes a leading legal treatise on student loans, National Consumer Law Center, Student Loan Law (7th ed. 2023), updated at www.nclc.org/library, and its attorneys regularly testify in Congress and provide comprehensive comments to the federal agencies on consumer regulations.

² Intent To Receive Public Feedback for the Development of Proposed Regulations and Establish Negotiated Rulemaking Committee, 90 Fed. Reg. 14741 (April 4, 2025).

millions of borrowers beginning in fall 2023; FSA’s transition to a new servicing contract and approach; the partial implementation of the 2023 Income-Driven Repayment (IDR) regulations followed by a series of differing court orders pausing various portions of the regulations; and applications for IDR repeatedly pulled down for lengthy periods and changed, and roughly a million borrowers left in lengthy IDR processing backlogs, and 8 million more in the SAVE forbearance.

All this change has been hard on FSA and on servicers, but especially on borrowers, who have been put back into repayment only to have their repayment options repeatedly changed and taken away. We have been hearing from borrowers across the country directly, as well as from legal aid attorneys and nonprofit financial counselors who work with low-income borrowers, that people are incredibly confused and stressed about navigating these changes, getting in and staying in a repayment plan that they can afford, and avoiding having their student loans damage their credit or ultimately default.

And more change is on the way: As part of the reconciliation process, the House Education and Workforce committee advanced legislation last week that, if passed, will dramatically change student loan repayment options for all borrowers next year. Importantly, that legislation would entirely eliminate the PAYE and ICR plans that ED proposes to modify in this rulemaking, and would make significant changes to IBR.

Convening a rulemaking committee to change the rules on borrowers now—while borrowers are still reeling from recent tumult and Congress is pursuing action that would dramatically change the repayment rules yet again next year—threatens to create additional disruption and stress for borrowers for no good reason. Such disruption would undermine the Department’s efforts to increase successful repayment and could exacerbate the already exceptionally high rate of delinquency.³

Instead, the Department should wait to convene a rulemaking committee on repayment until after Congress passes its reconciliation bill, or it becomes clear that student loan repayment changes will not be included in the bill. Until then, the Department should limit any rulemaking on repayment to more surgical efforts to restore provisions of the already promulgated and commented upon 2023 IDR regulations that are unrelated to the challenged SAVE plan, but have been swept up inadvertently in the preliminary injunction. For example, the Department should consider restoring automatic enrollment in IDR for distressed borrowers, automatic recertification via data-sharing, and protection of borrowers’ IDR credit when they consolidate. It could do so by clarifying that these provisions are severable from the SAVE plan and

³ See Tiara Moultri, *Hitting the Breaks on the Default Cliff* (May 2, 2025) (noting that just 38% of borrowers are current on their student loans and that all of the recent changes have “left student loan borrowers in a state of perpetual uncertainty about their repayment and debt relief options”), *available at* <https://tcf.org/content/commentary/hitting-the-brakes-on-a-student-loan-default-cliff/>.

re-issuing them as standalone provisions if necessary. The Department would likely have good cause to restore these targeted provisions through the more efficient interim final rule process, as the provisions have already been subjected to the full notice and comment process, because the current broad preliminary injunction is temporarily preventing the Department from complying with its statutory obligations under the FUTURE Act,⁴ and because the Department has already informed borrowers in writing that if they opted into data-sharing they would be automatically recertified in their IDR plan without requiring annual paperwork and interrupting this process would unfairly harm borrowers relying on that term.

2. Substance of Repayment Rulemaking

If the Department does move forward with convening a negotiated rulemaking committee, we urge it to focus on three things:

- First, the Department of Education should honor its promise to current student borrowers, as reflected in their loan contracts, to allow borrowers to cap payments at no more than 10% of income over 150% of the federal poverty level, and to have any remaining balance cancelled after no more than 20 years if they have only undergraduate loans or qualify for PAYE, or 25 years if not. The government should always honor its commitments to the American people, and when it contracts with individuals it should fulfill its obligations in good faith.⁵
- Second, the Department should ensure that future low-income students and borrowers can be confident that they'll have access to affordable payment options and a pathway to being debt free if they choose to pursue postsecondary education. Education should be a path to opportunity and economic mobility, not a debt trap.
- Third, the Department should design the payment system to substantially reduce default. Prior to the payment pause, roughly 1 million borrowers defaulted every year,⁶ mostly from low-income and working class families,⁷ with devastating consequences for their finances, their families, and the broader economy. The SAVE plan was designed to

⁴ Public Law No. 116-91.

⁵ The Master Promissory Note contracts signed by borrowers include the key terms of the PAYE, ICR, IBR, and REPAYE plans (as those plans were adopted). The Department should likewise honor its PSLF commitments and should honor its statutory obligations to implement PSLF, which limit the Department's discretion to restrict PSLF eligibility as suggested in the recent Executive Order on PSLF.

⁶ Urban Institute, Underwater on Student Debt (Aug. 2018), *available at* https://www.urban.org/sites/default/files/publication/98884/underwater_on_student_debt.pdf.

⁷ The Institute for College Access and Success, Casualties of College Debt: What Data Show and Experts Say About Who Defaults and Why at 7 (June 2019), *available at* https://ticas.org/wp-content/uploads/legacy-files/pub_files/casualties_of_college_debt_0.pdf.

improve repayment success and reduce defaults, including by making repayment more accessible, affordable, and automatic, and by shortening the time in repayment for low-balance borrowers who are the most likely to default. With the SAVE plan currently blocked, and the cost of living much higher than in 2019, there are now some 4 million borrowers in late stage delinquency and on track to default this year,⁸ with another roughly 8 million borrowers currently in the SAVE forbearance who may similarly fall behind if the SAVE plan is eliminated.

The Department can stem the default tide and help low-income people successfully manage their loans by restoring and implementing key reforms included in the SAVE regulations, including the automatic enrollment, automatic recertification, and consolidation provisions discussed above. It should likewise restore affordable payments for all borrowers and \$0 payments for borrowers whose low income leaves them vulnerable to food insecurity, so borrowers and their kids do not have to choose between making student loan payments and going hungry. The Department should also think creatively about ways to ensure that persistently low-income borrowers, whose education did not pay off as hoped, are not kept in the repayment system for decades. Similarly, the Department should implement protections to ensure that falling behind on repayment does not threaten borrowers' ability to meet their basic needs, including by capping involuntary collections at no more than what a borrower would owe in IDR and stopping collections that would push people into poverty.

Thank you for your consideration of these comments. We welcome any opportunities to work with the Department in improving the student loan program and making it work for low-income borrowers. If you have any questions about these comments, please contact Abby Shafroth, ashafroth@nclc.org.

Respectfully submitted,
National Consumer Law Center (on behalf of its low-income clients)

⁸ Press Release, U.S. Dep't of Ed., U.S. Department of Education to Begin Federal Student Loan Collections (April 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-begin-federal-student-loan-collections-other-actions-help-borrowers-get-back-repayment>.