DEPARTMENT OF EDUCATION

34 CFR Part 685

[Docket ID ED–2023–OPE–0004]

RIN 1840–AD81

Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn (REPAYE) repayment plan, and to restructure and rename the repayment plan regulations under the William D. Ford Federal Direct Loan (Direct Loan) Program, including combining the Income Contingent Repayment (ICR) and the Income-Based Repayment (IBR) plans under the umbrella term of ''Income-Driven Repayment (IDR) plans.''

DATES: We must receive your comments on or before February 10, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *Regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Federal eRulemaking Portal: Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to generally make comments received from members of the public available for public viewing at *www.regulations.gov.* Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comment any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Blasen, Office of Postsecondary Education, 400 Maryland Ave. SW, Washington, DC 20202. Telephone: (202) 987–0315. Email: *Richard.Blasen@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

College affordability and student loan debt are significant challenges for many Americans. Student loan debt has risen to $1.6 trillion in aggregate over the past 10 years, and the inability to repay student loan debt has been cited as a major obstacle to middle class milestones such as homeownership.[1] In this notice of proposed rulemaking (NPRM), the Department proposes several significant improvements to the repayment plans available to student loan borrowers to make it easier for borrowers to repay their loans.

The Department convened the Affordability and Student Loans negotiated rulemaking committee (Committee) between October 4, 2021, and December 10, 2021,[2] to consider proposed regulations for the Federal student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The Committee operated by consensus, which means that there must be no dissent by any member for the Committee to be considered to have reached agreement. The Committee did not reach consensus on the topic of IDR plans.

On July 13, 2022, the Department published in the **Federal Register** (87 FR 41878) an NPRM related to other topics which were considered by the Affordability and Student Loans Committee. The Department published the final rule on November 1, 2022, 87 FR 65904, (Affordability and Student Loans Final Rule).

This NPRM addresses IDR plans (repayment plans that base a borrower's monthly payment amount on the borrower's income and family size). These proposed changes to the rules governing IDR plans would help ensure that student loan borrowers have greater access to affordable repayment terms based upon their income, resulting in lower monthly payments and lower amounts repaid over the life of a loan.

The Department proposes to amend §§ 685.102, 685.208, 685.209, 685.210, 685.211, and 685.221 to reflect the proposed changes to IDR plans. The proposed IDR regulations would expand the benefits of the REPAYE plan, including providing more affordable monthly payments, by increasing the amount of income protected from the calculation of the borrower's payments, lowering the share of unprotected income used to calculate payment amounts on undergraduate debt, reducing the amount of time before reaching forgiveness for borrowers with

[1] R. Chakrabarti, N. Gorton, and W. van der Klaauw, ''Diplomas to Doorsteps: Education, Student Debt, and Homeownership,'' Federal Reserve Bank of New York *Liberty Street Economics* (blog), April 3, 2017, *https://libertystreeteconomics.newyorkfed.org/2017/04/diplomas-to-doorsteps-education-student-debt-and-homeownership/http://libertystreeteconomics.newyorkfed.org/2017/04/diplomas-to-doorsteps-education-student-debt-andhomeownership.html.*

[2] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn#loans*?

low balances, and not charging any remaining accrued interest each month after applying a borrower's payment. The proposed regulations would also allow borrowers to receive credit toward forgiveness for certain periods of deferment or forbearance.

The proposed regulations would streamline and standardize the Direct Loan Program repayment regulations by categorizing existing repayment plans into three types: fixed payment repayment plans, which are plans with monthly payments based on the scheduled repayment period, loan debt, and interest rate; IDR plans, which are plans with monthly payments based in whole or in part on the borrower's income and family size; and the alternative repayment plan, which is only used on a case-by-case basis when a borrower has exceptional circumstances.[3] As part of the reorganization of the regulations, the Department seeks to standardize and clarify the regulations (including changes to the terms of the plans themselves), refine sections of the regulations that may be ambiguous to reflect the Department's long-standing interpretation of those regulations, and simplify the procedures and terms of the existing plans.

The Affordability and Student Loans Committee discussed and reached consensus on proposed regulatory changes that would remove most events from the current rules that require interest capitalization. That Committee also discussed but did not reach consensus on IDR. This NPRM proposes changes to IDR. We addressed interest capitalization in the Affordability and Student Loans Final Rule. In this NPRM, we make technical and conforming changes to that language as part of the reorganization of regulatory language for IDR plans.

Summary of the Major Provisions of This Regulatory Action

The proposed regulations would make the following changes to the IDR plans (§ 685.209):

- Expand access to affordable monthly payments on Direct Loans through changes to the REPAYE repayment plan.
- For borrowers on the REPAYE plan, increase the amount of income exempted from the calculation of the borrower's payment amount from 150 percent of the applicable poverty guideline to 225 percent of the applicable poverty guideline.
- Lower the share of discretionary income that the REPAYE formula would mandate be put toward monthly payments so that borrowers with only outstanding loans for an undergraduate program pay 5 percent of their discretionary income and those who have outstanding loans for undergraduate and graduate programs pay between 5 and 10 percent based upon the weighted average of their original principal balances attributable to those different program levels.
- Provide for a shorter repayment period and earlier forgiveness for borrowers with low original loan principal balances.
- Simplify the provision that a borrower who fails to recertify their income is placed on an alternative repayment plan.
- Under the modified REPAYE plan, cease charging any remaining accrued interest each month after applying a borrower's payment.
- Make additional improvements that help borrowers benefit from the IDR plans by allowing borrowers to receive credit toward forgiveness for certain periods of deferment or forbearance. For periods of deferment or forbearance for which borrowers do not automatically receive credit, borrowers could make additional payments through a new provision that would allow them to also get credit for those months. The proposed regulations would also allow borrowers to maintain credit toward forgiveness for payments made prior to consolidating their loans.
- Streamline and standardize the Direct Loan Program repayment regulations by locating all repayment plan provisions in sections of the regulations that are listed by repayment plan type: fixed payment, income-driven, and alternative repayment plans.
- Clarify the repayment plan options available to borrowers through streamlining of the regulations and reduce complexity in the student loan repayment system by phasing out enrollment in the existing IDR plans to the extent that current law allows, except that no borrower would be required to switch to a different repayment plan.
- Eliminate burdensome and confusing recertification regulations for borrowers using IDR plans.
- Make updates to appropriate cross-references.

Costs and Benefits: As further detailed in the Regulatory Impact Analysis (RIA), the proposed regulations would have significant impacts on borrowers, taxpayers, and the Department. The effects related to the Department could also include some costs on the entities it contracts with to service student loans.

Borrowers would benefit from more affordable IDR plans and streamlining of existing IDR plans. The proposed IDR changes would help borrowers to avoid delinquency and defaults, which are harmful for borrowers and create administrative complexities for collection. For borrowers who might otherwise be averse to taking on debt and who would be willing to borrow Federal student loans under this more affordable IDR plan, the additional borrowing may help them to enroll, stay in school, and complete their degrees.

Additionally, the Department would benefit from streamlining existing IDR plans as administration of repayment plans would be easier.

Costs associated with these proposed changes to IDR plans include implementation costs and increased costs of the student loan programs to the taxpayers in the form of transfers to borrowers who would pay less on their loans. The implementation costs include paying student loan servicers to adjust their systems. As detailed in the RIA, the proposed changes are estimated to have a net budget impact of $137.9 billion across all loan cohorts through 2032.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subject addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a

[3] *https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-685/subpart-B/section-685.208.*

disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Department's regulations currently contain more than a half dozen repayment plans: standard, extended, graduated, alternative, IBR, ICR, Pay As You Earn (PAYE), and REPAYE. Of these, eligible borrowers may choose from up to four different repayment plans where monthly payment amounts are based in part on a borrower's income, referred to collectively as IDR plans: IBR, ICR, PAYE, and REPAYE.

When the HEA was initially enacted, it contained only one repayment plan: the standard repayment plan. Under the standard repayment plan, borrowers are required to repay their loans in full within 10 years from the date the loan entered repayment by making fixed monthly payments, or between 10 and 30 years if the loan is a Direct or Federal Family Education Loan (FFEL) Program Consolidation Loan. Over the years, Congress has added other plans designed to keep amortized repayment amounts affordable. Those plans relied on traditional tools like extending the repayment period and allowing for lower initial payments that increase on a set schedule over time. More specifically, the extended repayment plan provides for fixed, but smaller, monthly payments over a 25-year period instead of a 10-year period. However, the extended repayment plan is only available if the borrower owes more than $30,000. The plan is also limited to those who borrowed after October 7, 1998. However, that date limitation alone is unlikely to affect significant numbers of borrowers at this time.

The graduated repayment plan allows borrowers to repay their loans by making small payments at the beginning of their repayment period, and gradually increasing payments in later years. Under the graduated repayment plan, a borrower is required to repay the loan in full within 10 years from the date the loan entered repayment, or between 10 and 30 years if the loan is a Direct or FFEL Consolidation loan.

When Congress passed legislation to create the Direct Loan Program, it included the original ICR plan as an option for borrowers in that program.[4] ICR provides a flexible alternative to the traditional standard, extended, and graduated repayment plans also offered under the HEA.[5] Under the ICR plan, a borrower's monthly payment amount is generally calculated based on the total amount of the borrower's Direct Loans, family size, and adjusted gross income (AGI). A borrower's required monthly payment amount is determined to be the lesser of (1) 20 percent of their discretionary income (AGI less 100 percent of the applicable poverty guideline), divided by 12, or (2) the amount the borrower would repay annually over 12 years when using standard amortization multiplied by an income percentage factor corresponding to the borrower's AGI, divided by 12.

In 2007, Congress established the IBR plan and made it available to borrowers in both the Direct Loan and FFEL Programs. The IBR plan requires borrowers to make monthly payments of 15 percent of their discretionary income (AGI minus 150 percent of the poverty guideline based upon their family size, divided by 12) and provides forgiveness after the equivalent of 25 years' worth of monthly payments. Congress modified the IBR plan in 2010 to lower the percentage of income a borrower must pay monthly to 10 percent of their discretionary income and shortened the time to forgiveness to 20 years' worth of monthly payments. These revised IBR terms are only available to new borrowers as of 2014. This revised plan is sometimes referred to as the ''New IBR.'' Congress also required that, to qualify for either version of the IBR plan, a borrower must have a partial financial hardship (PFH). A PFH means that a borrower's calculated payment on IBR had to be at or below what the borrower would have paid on the 10-year standard plan.

The next income-contingent repayment plan, the PAYE repayment plan, became available on July 1, 2013. In general, the PAYE plan was designed for certain borrowers to get repayment terms similar to IBR even if they borrowed before 2014. PAYE is available to borrowers who did not have an outstanding loan balance on or after October 1, 2007, but who received at least one loan disbursement on or after October 1, 2011. The PAYE plan also includes a PFH requirement identical to IBR, sets payments at 10 percent of discretionary income, and a loan forgiveness time frame equivalent to 20 years of qualifying monthly payments.[6]

The latest income-contingent repayment plan became available on July 1, 2016, in accordance with President Obama's memorandum directing the Department to ensure more Direct Loan borrowers could limit their loan payments to 10 percent of their monthly incomes.[7] To meet this goal, the Secretary issued final regulations that added a new income-contingent repayment plan, the REPAYE plan. This plan was modeled on the PAYE plan and may be used to repay any outstanding loans made to a borrower under the Direct Loan Program, except for defaulted loans, Direct PLUS loans made to a parent borrower to pay the cost of attendance for a dependent student, or Direct Consolidation Loans that repaid Parent PLUS loans.[8]

In recent years, the Department has become increasingly concerned that the current IDR plans do not adequately serve struggling borrowers.[9] Borrowers face a maze of repayment options that may lead some borrowers to make suboptimal decisions, struggle with annual income re-certification requirements, or never enroll in an IDR plan at all and instead fall into delinquency and default. For some borrowers, particularly low-income borrowers, the payments on an IDR plan may still not be affordable. Borrowers who obtained even small loans, many of whom did not complete their credentials, may end up in repayment for decades. Borrowers who are making their monthly payments may also see their loan balances balloon over time as interest accrues.

This proposed regulation is intended to address these challenges for borrowers by ensuring access to a more generous, streamlined IDR plan. The Department initially considered creating another new repayment plan; however, based on concerns about the complexity

[4] This NPRM uses the term income-driven repayment (IDR) to refer to all payment options that allow borrowers to make payments based upon their income. Income-contingent repayment plans refer to a subset of IDR options, whose terms are created through regulation. The plans created under the ICR authority are income-contingent repayment, Pay As You Earn, and Revised Pay As You Earn.

[5] *https://www.govinfo.gov/content/pkg/FR-1994-12-01/html/94-29260.htm.*

[6] *https://www.govinfo.gov/content/pkg/FR-2012-11-01/html/2012-26348.htm.*

[7] *https://obamawhitehouse.archives.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments.*

[8] *https://www.federalregister.gov/documents/2015/10/30/2015-27143/student-assistance-general-provisions-federal-family-education-loan-program-and-william-d-ford.*

[9] See, for example, *https://www.pewtrusts.org/en/research-and-analysis/reports/2022/02/redesigned-income-driven-repayment-plans-could-help-struggling-student-loan-borrowers; https://www.urban.org/research/publication/income-driven-repayment-student-loans-options-reform;* and *https://bfi.uchicago.edu/working-paper/2020-169/.*

of the student loan repayment system and the challenges of navigating multiple IDR plans, we instead propose to reform the current REPAYE plan to provide greater benefits to borrowers.[10]

Making the REPAYE plan more generous would help address concerns around borrower confusion, because the Department and those who provide repayment plan information to borrowers would be able to present the revised plan as the IDR option that would be most affordable for a large majority of student borrowers.

Public Participation

The Department has significantly engaged the public in developing this NPRM, including through review of oral and written comments submitted by the public during four public hearings. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

On May 26, 2021, the Department published a notice in the **Federal Register** (86 FR 28299) announcing our intent to establish multiple negotiated rulemaking committees to prepare proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans.

The Department developed a list of proposed regulatory provisions for the Affordability and Student Loans Committee based on advice and recommendations submitted by individuals and organizations in testimony at three virtual public hearings held by the Department on June 21 and June 23–24, 2021. Additionally, the Department accepted written comments on possible regulatory provisions that were submitted directly to the Department by interested parties and organizations. You may view the written comments submitted in response to the May 26, 2021, **Federal Register** notice on the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2021–OPE–0077. Instructions for finding comments are also available on the site under ''FAQ.''

Transcripts of the public hearings can be accessed at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn.*

[10] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nov4pm.pdf,* p. 68.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of regulations on which the negotiators reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html*.

The Department held negotiated rulemaking related to this NPRM. The negotiated rulemaking session for the Committee consisted of three rounds of negotiations that lasted 5 days each.

On August 10, 2021, the Department published a notice in the **Federal Register** (86 FR 43609) announcing its intention to establish the Committee to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee meetings and requested nominations for individual negotiators to serve on the negotiating committee. In the notice, we announced the topics that the Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Accrediting Agencies:* Heather Perfetti, Middle States Commission on Higher Education, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges.
- *Dependent Students:* Dixie Samaniego, California State University, and Greg Norwood (alternate), Young Invincibles.
- *Departments of Corrections:* Anne L. Precythe, Missouri Department of Corrections.
- *Federal Family Education Loan Lenders and/or Guaranty Agencies:* Jaye O'Connell, Vermont Student Assistance Corporation, and Will Shaffner (alternate), Higher Education Loan Authority of the State of Missouri.
- *Financial Aid Administrators at Postsecondary Institutions:* Daniel Barkowitz, Valencia College, and Alyssa A. Dobson (alternate), Slippery Rock University.
- *4-Year Public Institutions:* Marjorie Dorimé-Williams, University of Missouri, and Rachelle Feldman (alternate), University of North Carolina at Chapel Hill.
- *Independent Students:* Michaela Martin, University of La Verne, and Stanley Andrisse (alternate), Howard University.
- *Individuals With Disabilities or Groups Representing Them:* Bethany Lilly, The Arc of the United States, and John Whitelaw (alternate), Community Legal Aid Society.
- *Legal Assistance Organizations That Represent Students and/or Borrowers:* Persis Yu, National Consumer Law Center, and Joshua Rovenger (alternate), Legal Aid Society of Cleveland.
- *Minority-Serving Institutions:* Noelia Gonzalez, California State University.
- *Private Nonprofit Institutions:* Misty Sabouneh, Southern New Hampshire University, and Terrence S. McTier, Jr. (alternate), Washington University.
- *Proprietary Institutions:* Jessica Barry, The Modern College of Design in Kettering, Ohio, and Carol Colvin (alternate), South College.
- *State Attorneys General:* Joseph Sanders, Illinois Board of Higher Education, and Eric Apar (alternate), New Jersey Department of Consumer Affairs.
- *State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators:* David Tandberg, State Higher Education Executive Officers Association, and Suzanne Martindale (alternate), California Department of Financial Protection and Innovation.
- *Student Loan Borrowers:* Jeri O'Bryan-Losee, United University Professions, and Jennifer Cardenas (alternate), Young Invincibles.
- *2-Year Public Institutions:* Robert Ayala, Southwest Texas Junior College, and Christina Tangalakis (alternate), Glendale Community College.
- *U.S. Military Service Members and Veterans or Groups Representing Them:* Justin Hauschild, Student Veterans of America, and Emily DeVito (alternate), The Veterans of Foreign Wars.
- *Federal Negotiator:* Jennifer M. Hong, U.S. Department of Education.

The Department also invited nominations for two advisors. These advisors were not voting members of the Committee and did not impact the consensus vote; however, they were consulted and served as a resource. The advisors were:

• Rajeev Darolia, University of Kentucky, for issues related to economic and/or higher education policy analysis and data.

• Heather Jarvis, Fosterus, for issues related to qualifying employers on the topic of Public Service Loan Forgiveness.

The Committee met to develop proposed regulations in October, November, and December 2021.

At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any member of the Committee and noted that consensus votes would be taken issue by issue.

The Committee reviewed and discussed the Department's drafts of regulatory language and alternative language and suggestions proposed by negotiators and Subcommittee members. The Committee reached consensus on interest capitalization. It also reached consensus on proposed regulations relating to prison education programs, Total and Permanent Disability, and False Certification Discharges that are not included in this publication. For more information on the negotiated rulemaking sessions, including the work of the Subcommittee, please visit: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

Summary of Proposed Changes

These proposed regulations would—

• Amend § 685.208 to cover only fixed payment repayment plans, which are plans under which monthly payments are based on repayment period, loan debt, and interest rate.

• Amend § 685.209 to include regulations for all IDR plans, which are plans with monthly payments based in whole or in part on income and family size.

• Modify the terms of the REPAYE plan in § 685.209 to reduce monthly payment amounts for borrowers. A borrower who only has outstanding loans for an undergraduate program would pay 5 percent of their discretionary income, and a borrower who only has outstanding loans for a graduate program would pay 10 percent of their discretionary income. A borrower with outstanding loans from both an undergraduate and graduate program would pay an amount between 5 and 10 percent based upon the weighted average of the original principal balances of the loans attributed to the undergraduate or graduate programs.

• Modify the REPAYE plan regulations in § 685.209 to reduce monthly payments for borrowers by increasing the amount of discretionary income exempted from the calculation of payments to 225 percent of the poverty guideline.

• Modify the REPAYE plan regulations in § 685.209 by ceasing to charge any unpaid accrued interest each month after applying a borrower's payment.

• Simplify the alternative repayment plan that a borrower is placed on if they are removed from the REPAYE plan because they fail to recertify their income, and only allow up to 12 payments on this plan to count toward forgiveness in § 685.221.

• Reduce the time to forgiveness under the REPAYE plan regulations in § 685.209 for borrowers with low original principal loan balances.

• Adjust the REPAYE plan regulations in § 685.209 to allow borrowers whose tax status is married filing separately to exclude their spouse from both the borrower's household income and family size.

• Modify the IBR plan regulations in § 685.209 to clarify that borrowers in default are eligible to make payments under the plan.

• Modify the regulations for all IDR plans in § 685.209 to allow the following periods of deferment and forbearance to count toward forgiveness:

• Cancer treatment deferment under section 455(f)(3) of the HEA;

• Rehabilitation training program deferment under § 685.204(e);

• Unemployment deferment under § 685.204(f);

• Economic hardship deferment under § 685.204(g), which includes deferments for Peace Corps service;

• Military service deferment under § 685.204(h);

• Post-active duty student deferment under § 685.204(i);

• National service forbearance under § 685.205(a)(4);

• National Guard Duty forbearance under § 685.205(a)(7);

• U.S. Department of Defense Student Loan Repayment Program forbearance under § 685.205(a)(9); and

• Administrative forbearance under § 685.205(b)(8) and (9).

• Modify the regulations applicable to all IDR plans in § 685.209 to allow borrowers an opportunity to make payments for all other periods in deferment or forbearance.

• Modify the regulations for all IDR plans in § 685.209 to clarify that a borrower's progress toward forgiveness does not fully reset when a borrower consolidates loans on which a borrower had previously made qualifying payments.

• Modify the regulations for all IDR plans in § 685.209 to automatically enroll any borrowers who are at least 75 days delinquent on their loan payments in the IDR plan for which the borrower is eligible and that produces the lowest monthly payments for them.

• Modify § 685.209 to limit eligibility for the PAYE plan to borrowers who began repaying under the PAYE plan before the effective date of these regulations and who continue to repay on that plan, and to limit eligibility for the ICR plan to (1) borrowers who began repaying under the ICR plan before the effective date of these regulations and who continue to repay on that plan, and (2) borrowers whose loans include a Direct Consolidation Loan made on or after July 1, 2006, that repaid a parent PLUS loan.

• Make conforming changes to §§ 685.102, 685.210, 685.211, and 685.221 based on revisions to the sections noted above.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Income-Driven Repayment (§§ 685.208 and 685.209)

Statute: Section 455(d) of the HEA provides that the Secretary will offer a variety of plans for repayment of eligible Direct Loans, including principal and interest on the loans. Section 455(d)(1)(D) of the HEA requires the Secretary to offer an income-contingent repayment plan with varying annual repayment amounts based on the borrower's income, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e)(4) of the HEA authorizes the Secretary to establish income-contingent repayment plan procedures and repayment schedules through regulations. Section 455(e)(2) provides that a repayment schedule for a Direct Loan that is repaid pursuant to income-contingent repayment is based on the AGI (as defined in section 62 of the Internal Revenue Code of 1986) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the AGI of both the borrower and the borrower's spouse. Section 455(d)(7) of the HEA identifies the periods that the Secretary must include in the calculation of the maximum repayment period under the ICR repayment plans. This section does not specifically limit the calculation to only those periods or specifically preclude the Secretary from using the regulatory authority to add additional periods. Additionally, Section 410 of the General Education Provisions Act (20 U.S.C. 1221e–3) provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. Furthermore, under section 414 of the Department of Education Organization Act (20 U.S.C. 3474), the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

Current Regulations: Section 685.209 provides for three income-contingent repayment plans in which a borrower's monthly payment amount is based on their AGI, loan debt, and family size. Those plans are the ICR, PAYE, and REPAYE plans. Additionally, § 685.221 provides for the IBR plan.

The current regulations in § 685.208(k) provide for a discretionary income amount for the ICR plan of the borrower's AGI minus the amount for the Federal poverty guidelines for the borrower's family size. For the IBR, PAYE, and REPAYE plans, the current regulations provide for a discretionary income amount of the borrower's AGI minus 150 percent of the Federal poverty guidelines for the borrower's family size.

The current regulations for PAYE, REPAYE, and IBR, at §§ 685.209(a)(1)(i), 685.209(c)(1)(i), and 685.221(a)(1), define ''adjusted gross income'' as the AGI as reported to the Internal Revenue Service (IRS). For all three plans, the AGI of married borrowers filing jointly includes both the borrower's and the spouse's income. For PAYE and IBR, the AGI of married borrowers filing separately includes only the borrower's income; for REPAYE, it includes the AGI of the borrower and the spouse, unless the borrower certifies that they are separated from or unable to access the spouse's income. For the ICR plan, the current regulations at § 685.209(b)(1)(iii)(A) refer to income as the borrower's AGI. The current regulations also provide, at §§ 685.209(a)(5)(i)(B), 685,209(b)(3)(i), 685.209(c)(4)(i)(A), and 685.221(e)(1)(ii), that borrowers may submit alternative documentation if the AGI is not available or does not reasonably reflect the borrower's current income.

The current regulations include the PAYE, REPAYE, and ICR plans within § 685.209; and the IBR plan in § 685.221. The term ''income-driven repayment'' is not used in the current regulations.

Under current regulations, monthly payment amount formulas are established for each of the IDR plans, but there is no definition of a monthly payment. Current regulations at §§ 685.209(a)(1)(iv), 685.209(c)(1)(iii), and 685.221(a)(3) provide that a borrower's ''family size'' includes individuals other than a spouse or children if such individuals receive more than half of their support from the borrower. The IBR regulations in § 685.221(a)(3) specify that support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs. Section 685.208 provides general repayment plan information and specifies which types of Direct Loans may be repaid under the various Direct Loan repayment plans. This section of the current regulations also describes the terms and conditions of the standard, graduated, extended, and alternative repayment plans, and includes high-level summaries of the terms of the income-contingent repayment plans and the IBR plan.

For the REPAYE plan, § 685.209(c)(1)(ii) defines an ''eligible loan'' for the purposes of adjusting a borrower's monthly payment amount as any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan or any Direct PLUS Loan or Federal PLUS Loan made to a parent borrower or any Direct Consolidation Loan or Federal Consolidation Loan that repaid a PLUS loan made to a parent borrower.

Section 685.209(c)(2)(ii)(B) provides that if a married borrower and the borrower's spouse each have eligible loans, the Secretary adjusts the borrower's REPAYE plan monthly payment amount by determining each individual's percentage of the couple's total eligible loan debt and then multiplies the borrower's calculated monthly payment amount by this percentage.

Section 685.209(c)(3)(iii) specifies when the annual notification for income recertification must be sent to a borrower, the date that documentation should be received by the Secretary, and the consequences if documentation is not received within 10 days of the annual deadline specified in the notice.

Sections 685.210(a)(1) and 685.210(b) establish the requirements for borrowers when they choose a repayment plan, including the procedures for initial selection of a plan and for changing plans. Section 685.210(a)(2) authorizes the Secretary to designate the standard repayment plan for a borrower who does not select a plan before they enter repayment.

In § 685.211, which addresses miscellaneous repayment provisions, § 685.211(a) describes how payments and prepayments are applied in the different repayment plans and § 685.211(b) provides that, to encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a repayment plan or on a schedule that meets the requirements specified by the Secretary.

Section 685.221 describes the IBR plan, which is available to borrowers who have a partial financial hardship. Pursuant to § 685.221(b)(1), the borrower's aggregate monthly loan payments are limited to no more than 15 percent or, for a new borrower as of 2014, 10 percent, of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12.

Proposed Regulations: The proposed regulations would simplify, clarify, and standardize the Direct Loan Program repayment regulations, including organizing the regulations by repayment plan type. In particular, the regulations would significantly revise the terms of the REPAYE plan to address a range of identified shortcomings in the current IDR plans and limit future enrollment of student borrowers into other repayment plans created by regulation. This would simplify borrowers' repayment choices. In addition, the Department proposes to revise other provisions related to the IBR and ICR plans to make it easier for borrowers to make progress toward forgiveness.

Proposed revised § 685.208 would be retitled ''Fixed payment repayment plans'' and would cover the standard, graduated, and extended repayment plans, which are plans under which monthly payments are based on repayment period, loan debt, and interest rate.

The Department proposes to remove provisions related to the ICR plan, the alternative repayment plan, and the IBR plan from § 685.208(k), (l), and (m), and to remove the regulations governing the IBR plan from § 685.221. We propose to include the regulations governing all of the IDR plans in revised § 685.209, which would be retitled ''Income-driven repayment plans.'' Proposed revised § 685.221 would contain the regulations governing the alternative repayment plan that are currently in § 685.208(l). In proposed § 685.209(f)(1), (h)(i), and (k)(i)–(ix), the Department proposes to modify the REPAYE plan to increase the amount of discretionary income exempted from the calculation of payments to 225 percent of the applicable poverty guideline, reduce monthly payment amounts as a percentage of discretionary income from 10 percent to 5 percent for the share of a borrower's total original loan principal volume attributable to outstanding loans received by the borrower to pay for an undergraduate program, not charge any remaining accrued interest after applying a borrower's monthly payment, and reduce the time to forgiveness under the plan for borrowers to as short as the equivalent of 10 years of qualifying payments for those with original loan balances of $12,000 or less.

The Department proposes a definition of ''discretionary income'' in § 685.209(b) that would increase the discretionary income threshold, exempting a greater portion of borrowers' incomes from the determination of payment amount, for the REPAYE plan. Discretionary income would be defined as the borrower's AGI minus 225 percent of the Federal poverty guidelines for the borrower's family size.

The Department proposes to clarify that, for all IDR plans, ''income'' means the borrower's AGI and, if applicable, the spouse's income, as reported to the IRS. The definition of income would also provide that, instead of AGI, the Secretary may accept an amount calculated based on alternative documentation of all forms of taxable income received by the borrower.

The proposed regulations would establish a new definition of ''income-driven repayment plans.'' That proposed definition would specify that an IDR plan is one in which the monthly payment amount is primarily based on the borrower's income.

The Department proposes to establish a new definition of ''monthly payment or the equivalent'' in § 685.209(b) that would define a monthly payment as the required payment made under one of the IDR plans; a month in which a borrower receives certain deferments or forbearances under one of the conditions in proposed § 685.209(k)(4)(iv)(A) through (J); or a month in which a borrower makes a payment in accordance with the procedures in proposed § 685.209(k)(6). Under proposed § 685.209(k)(6)(i), borrowers participating in any of the IDR plans would be able to apply toward the time required for forgiveness any period of deferment or forbearance that is not otherwise eligible to be counted toward forgiveness if the borrower makes a payment equal to or greater than the amount that would have been required during that period on any income-driven repayment plan, including, pursuant to § 685.209(k)(4)(i), a payment of $0.

The proposed regulations would establish a stand-alone definition of ''support'' in proposed § 685.209(b) that mirrors the definition in the current IBR regulations at § 685.221(a)(3).

Under § 685.209(k)(5), the Department proposes to amend the terms of the IBR plan to allow borrowers in default to make payments under the IBR plan that would count toward loan forgiveness.

Proposed § 685.209(k)(4)(v) would apply to all IDR plans and would provide that a borrower's progress toward forgiveness does not fully reset when a borrower consolidates one or more Direct or FFEL Program Loans into a Direct Consolidation Loan, as it does under current regulations. Instead, the Department would determine how many qualifying payments the borrower made on the loans consolidated, and then assign a qualifying payment count to the Direct Consolidation Loan that is based on the weighted average of the qualifying payments, using the loan balance as the weighting factor (as it is also used to prorate borrower-level IDR payments down to the loan level).

Proposed § 685.209(m)(3) would provide that any student borrower who is at least 75 days delinquent on their loan payments would be automatically enrolled in the IDR plan that results in the lowest monthly payment based on the borrower's income and family size, as long as the borrower has provided approval for the disclosure of tax information, the borrower otherwise qualifies for the plan, and that the IDR plan would lower the borrower's payment.

Under § 685.209(c)(2), the Department proposes to modify the eligibility requirements of the IBR plan to limit eligibility for this plan to borrowers who have a partial financial hardship and who have not made 120 qualifying payments on the REPAYE plan on or after the effective date of the regulation.

Under § 685.209(c)(3), the Department proposes to modify the eligibility requirements of the PAYE plan to limit eligibility for this plan to borrowers enrolled in the PAYE plan as of the effective date of the regulation.

Under § 685.209(c)(4), the Department also proposes to modify the eligibility requirements of the ICR plan to limit eligibility for this plan to borrowers currently enrolled in the ICR plan as of the effective date of the regulations, or to borrowers whose loans include a Direct Consolidation Loan that repaid a Parent PLUS loan.

The Department proposes to amend §§ 685.102, 685.210, 685.211, and 685.221 to include conforming changes based on revisions to the sections noted above. We also propose to make technical corrections to §§ 685.219, 685.220, 685.222, and 685.403 for consistency with the changes related to interest capitalization in the Affordability and Student Loans Final Rule.

Reasons

Definitions (§ 685.209(b))

For ease of understanding, the Department has combined all of the IDR plans in proposed § 685.209. This would ensure all the relevant information is available to borrowers and other stakeholders in a single location in the regulations.

The Department has proposed to incorporate into the definition of ''discretionary income'' an increase in the amount of the discretionary income level for the REPAYE plan, exempting more of borrowers' incomes from being used to calculate their monthly payment amounts on that plan. As discussed elsewhere in this NPRM, the Department is concerned that payments remain unaffordable on IDR plans for too many borrowers. By definition, borrowers in poverty have family financial resources insufficient to meet the costs of basic necessities and should not be expected to afford any amount of loan payments. The Department sought to define the level of necessary income protection by assessing the level where rates of financial hardship are significantly lower than the rate among those in poverty. Based upon an analysis discussed further in the Income Protection Threshold section of this document, the Department found that point to be 225 percent of the Federal poverty guidelines.

To simplify the definition of ''income,'' the Secretary has proposed to clarify that the Secretary will rely on the borrower's AGI, the spouse's AGI, if applicable, or alternative documentation of the borrower's income. These changes are largely technical, designed to streamline the regulations and ensure consistency in the language.

The Department has proposed to add a definition of ''IDR plans'' to ensure clarity in the new organization of the regulations, which places all IDR plans in § 685.209.

The Department is concerned that the current approach to defining a monthly payment is too narrow. Some borrowers are forced to choose between accessing a deferment or forbearance for which they qualify or losing out on progress toward forgiveness. In some cases, borrowers have found it difficult to navigate those decisions. As described later in this NPRM, the Department has proposed to include certain deferments and forbearances as the equivalent of a qualifying payment, ensuring borrowers will continue to receive progress toward forgiveness. We also propose to establish procedures that would provide borrowers with some greater flexibility in such cases. This definition would incorporate both such circumstances into the definition of a ''monthly payment or equivalent.''

The inclusion of a proposed definition of ''support'' would ensure greater consistency in the treatment of borrowers' family size across IDR plans, providing for a single and consistent defined term. The proposed language itself reflects existing language for the IBR plan.

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

The Department is not proposing to change which types of loans are eligible to be repaid under the different IDR plans. We propose to maintain the current practice in which all types of Direct Loans to students are eligible to be repaid on the REPAYE plan. With regard to parent PLUS loans, the HEA states that such loans may not be repaid under an ICR plan or the IBR plan, and Direct Consolidation Loans that repaid a parent PLUS loan may not be repaid under the IBR plan. However, a Direct Consolidation Loan disbursed after July 1, 2006, that repaid a parent PLUS loan may be repaid under an ICR plan (but not under any of the other IDR plans).

The Department is proposing additional eligibility changes to streamline the repayment options available to borrowers. As part of the Department's goal of creating an IDR plan that is the best option for borrowers, we propose to limit future enrollment in the PAYE or ICR plans after the effective date of these regulations. The Department proposes limiting enrollment in PAYE to borrowers enrolled on that plan as of the effective date of these regulations so long as the borrowers stay enrolled on that plan. Borrowers who have not yet signed up for PAYE by the effective date of these regulations, or those who leave the plan, would not be eligible to sign up for it after the effective date of these regulations. The Department proposes the same change with respect to ICR with one exception. Borrowers with a Direct Consolidation loan made on or after July 1, 2006, who repaid a parent PLUS loan could continue to choose the ICR plan after the effective date of these regulations.

The Department believes these changes would help accomplish its goal of simplifying repayment options for borrowers. With this change, all student borrowers in repayment would be able to access an IDR option through REPAYE, and many would be able to choose between two IDR options: IBR, for which the terms are specified in the statute, and REPAYE. The Department anticipates that REPAYE would provide the lowest monthly payments for essentially all low- or moderate-income student borrowers; this change would make it easier for borrowers to navigate repayment and enroll in the most affordable IDR plans.

The Department also proposes to limit the ability of borrowers to switch into IBR once they have completed 120 payments on REPAYE. Because the Department is proposing that borrowers with loans attributed to a graduate program must make 300 qualifying payments to receive forgiveness, we are concerned that a borrower might choose to make the lower payments available on REPAYE and then switch to IBR to receive immediate forgiveness. Doing so would run counter to the goals for the REPAYE plan, which is to reduce payments for all borrowers but still require borrowers with graduate loans to pay longer before receiving forgiveness. As graduate borrowers generally have larger balances than undergraduate borrowers, this helps to ensure that both groups repay a similar share of their balances. In addition, by preventing borrowers from switching after 120 payments, we propose to give borrowers ample time to decide between making lower payments on REPAYE or the possibility of forgiveness after the equivalent of 20 years on IBR.

Income Protection Threshold (§ 685.209(f))

Several non-Federal negotiators argued that a larger amount of borrowers' income should be excluded from the formula for calculating monthly payments. They stated that the current protection level in the PAYE and REPAYE plans of 150 percent of the poverty guideline ($20,385 for a single individual and $41,625 for a family of four in 2022) is not adequate to ensure low-income borrowers can afford their basic needs and that the amount of income protection should be increased.[11] Some of the non-Federal negotiators argued that the threshold should be 250 percent of the poverty guideline, while several others suggested that 400 percent of the poverty guideline would be more appropriate, especially in areas where the cost of living is substantially higher.[12]

The Department agrees with the non-Federal negotiators that the current amount of income protected is too low. Accordingly, in § 685.209(f)(1), the Department proposes to increase the amount of discretionary income exempted from the calculation of payments in the REPAYE plan to 225 percent of the Federal poverty guideline. The Department chose this threshold based on an analysis of data from the Survey of Income and Program Participation (SIPP) for individuals who are aged 18–65 who attended college and who have outstanding student loan debt. The Department looked for the point at which the share of those who report material hardship—either being food insecure or behind on their utility bills—is statistically different from those whose family incomes are at or below the Federal poverty guidelines.[13] The results of this analysis are shown in Table 1 below.

[11] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/107pm.pdf,* p. 64.

[12] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/108am.pdf,* p. 28.

[13] Department analysis of data from the Survey of Income and Program Participation, Census Bureau. For more on the SIPP, please see: *https://www.census.gov/programs-surveys/sipp.html.* The data track a subset of proxies for material hardship. We focus on two measures commonly used in the literature on material hardship and poverty: food insecurity and being behind on utility bills. We focus on differences in these measures across income categories relative to rates of hardship for individuals living in poverty, rather than comparing the absolute levels to any particular reference standard. We avoid interpretation of the absolute level since the measures do not offer a comprehensive indication of hardship; it should not be inferred, for example, that individuals who do not report these two measures of hardship experience no material hardships.

TABLE 1—RATES OF MATERIAL HARDSHIP BY FAMILY INCOME GROUPS RELATIVE TO POOR INDIVIDUALS

Family income as a multiple of the Federal Poverty Line (FPL) [14]	Fraction who are food insecure or behind on bills
Poor (family income < 100% FPL)	** 0.279 (0.016)
Rate of material hardship relative to families in poverty	
100–125% FPL	0.040 (0.039)
125–150% FPL	0.000 (0.033)
150–175% FPL	−0.037 (0.032)
175–200% FPL	−0.046 (0.033)
200–225% FPL	−0.060 (0.033)
225–250% FPL	** −0.088 (0.033)
250–275% FPL	** −0.151 (0.025)
275–300% FPL	** −0.167 (0.028)
300–325% FPL	** −0.148 (0.024)
325–350% FPL	** −0.180 (0.025)
350–375% FPL	** −0.189 (0.024)
375–400% FPL	** −0.188 (0.025)
400–450% FPL	** −0.219 (0.021)
450–500% FPL	** −0.224 (0.018)
500–600% FPL	** −0.230 (0.019)
600–700% FPL	** −0.243 (0.017)
>700% FPL	** −0.247 (0.016)
N	13,513

** $p<0.01$

Note: Analysis based on 2020 Survey of Income and Program Participation. In the analysis, an indicator for whether an individual experiences material hardship (*i.e.,* reports either being food insecure or behind on bills) is regressed on a constant term and a series of indicators corresponding to categories of family income relative to the Federal poverty line. Both hardship and family income are measured during 2019. The estimation sample includes individuals aged 18 to 65 who have outstanding education debt, are not enrolled as of December in the reference year (2019), and report at least some college experience. The first row of the table displays the estimated coefficient on the constant term, showing that about 27.9 percent of individuals in poverty experience material hardship. Subsequent rows show the estimated difference in the rate of material hardship for each income group relative to those in poverty. Standard errors shown in parentheses are estimated using replicate weights from the Census that account for the SIPP survey design, and 2 stars denote estimated coefficients that are statistically different from zero at the 0.01 significance level.

Based upon this analysis, individuals with family incomes up to and including 225 percent of the Federal poverty guidelines have rates of material hardship that are statistically indistinguishable from borrowers with income below 100 percent of the Federal poverty guidelines. Drawing on these results, we believe borrowers with income below 225 percent of the Federal poverty guidelines should not be expected to make loan payments.

Moreover, the 225 percent threshold would be better aligned with the minimum wage in many States. Assuming an average of 2,000 hours worked in a year, an individual who makes 150 percent of the poverty guideline for a single-person household is earning $10.19 an hour. That is below the minimum wage in 22 States plus the District of Columbia and less than $0.25 above the rate for three other States.[15] Combined, those 25 States plus the District of Columbia are home to 56 percent of Americans aged 25 or older with at least some college education.[16] By contrast, a threshold of 225 percent of the poverty guideline represents an hourly wage of $15.28 in 2022 for a single-person household. At this level, the REPAYE plan would continue to protect the amount a single minimum-wage worker with no dependents would earn in every State in 2023.[17] The higher income protection amount would also address the Department's concern that a too-high payment amount is one reason that many borrowers fall behind on their payments or default on their loans, despite the availability of IDR plans. This concern is particularly germane to lower-income borrowers, who cannot afford to repay at all. The Department believes that protecting more of a borrower's income, coupled with other proposed regulatory changes related to auto-enrollment for delinquent borrowers, would result in more low-income borrowers enrolling in IDR and in fewer defaulting on their student loans. Increasing the income protection threshold would better achieve the goals of IDR, allow more low-income borrowers to qualify for $0 monthly payments, and allow more borrowers to cover the cost of necessities without becoming delinquent on their student loans.

Payment Amounts (§ 685.209(f))

Many non-Federal negotiators also emphasized the need to reduce the required payments for borrowers on IDR plans. This included some suggestions that the Department should limit all payments to 5 percent of a borrower's discretionary income. Qualitative research shows that high numbers of borrowers on IDR plans still find their payments to be unaffordable,[18] and the most common complaint received by the Department from borrowers on the structure of IDR plans is that their payments are still unaffordable on those plans.

Borrowers who struggle to repay their student loans are likely to have a lower payment option on IDR than other repayment plans. If the payment amount under IDR is still not affordable, then a borrower may not be able to make any payments and, as a result, end up in

[14] This table uses the phrase Federal Poverty Line in place of the term Federal Poverty Guidelines.

[15] *https://www.dol.gov/agencies/whd/mw-consolidated.*

[16] U.S. Census Bureau, ''Table S1501: Educational Attainment,'' 2020 ACS 5-year estimates, *https://data.census.gov/cedsci/table?q=education%20by%20state&tid=ACSST5Y2020.S1501&moe=false&tp=true.*

[17] *https://www.dol.gov/agencies/whd/minimum-wage/state.*

[18] *https://www.pewtrusts.org/en/research-and-analysis/reports/2022/02/redesigned-income-driven-repayment-plans-could-help-struggling-student-loan-borrowers.*

delinquency or default. When that occurs, the IDR plans do not achieve their goals of establishing affordable payments for borrowers. By contrast, requiring a lower monthly payment amount would increase the likelihood that a borrower can afford and will make their required payments. Research has shown that usage of existing IDR plans reduces delinquencies by 33 percentage points.[19] Offering lower payment amounts under the REPAYE plan than those available on the other IDR plans would also contribute to the goals of being affordable based on income and family size, as well as providing the lowest payment option of any IDR plan for almost all borrowers.

In proposed revisions to the REPAYE plan in § 685.209(f)(1)(ii), the Department proposes to reduce—to 5 percent of discretionary income—the payment on the share of a borrower's total original loan principal balance that is attributable to loans they received as a student in an undergraduate program. Under proposed § 685.209(f)(1)(iii), borrowers would continue to pay 10 percent of their discretionary income on the share of their total original principal loan balances attributable to loans they received as a student in a graduate program that are still outstanding when the borrower begins using the REPAYE plan. Borrowers who have outstanding loans for both undergraduate and graduate programs would pay an amount between 5 and 10 percent based upon the weighted average of their original principal loan balances, regardless of whether the loans have been consolidated or not. For example, a borrower who has $20,000 in loans received as a student for undergraduate study and $60,000 in loans received as a student for graduate study would pay 8.75 percent of their discretionary income, while one who has $30,000 from their undergraduate education and $10,000 from their graduate education would pay 6.25 percent of their discretionary income. The Department proposes to use the original principal loan balance a borrower received for these calculations so that it would be easier for a borrower to understand how their payment rate is calculated and so that future borrowers can factor this information into decisions about how much to borrow. This calculation would only be based on loans that are still outstanding.

The Department proposes to treat loans attributed to undergraduate programs differently than graduate programs for several reasons. First, there are lower annual and cumulative limits on loans for undergraduate borrowers than there are for loans for graduate borrowers. Graduate and professional students are eligible to receive Direct PLUS Loans in amounts up to the cost of attendance established by the school they are attending, less other financial aid received. The lack of specific dollar limits on the amount of PLUS loans for graduate students means borrowers can take on significantly more debt for those programs than they can for undergraduate programs. The Department is concerned that setting payments at 5 percent of discretionary income for graduate loans could result in borrowers taking on significant additional debt that they will not be able to repay. The Department is not concerned that keeping the rate at 10 percent for graduate loans would create a further incentive for additional borrowing because that is the same rate that is already available to graduate borrowers on several different IDR plans. We do not, however, propose to increase the payment rate for graduate borrowers above the current REPAYE threshold of 10 percent. The Department is concerned that setting a higher payment rate for graduate borrowers—beyond what is available on IBR for new borrowers, PAYE, and the existing REPAYE plan—would not result in a plan that is clearly the best IDR option for most student borrowers. That would result in the Department not achieving its desired goal of making it easier for borrowers to navigate repayment.

Second, the Department is more concerned about the potential for undergraduate borrowers to struggle with delinquency and default than it is for graduate borrowers. Department data on borrowers in default as of December 31, 2021 show that 90 percent of borrowers who are in default on their Federal student loans had only borrowed for their undergraduate education. Just 1 percent of borrowers who are in default had loans only for graduate studies. Similarly, just 5 percent of borrowers who only have graduate debt are in default on their loans, compared with 19 percent of those who have debt from undergraduate programs.[20]

The Department proposes reducing the share of discretionary income a borrower would pay on their loans that are attributable to an undergraduate program to 5 percent as a way of addressing several concerns raised by negotiators and public commenters during the negotiated rulemaking process, as well as concerns identified through focus groups of borrowers and reviews of complaints received by the Ombudsman's office within the office of Federal Student Aid (FSA). In the former category, the Department heard repeatedly about concerns that the current amount of income required to be devoted to payments is too high and that it is a particular challenge for borrowers who are located in areas with higher costs of living, because current IDR formulas do not consider expenses. In the latter category, the Department has heard from borrowers who noted that they were willing to make payments on their loans but could not afford amounts as large as what current formulas calculate. A survey conducted by the Pew Charitable Trusts also found that almost half of borrowers surveyed who had been or were enrolled in an IDR plan at the time of the survey still found their monthly payments unaffordable.[21]

The Department proposes the reduction of payments to 5 percent to address these concerns through the REPAYE plan. The Department does not think it would be feasible to vary the amount of student loan payments by locality because it would introduce significant operational complexity and result in inconsistent borrower treatment across the country. Attempting to conduct individualized analyses of a borrower's expenses would create similarly significant challenges to the point of being impossible for the Department to administer. Reducing the share of discretionary income applied to the payment amount would, however, have a similar effect by providing borrowers with lower monthly loan payments.

The Department proposes reducing the share of discretionary income for loans obtained for undergraduate programs to 5 percent to ensure better parity between the payment reductions undergraduate borrowers receive from IDR, relative to the standard plan, compared to graduate borrowers. Because graduate borrowers generally have higher loan balances than undergraduate borrowers, if an undergraduate borrower and graduate borrower have the same income level, it is highly likely that the latter will have significantly larger reductions in

[19] *https://www.aeaweb.org/articles?id=10.1257/app.20200362.*

[20] Department of Education analysis of loan data by academic level for total borrower population and defaulted borrower population, conducted in FSA's Enterprise Data Warehouse, with data as of December 31, 2021.

[21] Travis Plunkett, Regan Fitzgerald, Lexi West, Many Student Loan Borrowers Will Need Help When Federal Pause Ends, Survey Shows (July 15, 2021), *https://www.pewtrusts.org/en/research-and-analysis/articles/2021/07/15/many-student-loan-borrowers-will-need-help-when-federal-pause-ends-survey-shows*

monthly payments than they would have on the 10-year standard plan due to IDR than the former if undergraduate and graduate loans are treated the same.

An example highlights how using the same share of income for payments by undergraduate and graduate borrowers creates inequities. All of these figures are based upon the 2015–16 National Postsecondary Student Aid Study and use the 2016 Federal poverty guideline of $11,880 for a single individual. Consider two borrowers: Borrower A finished an undergraduate program with the median amount of Federal loan debt for an undergraduate borrower ($20,062), while Borrower B finished a graduate program with the median amount of debt for a graduate program ($41,000). Borrower A's loans have a 4 percent interest rate, while Borrower B's are at 5.55 percent, the same difference in interest rates between undergraduate and graduate Direct Stafford loans that currently exists in statute. They both earn $50,000 and are the only members of their households. As a result, they would have equal payments of $162 per month in an IDR plan that uses the proposed 225 percent of the Federal poverty level as the income protection threshold and charges 10 percent of discretionary income. However, for Borrower A, this is just $41 less than the $203 they would pay on the 10-year standard plan. Borrower B, however, pays $284 less because their 10-year standard plan payment would have been $446. In fact, if both borrowers made $60,000, then Borrower A would pay $42 more per month under IDR than on the 10-year standard plan, while Borrower B would still pay $200 less.

The Department is concerned that using the same payment rate (as a share of discretionary income) to determine payment amounts for undergraduate and graduate borrowers would thus result in inequities between the two, whereby an undergraduate borrower would receive lower payment reductions relative to the 10-year standard repayment plan. It is not possible to fix this problem by equalizing the amount that monthly payments decrease, since the underlying payments on a 10-year standard plan for higher-balance loans will always be larger than those for lower-balance loans.

Instead of trying to equalize decreases in monthly payments, the Department calculated how to construct a payment formula in which the income at which an undergraduate borrower who completes their program with median debt ceases to benefit from IDR is equal to the income at which the graduate borrower who completes their program with median debt also ceases to benefit. Put another way, the Department looked at what share of discretionary income would ensure that a borrower with only the typical level of graduate loan debt could not benefit more at higher incomes than a borrower with only undergraduate loan debt.

To calculate that point, the Department first determined how much a graduate borrower in a single-person household with the median graduate loan balance could earn and still benefit from IDR. Another way to think of this is, ''What is the income level at which the payment calculated for IDR is equal to the payment on the 10-year standard plan?''. For graduate borrowers, we used $41,000, which is the median amount of Federal loans borrowed for graduate school among students who borrowed for graduate school and finished their program in 2015–16.[22] While this includes any completer who has Federal loan debt for graduate school in this year, we intentionally did not include undergraduate debt held by these borrowers, in order to address potentially differential treatment between a borrower who only has undergraduate debt from one who only has graduate debt. Based on that $41,000 amount, the income level for a single individual where they cease seeing a payment reduction under IDR is approximately $80,000 in 2016. Next, the Department performed the same calculation for a borrower with the median undergraduate debt amount of $20,062, varying the discretionary income amount in whole percentage points in descending order from 10 percent.[23] The Department found that a payment rate equal to 5 percent of discretionary income would allow a single borrower with only undergraduate loans up to $75,500 in 2016 income to receive benefits. That number is closer to the figure for a graduate borrower than 4 percent would be ($87,700). Accordingly, the Department believes charging borrowers 5 percent of discretionary income for the undergraduate portion of their debt provides the appropriate amount to ensure greater parity between graduate and undergraduate borrowers, in terms of their incentives to choose an IDR plan.

[22] Department analysis of data from the National Postsecondary Student Aid Study 2015–16 using the PowerStats web tool at *https://nces.ed.gov/datalab/.* Table ID: rlaubc.

[23] Department analysis of data from the National Postsecondary Student Aid Study 2015–16 using the PowerStats web tool using the PowerStats web tool at *https://nces.ed.gov/datalab/.* Table ID: zonpin.

By providing reduced payments for loans that a borrower received as a student in an undergraduate program, the proposed regulations would better target the benefits of the changes to IDR toward those who are more likely to struggle with their debt. A borrower who has only obtained loans for their graduate studies would still benefit from several other provisions in the IDR payment plans. These benefits include the larger amount of income protected from payments, not charging borrowers any remaining accrued interest after applying their monthly payment, and counting time spent in several deferments and forbearances toward forgiveness. The Department believes the approach to lower payments for undergraduate loans is preferable to setting an even higher income exemption than the 225 percent of the Federal poverty guideline proposed in this regulation. As noted in the discussion on the rationale for the 225 percent threshold, that is the point at which the share of those who report material hardship—being either food insecure or behind on their utility bills—is statistically different from those whose family incomes are at or below the Federal poverty guidelines. The Department thus believes it is appropriate for borrowers to make payments once their incomes exceed that 225 percent threshold. However, we want to make sure the payment a borrower makes when their income exceeds that threshold is affordable. This change thus accomplishes that goal.

In proposing reductions in the payment rate solely for undergraduate loans, the Department is consciously emphasizing greater benefits for borrowers who have undergraduate debt compared to those who only have debt for graduate school. As borrowers' monthly payments are based on the ratio of their undergraduate borrowing to their graduate borrowing, borrowers with the highest ratios of undergraduate to graduate borrowing would have the lowest monthly payments, even if they borrowed more overall. While graduate school can provide significant benefits, the Department is concerned that the majority of low-income students need to take out student loans in order to complete an undergraduate education—particularly if they want to obtain the bachelor's degree that is a necessary precursor to graduate school. For instance, data from the 2015–16 National Postsecondary Student Aid Study (NPSAS) show that 84 percent of Pell Grant recipients who completed a bachelor's degree that year also had

Federal loan debt compared to 51 percent of those who did not receive Pell.[24] Not surprisingly then, approximately two-thirds of borrowers who obtained a bachelor's degree in 2015–16 also received a Pell Grant.[25]

Setting payments at 5 percent of discretionary income for the portion of loans attributed to undergraduate education means that a lower-income borrower who has to take on debt for their undergraduate and graduate education, and thus ends up with a larger debt balance than someone who only had to borrow for graduate school, is not penalized the way they would be if the share of income was calculated based upon the total debt held or some similar way of calculating payments. The Department does not believe that this possibility would encourage many borrowers to take on significantly more undergraduate debt to lower possible future graduate loan payments. For one, many undergraduate students do not plan to attend graduate school. Second, for those planning to attend graduate school, the strict loan limits for undergraduate student borrowers would limit how much more they could borrow.

Interest Benefits (§ 685.209(h))

Proposed § 685.209(h) would address how the Secretary charges the remaining accrued interest to a borrower if the borrower's calculated monthly payment under an IDR plan is insufficient to pay the accrued interest on the borrower's loans. For the REPAYE plan, the Department proposes to not charge any remaining accrued interest to a borrower's account each month after applying a borrower's payment.

This would be an expansion of the current REPAYE plan interest benefit, which covers all of the remaining interest on subsidized loans only for the first 3 years of repayment in the plan, and then 50 percent of the remaining interest on subsidized loans after the first 3 years. For unsubsidized loans, the current REPAYE plan interest subsidy benefit covers 50 percent of the remaining interest during all years of repayment under the plan.

The Department proposes to increase the interest benefit due to concerns that the current structure of IDR plans risks discouraging borrowers from selecting the plans in the first place or from continuing to pay on them due to loan balance growth. The current IDR plans allow borrowers to pay less each month than what they would under the 10-year standard plan and, in the case of IBR and PAYE, require borrowers to have monthly payments below what they would owe on the 10-year standard plan. Unlike the standard, extended, or graduated plans, there is no requirement that monthly payments be sufficient to at least cover the amount of interest that accumulates each month. While most IDR plans do not charge some of the accumulating interest, the remaining portion of interest continues to accrue and over years that amount of interest accrual may be significant. As a result, many borrowers make their required payments each month but still see their balances continue to grow. In fact, the Department estimates that 70 percent of borrowers on existing IDR plans have seen their balances grow after entering those plans.[26]

The Department is concerned that growing balances due to unpaid interest may discourage borrowers from repaying their loans and, thus, result in lower amounts repaid to the government. Focus groups conducted by the Pew Research Center have found that interest accrual is a common source of borrower frustration and creates negative incentives for borrowers to stick with loan repayment.[27] Those same focus groups found that interest accrual created ''psychological and financial barriers to repayment,'' as borrowers lost motivation to repay and felt that they were trapped in debt indefinitely. Focus groups conducted by New America in 2015 similarly found that while borrowers understood the concept of how interest works, the rate of accrual and seeing balances continuing to increase had negative effects, such as higher-than-anticipated loan balances due to interest that would accrue while they were enrolled in school, during a loan deferment, or during a forbearance.[28] Those same focus groups found that while the borrowers who used IDR liked it, there were concerns about borrowers ending up paying far more than they would have repaid on the standard 10-year plan—an outcome that is a function of interest accumulation. Multiple annual reports from the FSA Ombudsman have also found that borrowers struggle to understand how the different repayment plans work and the interplay between lower monthly payments and higher interest accumulation.[29] Because IDR plans are the only repayment options that have no long-term protections against negative amortization, the Department is concerned that continued balance growth on these plans could dissuade borrowers from enrolling or recertifying enrollment in these plans. The potential for these negative incentives could be even greater as a result of the increases in the amount of income protected from payments and the reduction in payments tied to undergraduate loan balances. Were the Department to leave the interest benefits unchanged, those payment reductions would result in even greater amounts of interest accumulation for borrowers. That would risk undermining the Department's overall goals of providing student borrowers with one clear IDR option. Not all of the interest that would no longer be charged under this proposal is a true new cost to the government. Borrowers whose incomes are particularly low relative to their debt balances would end up with significant interest accumulation that would be forgiven after the borrower makes the necessary number of qualifying payments. For those borrowers, not charging interest as it accumulates instead of forgiving it at the end of the IDR repayment term would have no additional cost to the government. And in doing so, it has the added benefit of encouraging increased repayment.

Not charging any remaining accrued interest to the borrower's account after applying a borrower's payment would also help the Department accomplish its overall goals of simplifying repayment. Adding this benefit would further cement REPAYE as the best IDR option for most student borrowers.

This change to the interest benefits would also remove a significant tradeoff for borrowers between choosing an IDR plan or one of the fixed repayment plans, none of which allow for monthly payments that are less than the amount of interest that accrues each month. Limiting interest accumulation would also increase the attractiveness of IDR relative to a discretionary forbearance. While borrowers on IDR would still have to make a payment, they would also not see the interest accumulation that happens to a borrower on a

[24] Department analysis of data from the National Postsecondary Student Aid Study 2015–16 using the PowerStats web tool at *https://nces.ed.gov/datalab/*. Table ID: dzzbcp.

[25] Department analysis of data from the National Postsecondary Student Aid Study 2015–16 using the PowerStats tool at *https://nces.ed.gov/datalab/*. Table ID: jbryls.

[26] Department of Education internal analysis of loan data for borrowers enrolled in IDR plans, conducted in FSA's Enterprise Data Warehouse, with data as of March 2020.

[27] *https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf*.

[28] *https://static.newamerica.org/attachments/2358-why-student-loans-are-different/FDR_Group_Updated.dc7218ab247a4650902f7afd52d6cae1.pdf*.

[29] *https://studentaid.gov/sites/default/files/FY_2019_Federal_Student_Aid_Annual_Report_Final_V2.pdf*; *https://studentaid.gov/sites/default/files/FSA-FY-2018-Annual-Report-Final.pdf*; *https://studentaid.gov/sites/default/files/fy2020-fsa-annual-report.pdf*.

discretionary forbearance. This may help more borrowers to enroll in this affordable repayment plan, and may then reduce student loan delinquencies and defaults, to the benefit of the Department and of taxpayers.

For borrowers who may have already experienced interest accumulation from being on an IDR plan, the Department notes that changes to the treatment of interest capitalization in the final rule published on November 1, 2022, 87 FR 65904, (Affordability and Student Loans Final Rule) will provide some assistance. That rule eliminated instances of interest capitalization when a borrower leaves the ICR, PAYE, or REPAYE plans. That means if a borrower decides those plans are no longer for them or they fail to recertify on time, they will not see their principal balance grow. We incorporated conforming changes here as part of our proposed changes to the IDR regulations.

That rule did not eliminate interest capitalization when a borrower leaves the IBR plan, including if they fail to recertify. However, the Department proposes to partly address this issue through the implementation of changes made in accordance with the FUTURE Act (Pub. L. 116–91), the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136), and the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), which direct the IRS, upon the written request of the Department, to disclose to any authorized person tax return information to determine eligibility for recertifications for IDR plans. This will make it easier to automatically recertify a borrower's participation in IDR plans.

Deferments and Forbearances (§ 685.209(k))

The Department also proposes to provide credit toward IDR forgiveness for periods in which a borrower is in certain deferment and forbearance periods by treating those periods as a qualifying payment for the purposes of IDR. Overall, the Department's goal in providing credit toward forgiveness for some of these deferments and forbearances is to avoid situations in which a borrower is presented with conflicting benefits, in these cases an opportunity to pause payments or make progress toward ultimate loan forgiveness. There are many different benefits available to borrowers in navigating student loan repayment. This can create unintended consequences, such as confusing choices for borrowers by putting in conflict the benefits of pausing payments for specific activities or conditions, such as types of national service or receiving certain medical care and making progress toward forgiveness. As a result, there are too many instances in which borrowers may inadvertently sacrifice months of credit toward forgiveness.

During the negotiated rulemaking sessions, the negotiators focused on proposals for providing credit toward forgiveness for each month when a borrower was in one of the identified types of deferment and forbearance. In addition, several of the negotiators felt it was important to retroactively apply the benefit for borrowers who received specific deferments and forbearances in the past.[30] The Department agrees that it is appropriate to allow certain past periods of deferment and forbearance to count toward forgiveness because of concerns that the Department's loan servicers did not provide appropriate guidance and assistance to borrowers to ensure that they understood the full consequences of their decisions to take a deferment or forbearance. We believe that many borrowers did not understand that, by taking out a deferment or forbearance, they were delaying the time in which they could have the loan forgiven. To address this history, we are proposing to give a borrower credit for specific periods of deferment or forbearance because those deferments and forbearance periods are most likely to be periods in which a borrower would have benefitted from an IDR plan if they had received proper advice. This change does not affect the borrower's past usage of these deferments or forbearances. Rather, when a borrower requests an IDR repayment plan after the effective date of these regulations, the Department would award credit for those prior periods spent in a deferment or forbearance.

This proposal aligns with administrative actions already announced by the Department to address concerns about past handling of deferments and forbearances. In April 2022, the Department announced it would make an administrative account adjustment to award credit to borrowers with Direct or FFEL Loans that we manage.[31] As part of that announcement, the Department announced that we would award credit toward forgiveness on IDR when a borrower spent more than 12 months consecutive or more than 36 months cumulative in forbearance. Similarly, the Department would award credit toward IDR forgiveness for all periods spent in a deferment prior to 2013, excluding time spent in an in-school deferment. This reflects concerns that borrowers may not have been getting proper credit for economic hardship deferments.

Under current § 685.209, only time spent in an economic hardship deferment counts toward IDR forgiveness. However, borrowers who meet the eligibility criteria for certain other types of deferments might similarly be expected to have a $0 payment if they were making payments under an IDR plan. For example, the unemployment deferment is available to borrowers who do not have a job and are actively seeking employment and who, therefore, might qualify for a $0 IDR payment. Similarly, the rehabilitation training deferment requires a borrower to make a substantial commitment that could prevent them from working full-time, potentially resulting in a calculated IDR payment of $0. Accordingly, we are proposing to count periods of unemployment and rehabilitation training deferment as the equivalent of making qualifying payments toward IDR plan loan forgiveness. We also seek feedback on whether, if possible to operationalize, the Department should include comparable deferments that are available under 34 CFR 685.204(j)(2) to Direct Loan borrowers who had an outstanding balance on a FFEL Program loan made before July 1, 1993, when they received their first Direct Loan.

In other situations, the Department proposes to provide credit toward forgiveness by counting deferments and forbearances as qualifying payments out of concern that borrowers should not have to face the tradeoff of using an opportunity to pause their payments for a specific situation versus continuing to make progress toward forgiveness. Allowing these deferments and forbearances to count toward IDR forgiveness would avoid the risk that a borrower could miss the opportunity to gain months or years of progress toward forgiveness by making the wrong choice or because they received inaccurate advice. Specifically, in proposed § 685.209(k)(4)(iv), the Department proposes to include deferments tied to military service, service in the Peace Corps, and post-active duty, and forbearances related to national service or National Guard Duty, because the Department is concerned that judging the relative tradeoffs between obtaining a deferment or forbearance and otherwise making progress toward forgiveness generates confusion for

[30] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec7pm.pdf,* p. 33.

[31] *https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.*

borrowers and results in borrowers inadvertently losing months of progress toward forgiveness because of the complexity. The Department also proposes to provide credit toward forgiveness for time spent while the borrower is in a forbearance for loan repayment through the U.S. Department of Defense because of concerns about borrowers being confused about this benefit versus seeking forgiveness in IDR. Similarly, the Department is concerned about borrowers being able to successfully navigate between the cancer treatment deferment and IDR when they are ill and undergoing necessary medical care.

The Department also proposes to give credit toward forgiveness for periods in which a borrower has their payments paused for reasons outside their control. This would include periods of mandatory administrative forbearance when a servicer, not at the request of the borrower and for administrative reasons, pauses a borrower's payments while the servicer reviews other information about the borrower's loans. We believe that it is reasonable to assign credit toward forgiveness for periods where the Department pauses payments while reviewing paperwork so that the borrower is not worse off due to any administrative challenges the Department faces. At the same time, the Department hopes that the simpler rules around tracking payments for IDR would reduce the time a borrower spends in one of these mandatory administrative forbearances.

Several non-Federal negotiators also raised concerns that many borrowers may have paused their payments through deferments or forbearances because of misinformation or actions by their servicer.[32] This may include situations where a borrower would have had a $0 payment on an IDR plan but was placed in a forbearance instead. While the Department is deeply concerned about ensuring that borrowers receive accurate counseling on the best repayment option for them, we believe the best solution to this problem is the process in proposed § 685.209(k)(6) that gives borrowers a chance to gain credit toward forgiveness for any month spent in a deferment or forbearance. This option would not apply to months spent in a deferment or forbearance that the Department is already proposing should be treated as a qualifying month toward forgiveness. The proposed process would give the borrower the opportunity to submit an additional payment or payments for each month spent in deferment or forbearance at the lesser of what they would have paid on the 10-year standard plan or an IDR plan at that time. A borrower who ended up on a deferment or forbearance when they should have had a $0 IDR payment would thus be able to receive credit for all those months without making additional payments. If the Department cannot calculate the IDR payment for that period with existing data in its possession, then it would ask the borrower to furnish the information it needs to calculate what the payment on IDR should have been.

Non-Federal negotiators suggested some alternative ideas for addressing concerns around usage of deferments or forbearances, which included counting all periods of forbearance or automatically counting certain periods of forbearance before a certain date. Under those proposals, a borrower would have a strong incentive to request a discretionary forbearance, which does not have the same explicit eligibility standards as many other deferments and forbearances. This would allow many borrowers who could make payments to receive credit toward IDR forgiveness for months, if not years, when they could have been making payments. Instead, we believe the inclusion of the specific deferment and forbearance categories identified in this proposed rule would strike an appropriate balance by removing the downside risk of deferments and forbearances by allowing them to count towards forgiveness, while ensuring that borrowers continue to make payments when they are able.

Treatment of Income and Loan Debt (§ 685.209(e))

Some of the non-Federal negotiators argued that repayment should be calculated based solely on the borrower's income and should not consider the income of spouses who did not obtain student loans. Ultimately, they argued, repayment of student loans is the responsibility of the borrower.[33] During the public comment period on December 9, 2021, one participant stated, ''Calculating repayment using the nonborrower's income, married filing jointly, dramatically increases the repayment amount beyond the borrower's affordability. It financially penalizes the nonborrowing spouse for being married to the student. It creates an undue financial hardship on the nonborrower and it disincentivizes some marriages in otherwise already stressed, economic circumstances.''[34]

The Department proposes in § 685.209(e)(1) to make the requirements for including or excluding married borrowers' incomes more consistent across all IDR plans, and to avoid the complications that might be created by requesting spousal information when married borrowers have filed their taxes separately, such as in cases of domestic abuse, divorce, or separation. The Department notes, however, that section 455 of the HEA requires that the repayment schedule for an ICR plan be based upon the borrower and the spouse's AGI if they file a joint tax return.

The Department agrees that there are benefits to allowing the treatment of spouses' income of married borrowers in all IDR plans to mirror the PAYE and IBR plans, which include only the borrower's income in the calculation of the monthly payment amount in the case of married borrowers who file separate Federal income tax returns. First, establishing the same procedures and requirements across each of the IDR plans with respect to spouses' income would alleviate any confusion a borrower may have when selecting a plan that meets their needs. Secondly, having different requirements for different plans would create operational difficulty for the Department in the processing of application requests. Finally, excluding spousal income under all IDR plans for borrowers who file separate tax returns would create a process that is more streamlined and simplified when it comes to borrowers enrolling in an IDR plan. For instance, if for all IDR plans married borrowers are required to supply their spouses' incomes only if they file a joint tax return, borrowers would be able to complete their IDR applications more easily, and data-sharing to automate the transfer of income information from tax records would be more straightforward. Accordingly, we propose to change the terms of the REPAYE plan to exclude spousal income for borrowers who are married and filing separately.

Forgiveness Timeline (§ 685.209(k))

Forgiveness for borrowers after a set number of monthly payments is another key component of IDR plans. Many of the non-Federal negotiators took issue with the fact that loan forgiveness time periods are very long. They asserted that loan forgiveness should not take 20 to 25 years for all borrowers. In fact, one non-Federal negotiator explained, ''I

[32] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/nov4pm.pdf.*

[33] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec9pm.pdf,* p. 104.

[34] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec9pm.pdf,* p. 104.

would love to see 10 years of forgiveness, or 10 years to forgiveness for those who have limited income because . . . carrying that burden for 20 or 25 years is more than life altering, it's trajectory-altering.'' [35] A 2016 information experiment showed that the long length of repayment in IDR discourages borrowers from signing up for an IDR plan, especially for students who would benefit the most from lower payments compared to payments under the 10-year standard repayment plan.[36]

The Department is not proposing to change the maximum forgiveness timelines in REPAYE, which provides forgiveness after 20 years for borrowers who only have undergraduate loans and 25 years for all others. The Department recognizes that this means some borrowers with loans for a graduate program could still have the option of choosing a plan that provides forgiveness after 20 years, such as the IBR plan for newer borrowers, which is shorter than what the Department is proposing for REPAYE. However, as discussed elsewhere in this notice of proposed rulemaking, a borrower would not be allowed to switch to the IBR plan after making 120 or more qualifying payments on REPAYE. Moreover, the Department is also proposing to restrict future enrollment in the PAYE and ICR plans only to student borrowers who were enrolled in that plan on the effective date of the regulations and who stay enrolled in that plan. The Department believes that the more generous repayment benefits proposed under this plan would outweigh the tradeoffs of a slightly longer time to forgiveness.

While the Department is not proposing to change the maximum time to forgiveness, it proposes in § 685.209(k)(3) to add a provision that grants forgiveness starting at 10 years for borrowers whose original total Direct Loan principal balance was less than or equal to $12,000, with the time to forgiveness increasing by 1 year for each additional $1,000 added to their original principal balance above $12,000. For example, a borrower whose original principal balance was $13,000 would receive forgiveness after the equivalent of 11 years of payments, while someone who originally borrowed $20,000 would receive forgiveness after the equivalent of 18 years of payments. The overall caps of 20 years (for those with only undergraduate loans) or 25 years (for those with graduate loans) would still apply. The result would be that a borrower with $22,000 in loans for an undergraduate program or $27,000 in loans for a graduate program would not benefit from the shortened time to forgiveness. The eligibility for the shortened forgiveness period would be based upon the original principal balance of all of a borrower's loans, such that if they later borrow additional funds their time to forgiveness would adjust to include those new balances. Borrowers in this situation would, however, maintain at least some of the credit toward forgiveness from prior payments.

The Department proposes the $12,000 threshold for early forgiveness based upon considerations of how much income a borrower would have to make to be able to pay off a loan without benefiting from this shortened repayment period. The Department then tried to relate that amount in terms of the maximum amount of loans an undergraduate borrower could receive so the connection would be easier for a future student to understand when making borrowing decisions. That amount worked out to the maximum amount that a dependent undergraduate student can borrow in their first 2 years of postsecondary education ($5,500 for a dependent first-year undergraduate and $6,500 for a dependent second-year undergraduate, for a total of $12,000).

For the income analysis, we looked at what a one-, two-, and four-person household would have needed to earn in 2020 to pay off a $12,000 loan at a 5 percent interest rate in 10 years, assuming that all of their debt was for an undergraduate program, they maintained that household size, and their income rose exactly with the Federal poverty guidelines during this period. These calculations show that a borrower in a one-person household would not benefit from the early forgiveness if their starting income exceeded $59,257. The corresponding income levels for two- and four-person households are $69,337 and $89,497. These amounts can be compared to inflation-adjusted estimates of family income for adults early in their careers (aged 25 to 34) who have completed different levels of postsecondary attainment and are not currently enrolled.[37] The Department chose 25 to 34 to better reflect the ages of individuals who are just starting to repay their student loans. These figures are calculated using the 2019 American Community Survey 5-year sample, inflation-adjusted to 2020 dollars. The overall median for those with at least some college education (including those with less than a bachelor's degree and those with a bachelor's degree or higher) is $74,740. Within that group the figures are $58,407 for those with less than a bachelor's degree and $89,372 for those with a bachelor's degree or higher. The starting income at which an individual would not benefit from early forgiveness is, thus, close to the median family income for a 25- to 34-year-old individual with less than a bachelor's degree, while the figure for a four-person household is close to that of the family income for a young adult with a bachelor's degree or higher. Hence, the benefits of early forgiveness are most likely to be felt by middle- or low-income borrowers.

The Department also compared the starting income at which a borrower would not benefit from a shorter forgiveness period to the 2020 U.S. median household income at different levels of postsecondary attainment. Median U.S. household income across all households in which the highest attainment level is some college ($63,700) is similar to the income level at which a borrower in a one- or two-person household would not benefit from early forgiveness. The median household income where the highest attainment level is at least a bachelor's degree ($107,000) is substantially higher than the income level at which a borrower in a four-person household would not benefit from early forgiveness.[38] Thus, the Department believes that the threshold for early forgiveness would be well aligned with the distribution of income for households that have at least some postsecondary education.

The Department believes the $12,000 amount as a starting point for forgiveness is also an appropriate threshold based upon the income a borrower would have to earn to benefit from this assistance. Having the time to forgiveness increase by 1 year for each $1,000 borrowed would keep the income at which a borrower would benefit from this provision roughly constant, such that a borrower would not be able to benefit from forgiveness at years 11 through 19 at an income level far different from what a borrower could earn and still receive forgiveness at year 10. It would also ensure there is not a cliff at which borrowers would

[35] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec7am.pdf,* p. 17.

[36] *https://www.sciencebdirect.com/science/article/pii/S0047272719301288.*

[37] Family income differs slightly from household income in that it only captures the incomes of individuals related to the head of the household, while household income includes all individuals regardless of their relation to one another.

[38] *https://www.census.gov/content/dam/Census/library/visualizations/2021/demo/p60-273/figure1.pdf.*

otherwise have to wait another 10 years for forgiveness.

In selecting the starting amount of $12,000 the Department also considered the lower amount of $10,000 as well as the higher amount of $19,000. The former is based upon the 1-year loan limit for an independent undergraduate borrower, rounded up to the nearest $1,000, while the latter is equal to the 2-year loan limit for an independent undergraduate borrower. The Department did not select the higher amount because that level of debt would not achieve the policy goal of targeting the early forgiveness benefit on borrowers who were most likely to struggle to repay their loans. While there are borrowers with debt levels that high who may struggle to repay, the degree of default and delinquency is not as high as it is for those with lower loan amounts. For instance, 63 percent of borrowers in default had an original loan balance of $12,000 or less, while just 15 percent of borrowers in default originally borrowed between $12,000 and $19,000.[39] The Department also was concerned that starting with a higher original loan balance threshold for 10-year forgiveness and increasing the time to forgiveness by 12 monthly payments for each additional $1,000 would also mean that the benefits to borrowers receiving forgiveness in a period longer than 10 years but shorter than 20 or 25 years would be less well targeted. For instance, for a borrower in a one-person household, raising the amount eligible for early forgiveness from $12,000 to $19,000 would increase the amount the borrower would need to earn to not receive early forgiveness from $59,300 to approximately $77,000. The Department also decided against proposing to start the shorter forgiveness period at original principal balances of $10,000 because the incomes where a borrower would stop benefiting from this option are too far below the national median income for households with at least some college. For example, the threshold for a one-person household would be $54,166, even further below the two different measures of median income discussed above.

We also considered multiple options for how the time to forgiveness should change with the level of additional debt. We only considered adjusting the time to forgiveness in one-year increments. We are concerned that lesser increments (such as one month, three months, or six months) would be confusing to explain to borrowers and create a very wide range of repayment timeframes, making the policy harder to implement. We looked at the starting income at which borrowers would cease benefiting from the shortened repayment timeframe for different dollar increments per additional year of payments. We modeled this for undergraduate-only borrowers because we anticipate that they are the most likely to have debt balances eligible for the shortened time to forgiveness. The dollar increments we considered per additional year of required payments were $500, $1,000, $1,500, and $2,000, as these round dollar amounts would be easier to communicate to borrowers. Increments of $500 produced the counterintuitive effect of the maximum starting income for a borrower to benefit from the 10-year forgiveness on a $12,000 original balance exceeding the maximum starting income for a borrower who owed any of the higher amounts that would still be eligible for the shortened forgiveness timeframe (*e.g.,* $12,500 over 11 years, $13,000 at 12 years, etc.). By contrast, the difference in starting incomes that would benefit from the shortened time to forgiveness would be too large when using an increment of an extra year for every $1,500 or $2,000. In those situations, increasing the time to forgiveness by a year per additional $1,500 in a borrower's loan balance would result in a situation where a borrower who receives forgiveness after 19 years with a loan balance of $25,500 would be able to make approximately $11,000 more in starting income than a borrower with a loan balance of $12,000 and receives forgiveness after 10 years. The gap in break-even starting income for lower- and higher-balance borrowers when using a $2,000 increment is even larger, at more than $18,000. By contrast, the gap using $1,000 increments is less than $4,000. Selecting a slope in which every additional $1,000 adds 1 year of payments thus ensures relatively consistent break-even starting income thresholds for all borrowers who would benefit from the shortened time to forgiveness.

The Department also recognizes that proposing to tie the starting point for the shortened repayment period to a set dollar amount linked to statutory loan limits means that any potential future changes to Federal loan limits could result in a situation where the shortened forgiveness period no longer matches what a dependent borrower could take out in 2 years of a program. Accordingly, the Department seeks comments as to whether it should define the starting point for the shortened forgiveness to the first two years of loan limits for a dependent undergraduate to allow for an automatic adjustment. Similarly, we seek comments on whether we should consider a slope for early forgiveness tied to a specific dollar amount or one that adjusts for inflation.

The Department proposes starting the forgiveness period at 10 years to align with the standard repayment plan. This would ensure that lower-balance borrowers would not be worse off for having chosen IDR. Using the same repayment time frames would also make it easier for borrowers to choose among plans, which reduces complexity for them in navigating the repayment system.

We believe it is reasonable to require borrowers who borrow smaller amounts to repay for shorter periods of time than borrowers who borrow larger amounts. This could encourage borrowers to be more sensitive to the amount they borrow, which could reduce the chances that they borrow more than they need. Conversely, it may encourage debt-averse borrowers to be willing to borrow small amounts, which could help these students persist and ultimately complete a credential.[40]

The Department is concerned that even though IDR plans have done a great deal to help avert delinquency and default for the borrowers who use them, levels of delinquency and default among the total population of borrowers still remain unacceptably high. For instance, prior to the COVID–19 national emergency and the pause on student loan interest, repayment, and collections, there were more than 1 million Direct Loan borrowers defaulting every year.[41] Similarly, in the quarters prior to the student loan repayment pause there were 1.9 million borrowers whose loans were managed by the Department who were 90 or more days late on their loans.[42] The Department believes that the early forgiveness option is one of several key changes that would help encourage more low-balance borrowers to use IDR and to avoid delinquency and default. A large majority of borrowers who defaulted on their loans took out small loans, at least initially. Based upon an analysis of borrower balances as of

[39] Department analysis of data from the Office of Federal Student Aid, FSA Data Center, Portfolio by Debt Size and IDR Portfolio by Debt Size, May 2022, *https://studentaid.gov/data-center/student/portfolio*.

[40] *https://www.aeaweb.org/articles?id=10.1257/pol.20180279*.

[41] Department analysis of data from the FSA Data Center, available at *https://studentaid.gov/sites/default/files/DLEnteringDefaults.xls*.

[42] Department analysis of data from the FSA Data Center, available at *https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls*.

December 2019, only 17 percent of borrowers in repayment who originally borrowed $12,000 or less were using IDR, compared to 52 percent of those who originally borrowed over $50,000.[43] By contrast, 63 percent of the borrowers in default had an original loan balance of $12,000 or less.[44] A shorter period to forgiveness would make this IDR plan more attractive for the most vulnerable borrowers and help them avoid defaulting on their loans.

Importantly, the Department proposes to base early forgiveness on what the borrower originally borrowed. The Department is concerned that many borrowers who originally had lower balances owe more today than what they originally borrowed due to accumulating interest, interest capitalization, and prior defaults. For instance, among borrowers who first entered college in the 2003–04 academic year, more than one-third (37 percent) had a higher balance in 2015 than what they originally borrowed.[45] Of those who owed more than they originally borrowed, the median borrower owed 119 percent of their original balance.[46] Connecting repayment to the amount originally borrowed would also ensure that future borrowers will be able to understand when they first borrow a loan what the implications are for their future repayment time frame. This early forgiveness provision would align with suggestions made by several non-Federal negotiators to shorten the forgiveness period but do so in a targeted manner that would provide benefits to those who are most likely to struggle to repay. Adding these benefits solely to the REPAYE plan would move in the direction of having one IDR plan that is the most beneficial for almost all borrowers, thereby simplifying loan counseling and servicing and making it easier for borrowers to understand which plan is best for them.

Automatic Enrollment in an IDR Plan (§ 685.209(m))

The Department proposes in § 685.209(m) to allow the Secretary to automatically enroll a borrower into the IDR plan that produces the lowest monthly payment for which the borrower is eligible if the borrower is 75 days or more past due on their loan payments. This would occur if the borrower has provided approval for the IRS to share their tax information with the Secretary, and if the Secretary determines that the borrower's payment would be lowered by enrolling in an IDR plan. This auto-enrollment provision would build on the Secretary's authority in section 455 of the HEA to place a borrower who is in default on an ICR plan.

The Department is proposing this change because 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. The Department is concerned that these borrowers may not be aware of IDR plans, and automatically moving them on to one of the plans and presenting them with the likely lower payment would be a better way to raise awareness than additional marketing or outreach. Moreover, the fact that borrowers have gone delinquent on their payments suggests that payments on their current repayment plans may be unaffordable. Automatically enrolling these borrowers in an IDR plan would ensure that no borrower whom the Department can identify as having a $0 payment would end up in default.

The Department proposes 75 days as the point for auto-enrollment to avoid the negative credit reporting that first occurs on Federal student loans when they are 90 days late. Negative credit reporting is a significant step on the road to default and can cause broader harm for the borrower. For instance, once a borrower's credit score drops, it may be harder for that individual to obtain housing or acquire different types of financial services. By implementing the 75-day rule to place delinquent borrowers in an IDR plan, the Department would be able to ensure more borrowers can avert default and help prevent those borrowers from receiving a negative credit history report.

Defaulted Loans (§ 685.209(d) and (k))

The Department also proposes several additional changes that would help borrowers in default benefit from IDR. Several non-Federal negotiators agreed with the Department's proposal to allow a borrower in default to enter an IDR plan that allows them to make progress toward forgiveness.[47]

The Department proposes in § 685.209(d)(2)) to allow defaulted borrowers to enroll in IBR so that they may receive credit toward forgiveness. These borrowers would receive credit toward forgiveness both for payments made through the IBR plan and any amounts collected through administrative wage garnishment, the Treasury Offset Program, or any other means of forced collection that are equivalent to what the borrower would have owed on the 10-year standard plan.

The Department proposes to grant borrowers access to IBR as permitted by section 493C of the HEA. While section 455 of the HEA provides that the Secretary may enroll a borrower in default in an ICR plan, that section also provides that periods while the borrower is in default do not count toward the maximum repayment time frame on an ICR plan. The Department believes borrowers in default would be better served by using an IDR plan in which they would be able to accumulate progress toward forgiveness.

The Department proposes to make defaulted borrowers eligible for IBR because the Department believes that those who have defaulted on a loan should still have access to more affordable payments and a path to forgiveness. Moreover, given the limited number of pathways and opportunities for getting out of default, this change would ensure that, even if a borrower is unable to rehabilitate or consolidate their loans, they would still have a way to establish more manageable payments.

The Department also recognizes that many borrowers in default may not make voluntary payments but could be subject to forced collections activity. Since amounts collected through tools such as administrative wage garnishment or the Treasury Offset Program are credited toward a borrower's balance, the Department proposes in § 685.209(k)(5) that borrowers also receive credit toward IBR forgiveness for amounts collected through these means that are equal to what a borrower would have paid on the 10-year standard plan. In other words, if a borrower has a $600 tax refund credited against their loan debt through the Treasury Offset Program and their monthly payment on the 10-year standard plan would have been $50, then they would receive a year's worth of credit toward IBR forgiveness.

The Department recognizes that allowing borrowers in default access to IBR provides them a path to forgiveness and also results in a higher payment amount than the borrower would owe under REPAYE. Therefore, the Department seeks comments on how to address the tradeoffs between lower monthly payments versus credit toward forgiveness for borrowers in default,

[43] Department of Education analysis of data for the defaulted borrower population, conducted in FSA's Enterprise Data Warehouse, with data as of December 31, 2019.

[44] Ibid.

[45] Department analysis of data from the Beginning Postsecondary Students Longitudinal Study, 2003–04 using the Powerstats web tool at *https://nces.ed.gov/datalab/*. Table ID: iyaord.

[46] Department analysis of data from the Beginning Postsecondary Students Longitudinal Study, 2003–04 using the Powerstats web tool at *https://nces.ed.gov/datalab/*. Table ID: kxmelz.

[47] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec9pm.pdf*.

recognizing that the HEA explicitly states that time in default cannot count toward forgiveness under plans such as REPAYE that are created under the ICR authority.

Application and Annual Recertification Procedures (§ 685.209(l))

As a result of changes made by Congress in 2019 that allow borrowers to grant multiyear approval for the sharing of their tax information to the Department, we propose to provide borrowers with an easier path to participating in IDR as well as to annually recertifying their income to recalculate their payments. Currently, borrowers who wish to participate in an IDR plan must complete an application and furnish their income information either through an online tool that allows them to transfer their data from the IRS or by providing an alternative form of income documentation, such as pay stubs. Borrowers also have to provide information on their family size. Borrowers must then recertify their income and family size annually through the same processes. The purpose of this recertification is to have the borrower self-certify their family size, as well as provide documentation that shows their annual AGI so that payments are based on more up-to-date financial and familial circumstances.

The application and recertification processes create significant challenges for the Department and borrowers. A borrower must be aware of and complete paperwork for IDR to be told exactly what their payment would be, since online estimator tools cannot guarantee what a borrower would pay. The borrower must also repeat these steps every year, requiring the Department to send a recertification reminder to the borrower. The borrower has a limited period of time to return the annual certification back to the Department's loan servicer. Failure to meet the deadline can result in the borrower losing eligibility to continue in their repayment plan and, under current regulations, having their interest capitalized. Department data from 2019 show that 39 percent of borrowers on an IDR plan recertified on time and that only 57 percent had certified within 6 months after their recertification deadline.[48]

Due to the concern that the process is confusing for borrowers, challenging for the Department to administer, and prone to potential errors that could cause a borrower's removal from IDR plans, the Department proposes to simplify the IDR application and annual recertification process. Due to recent statutory changes regarding disclosure of tax information, when the Department has the borrower's approval, it will rely on tax data to provide a borrower with a monthly payment amount and offer the borrower an opportunity to request a different payment amount if it is not reflective of the borrower's current income or family size.[49]

Consequences of Failing To Recertify (§ 685.209(l))

Current regulations specify that a borrower who fails to recertify their income and family size for the REPAYE plan is placed in an alternative plan in which the borrower's monthly payment is the amount to either repay the loan within 10 years of starting on the alternative repayment plan or within 20 or 25 years of starting on the REPAYE plan.

The Department is concerned that the structure of the alternative repayment plan provision is overly complicated and creates confusion for borrowers as well as operational challenges. Accordingly, the Department proposes to simplify this alternative repayment plan provision. Borrowers who fail to recertify would initially be placed on an alternative payment plan with payments set to the amount the borrower would have paid on a 10-year standard repayment plan based on the current loan balances and interest rates on the loans at the time the borrower was removed from the REPAYE plan, except that no more than 12 of these payments could count toward forgiveness. If the borrower wanted to change their repayment amount, the borrower could then submit evidence of exceptional circumstances to support changing the amount of the required payment under the alternative payment plan or change to a different repayment plan. Simplifying the terms of the alternative plan would assist in reducing complexity for borrowers.

Consolidation Loans (§ 685.209(k))

In response to concerns raised by non-Federal negotiators, the Department proposes in § 685.209(k)(4)(v) to provide that payments made on loans prior to consolidation would count toward IDR forgiveness without restarting the clock toward forgiveness. More specifically, the Department proposes to allow a borrower who consolidates one or more Direct Loan or FFEL program loans into a Direct Consolidation Loan to count the qualifying payments the borrower made on the Direct Loan or FFEL program loans prior to consolidating as qualifying payments on the Direct Consolidation Loan.

The Department would effectuate this change by giving borrowers credit toward forgiveness by calculating the weighted average of qualifying payments made on the original principal balance of all loans repaid by the consolidation loan. For example, if a borrower has made 30 qualifying payments on loans with an original principal balance of $30,000 and consolidates them with a loan that includes another $30,000 of loans that have never had any qualifying payments, then the borrower's consolidation loan would be credited with 15 payments toward forgiveness.

The Department believes that the current regulations too often force borrowers to choose between receiving more affordable loan payments and losing out on progress toward forgiveness. For example, consolidation is one of two pathways for borrowers to exit default and re-enter repayment. While consolidation is typically the fastest route out of default, borrowers who choose that option lose out on any progress they made toward forgiveness prior to defaulting. Beyond these specific circumstances, the Department is concerned more generally that borrowers often do not understand the effect of consolidation on their forgiveness progress and making this change would contribute to the Department's goal of removing complications to loan repayment, which can generate borrower frustration.

Conclusion

Under the proposed regulations, student borrowers seeking an IDR plan would generally choose between the IBR plan under section 493C of the HEA and the REPAYE plan, as modified by these proposed regulations. (Borrowers with Direct Consolidation Loans that include a Parent PLUS loan would still have access to the ICR plan.) This would significantly simplify the landscape of available IDR plans that borrowers seeking to enter an IDR plan currently navigate.

Borrowers who are currently enrolled in the ICR or PAYE plans could remain in those plans. However, should they seek to change plans, they would no longer have access to the original ICR plan and the PAYE plan and instead would choose from, with respect to IDR plans, the REPAYE plan or the IBR plan. The Department believes that most student borrowers who are currently on

[48] Department of Education internal analysis of data for IDR borrowers who had a recertification date during the 2018 calendar year.

[49] *https://www.congress.gov/bill/116th-congress/house-bill/5363/text/pl.*

the original ICR or the PAYE plan would see significant payment reductions by switching to the REPAYE plan, as modified by these proposed regulations. The Department believes that borrowers would benefit from a more affordable plan that provides more protected income for borrowers to meet their family's basic needs.

The plan would also reduce the share of discretionary income that goes toward loan payments for borrowers with undergraduate debt, stop loan balances from growing due to unpaid interest, and reduce the amount of time for which borrowers with lower loan balances need to repay.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

The Department estimates the net budget impact to be $137.9 billion in increased transfers among borrowers, institutions, and the Federal Government, with annualized transfers of $14.8 billion at 3 percent discounting and $16.3 billion at 7 percent discounting, and annual quantified costs of $1.1 million related to administrative costs. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), we have determined that the benefits of this proposed regulatory action would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Need for Regulatory Action

The Department has identified a significant need for regulatory action to promote access to more affordable repayment plans for student loan borrowers.

IDR plans are created either through regulation or statute and base a borrower's monthly payment on their income and family size. Under these plans, loan forgiveness occurs after a set number of payments, depending on the repayment plan that is selected. Because payments are based on a borrower's income, they may be more affordable than other fixed repayment options, such as those in which a borrower makes payments over a period of between 10 and 30 years. There are four repayment plans that are collectively referred to as IDR plans: (1) the IBR plan; (2) the ICR plan; (3) the PAYE plan; and (4) the REPAYE plan. Within the IBR plan, there are two versions that are available to the borrower, depending on when they took out their loans. Specifically, for a new borrower with loans taken out on or after July 1, 2014, the borrower's payments are capped at 10 percent of discretionary income. For those who are not new borrowers on or after July 1, 2014, the borrower's payments are capped at 15 percent of their discretionary income. IDR plans simultaneously provide protection for the borrower against the consequences of ending up as a low earner and adjust repayments to fit the borrower's changing ability to pay.[50] Because of these benefits, Federal student loan borrowers are increasingly choosing to repay their loans using one of the IDR plans.[51] Enrollment in IDR plans increased by about 50 percent between the end of 2016 and the start of 2022, from approximately 6 million to more than 9 million borrowers and more than $500 billion in debt is currently being repaid through the IDR repayment plans.[52] Similarly, the share of

[50] Krueger, A.B., & Bowen, W.G. (1993). Policy Watch: Income-Contingent College Loans. *Journal of Economic Perspectives, 7*(3), 193–201. *https://doi.org/10.1257/jep.7.3.193.*

[51] Gary-Bobo, R.J., & Trannoy, A. (2015). Optimal student loans and graduate tax under moral hazard and adverse selection. The RAND Journal of Economics, 46(3), 546–576. *https://doi.org/10.1111/1756-2171.12097.*

[52] U.S. Dep't of Educ., Federal Student Aid Data Center, Repayment Plans, available *https://studentaid.gov/manage-loans/repayment/plans.*

borrowers with Federally managed loans enrolled in an IDR plan rose from just over one-quarter to one-third during this time.[53]

Section 455(d)(1)(D) of the HEA, as discussed elsewhere in this document, requires the Secretary to offer an income-contingent repayment plan with terms prescribed by the Secretary. The Department proposes to amend the regulations governing income-contingent repayment plans by amending the REPAYE repayment plan, as well as restructuring and renaming the repayment plans available in the Direct Loan Program, including by combining the ICR and the IBR plans under the umbrella terms of the ''IDR plans.''

The Department has identified several areas that need improvement related to IDR plans. First, many struggling borrowers are not enrolled in IDR plans that would improve their chances of avoiding delinquency and default. Research shows that low-income borrowers and borrowers with high debt levels relative to their incomes enroll in IDR plans at lower rates.[54] An analysis of IDR usage by the JPMorgan Chase Institute found that there are two borrowers who could potentially benefit from an IDR plan for each borrower who is using those plans.[55] Moreover, the borrowers not using the IDR plans appear to have significantly lower incomes than those who are enrolled. An Urban Institute analysis using the 2016 Survey of Consumer Finances found that the share of Black borrowers using IDR was lower than the share of borrowers not making any payments.[56] The gap between IDR usage and not making any payments was even larger for borrowers who were receiving Federal benefits, such as support from the Supplemental Nutrition Assistance Program.[57] According to a 2012 U.S. Treasury study, 70 percent of defaulted borrowers have incomes that would have allowed them to reduce their payments compared to the standard 10-year repayment plan by going onto IDR; these payment reductions could have reduced the likelihood of default.[58] Though IDR enrollment has increased since 2012, in 2019 alone, more than 1.2 million Federal student loan borrowers defaulted on their Direct Loans, and more were behind on their payments and at risk of defaulting.[59]

While IDR options have helped to make loans more affordable for many, borrowers often still face challenges with IDR plans. Most borrowers enrolled in IDR plans experience increased loan balance growth when their payments are not large enough to cover the interest they accrue.[60] Focus groups of borrowers also show that this possibility may also serve as a source of stress even for borrowers who do enroll in IDR plans and who are able to afford their payments.[61] Additionally, some borrowers encounter barriers to accessing and maintaining affordable payments on IDR plans. One barrier, in particular, for some borrowers is in recertifying their incomes by the annual deadline due to the burden of the recertification process for the borrower, which may be one reason that some borrowers choose instead to enter deferment or forbearance, or fall out of or leave IDR plans.[62] The Consumer Financial Protection Bureau found that delinquency rates significantly worsened for those who did not recertify their incomes on time after their first year in an IDR plan.[63] In contrast, delinquency rates for those who did recertify their incomes slowly improved.

The Department is concerned that the current IDR plans may not adequately serve borrowers and proposes the changes described in this NPRM to improve access to effective and affordable loan repayment plans. In particular, the Department proposes to amend the REPAYE plan to reduce the required monthly payment amount to 5 percent of the borrower's discretionary income for the share of a borrower's total original principal loan volume attributable to loans received as a student in an undergraduate program, increase the amount of discretionary income exempted from the calculation of payment to 225 percent of the Federal poverty guidelines, not charge any remaining monthly interest after applying a borrower's monthly payment, reduce the time to forgiveness under the plan for borrowers with lower original loan balances, and automate the application and recertification process wherever possible, including automatically enrolling delinquent borrowers. Additionally, the Department proposes to modify the IBR plan in § 685.209 to clarify that borrowers in default are eligible to make payments under the plan. The Department also proposes to modify all the regulations for all of the income-driven repayment plans in § 685.209 to allow certain periods of deferment and forbearance to count toward forgiveness, including cancer treatment deferments, unemployment and economic hardship deferments (including Peace Corps service deferments), military service deferments, and administrative forbearances. The Department also proposes to stop resetting progress toward IDR loan forgiveness when a borrower consolidates their loans after making payments that qualify for forgiveness under an IDR plan.

We also propose to modify all the regulations governing the income-driven repayment plans in § 685.209 to automatically enroll any borrowers who are at least 75 days delinquent on their loan payments, and who have previously provided approval for the IRS to share tax information on their incomes and family sizes with the Department, in the IDR plan that is most affordable for them in monthly payments, unless the borrower's current plan provides a lower monthly payment.

Finally, the Department proposes to simplify the complex rules relating to the different IDR plans to the extent allowable by making the REPAYE plan the best choice for most borrowers and by limiting student borrowers already

Includes all Federally managed loans across all IDR plans, measured in Q4 2016 through Q1 2022.

[53] Ibid.

[54] Daniel Collier et al., Exploring the Relationship of Enrollment in IDR to Borrower Demographics and Financial Outcomes (Dec. 30, 2020); see also Seth Frotman and Christa Gibbs, Too many student loan borrowers struggling, not enough benefiting from affordable repayment options, Consumer Fin. Prot. Bureau (Aug. 16, 2017).

[55] This analysis is restricted to borrowers with a Chase checking account who meet certain other criteria in terms of frequency of monthly transactions and amount of money deposited into the account each year. *https://www.jpmorganchase.com/institute/research/household-debt/student-loan-income-driven-repayment.*

[56] *https://www.urban.org/urban-wire/demographics-income-driven-student-loan-repayment.*

[57] Ibid.

[58] U.S. Government Accountability Office, 2015. Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options. GAO–15–663. U.S. Government Accountability Office, 2016. Education Needs to Improve its Income Driven Repayment Plan Budget Estimates. Technical Report GAO–17–22.

[59] U.S. Government Accountability Office, 2015. Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options. GAO–15–663. U.S. Government Accountability Office, 2016. Education Needs to Improve its Income Driven Repayment Plan Budget Estimates. Technical Report GAO–17–22.

[60] Department of Education analysis of loan data for borrowers enrolled in IDR plans, conducted in FSA's Enterprise Data Warehouse, with data as of March 2020.

[61] Sattelmeyer, Sarah, Brian Denten, Spencer Orenstein, Jon Remedios, Rich Williams, Borrowers Discuss the Challenges of Student Loan Repayment (May 2020), *https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf.*

[62] Consumer Financial Protection Bureau. Borrower Experiences on Income-Driven Repayment. November 2019. *https://files.consumerfinance.gov/f/documents/cfpb_data-point_borrower-experiences-on-IDR.pdf.*

[63] Ibid.

enrolled in one of the existing ICR plans other than REPAYE from re-enrolling in that plan after they leave it. This will result in phasing out the older repayment plans for student borrowers and will ensure that borrowers have access to the most generous IDR plan.

SUMMARY OF PROPOSED PROVISIONS

Provision	Regulatory section	Description of proposed provision
Streamline the regulations	§ 685.208	Would house all fixed amortization repayment plans under this section.
Streamline the regulations	§ 685.209	Would house all IDR plans under this section and establish new terms for the REPAYE plan.
Reduce monthly payment amounts, expand interest benefit for borrowers, and shorten the time to forgiveness.	§ 685.209	Would reduce monthly payment amounts to 5 percent of discretionary income for the share of a borrower's total original principal loan volume attributable to loans received as students for an undergraduate program (with a weighted average between 5 and 10 percent for borrowers with outstanding undergraduate and graduate loans, and a payment of 10 percent for borrowers with only outstanding graduate loans), increase the amount of discretionary income exempted from the calculation of payments to 225 percent of the Federal poverty guidelines, not charge any unpaid monthly interest after applying a borrower's payment, and reduce the time to forgiveness under the plan for borrowers with lower original balances.
Address defaulted borrowers	§ 685.209	Would clarify that borrowers in default are eligible to make payments under the IBR plan.
Address qualifying payments	§ 685.209	Would allow certain periods of deferment and forbearance to count toward IDR forgiveness.
Address qualifying payments	§ 685.209	Would allow borrowers an opportunity to make catch-up payments for all other periods in deferment or forbearance.
Address qualifying payments	§ 685.209	Would clarify that a borrower's progress toward forgiveness does not fully reset when a borrower consolidates loans on which a borrower had previously made qualifying payments.
Address delinquent borrowers	§ 685.209	Would modify all IDR plans to automatically enroll any borrowers who are at least 75 days delinquent on their loan payments and who have previously provided approval for the IRS to share their tax information with the Secretary in the IDR plan that is best for them.
Limiting new enrollments in older IDR plans.	§ 685.209	Would limit new enrollments in PAYE after the effective date of these regulations, limit enrollments in IBR to borrowers who have a partial financial hardship and have not made 120 payments on REPAYE and would limit new enrollments in the ICR plan after the effective date of the regulations to borrowers whose loans include a Direct Consolidation loan that included a parent PLUS loan.
Consequences of not recertifying on REPAYE.	§ 685.209	Place borrowers who do not recertify on REPAYE into an alternative payment plan where monthly payments are equal to the amount a borrower would pay each month to repay their original balance in equal installments over 10 years and allow no more than 12 of these payments to count toward forgiveness.
Technical changes	§§ 685,210, 685.211, and 685.221.	Would establish conforming changes based on revisions to the sections noted above.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Discussion of Costs and Benefits

The proposed regulations would expand access to affordable monthly payments on the REPAYE plan by increasing the amount of income exempted from the calculation of payments from 150 percent of the Federal poverty guidelines to 225 percent of the Federal poverty guidelines, lowering the share of discretionary income put toward monthly payments to 5 percent for a borrower's total original loan principal volume attributable to loans received as students for an undergraduate program, not charging any monthly unpaid interest remaining after applying a borrower's payment, and providing for a shorter repayment period and earlier forgiveness for borrowers with smaller original principal balances (starting at 10 years for borrowers with original principal balances of $12,000 or less, and increasing by 1 year for each additional $1,000 up to 20 or 25 years).

To better understand the impact of these proposed rules, the Department simulated how future cohorts of borrowers would benefit from enrolling in REPAYE under the proposed provisions. To do so, the Department used data from the College Scorecard and Integrated Postsecondary Education Data System (IPEDS) to create a synthetic cohort of borrowers that is representative of borrowers who entered repayment in 2017 in terms of institution attended, education attainment, race/ethnicity, and gender. Using Census data, the Department projected earnings and employment, marriage, spousal debt, spousal earnings, and childbearing for each borrower up to age 60. Using these projections, payments under a given loan repayment plan can be calculated for the full length of time between repayment entry and full repayment or forgiveness. To provide an estimate of how much borrowers in a given group (*e.g.,* lifetime income, education level) would benefit from enrolling in REPAYE under the proposed provisions, total payments per $10,000 of debt at repayment entry were calculated for each borrower in the group and compared to total payments that the borrower would make if they were to enroll in the standard 10-year repayment plan and current REPAYE plan. Payments made after repayment entry are discounted using the Office of Management and Budget's Present

Value Factors for Official Yield Curve (Budget 2023) so that the resulting amounts are all provided in present discounted terms.

These projections do not take into account borrowers' decisions of which plan to choose and, thus, should not be interpreted as reflecting estimates of the budgetary costs of the proposed changes to REPAYE. Rather, these estimates reflect changes in simulated payments that would occur if all borrowers enrolled and paid their full monthly obligation in different plans to highlight the types of borrowers who could benefit most under different repayment plans. They also do not account for the possibility of borrowers being delinquent or defaulting, which could affect assumptions of amounts repaid.

On average, if all borrowers in future cohorts were to enroll in the 10-year standard repayment plan or the current REPAYE plan and make all of their required payments on time, we estimate that borrowers would repay approximately $11,800 per $10,000 of debt at repayment entry in both the standard 10-year plan and under the current provisions of REPAYE. The proposed changes to REPAYE would result in the amount repaid per $10,000 of debt at repayment entry falling to approximately $7,000. On average, borrowers with only undergraduate debt are projected to see expected payments per $10,000 borrowed drop from $11,844 under the standard 10-year plan and $10,956 under the current REPAYE plan to $6,121 under the proposed REPAYE plan. The average borrower with graduate debt, whose incomes and debt levels tend to be higher, is projected to have much smaller reductions in payments per $10,000 borrowed, from $11,995 under the 10-year standard plan and $12,506 under the current REPAYE plan to $11,645.

TABLE 2—PROJECTED PRESENT DISCOUNTED VALUE OF TOTAL PAYMENTS PER $10,000 BORROWED FOR FUTURE REPAYMENT COHORTS, ASSUMING FULL TAKE-UP OF VARIOUS REPAYMENT PLANS

	All borrowers	Borrowers with only undergraduate debt	Borrowers with any graduate debt
Standard 10-year plan	$11,880	$11,844	$11,995
Current REPAYE	11,844	10,956	12,506
Proposed REPAYE	7,069	6,121	11,645

The Department has also estimated how payments per $10,000 borrowed would change for borrowers in future repayment cohorts who are projected to have different levels of lifetime individual earnings. For this estimate borrowers are divided into quintiles based on projected earnings from repayment entry until age 60. Borrowers in the first quintile are projected to have lower lifetime earnings than at least 80 percent of all borrowers in the cohort, while those in the top quintile are projected to have higher earnings than at least 80 percent of all borrowers.

On average, borrowers in every quintile of the lifetime income distribution are projected to repay less (in present discounted terms) in the proposed REPAYE plan than in the existing REPAYE plan. However, differences in projected payments per $10,000 borrowed are largest for borrowers with only undergraduate debt in the bottom two quintiles (*i.e.,* those with projected lifetime earnings less than at least 60 percent of all borrowers in the cohort). Borrowers with only undergraduate debt who have lifetime income in the bottom quintile are projected to repay $873 per $10,000 in the proposed REPAYE plan compared to $8,724 per $10,000 in the current REPAYE plan, and borrowers in the second quintile of lifetime income with only undergraduate debt are projected to repay $4,129 per $10,000 compared to $11,813 per $10,000 in the current REPAYE plan. Borrowers in the top 40 percent of the lifetime income distribution (quintiles 4 and 5) are projected to see only small reductions in payments per $10,000 borrowed.

TABLE 3—PROJECTED PRESENT DISCOUNTED VALUE OF TOTAL PAYMENTS PER $10,000 BORROWED FOR FUTURE REPAYMENT COHORTS BY QUINTILE OF LIFETIME INCOME, ASSUMING FULL TAKE-UP OF SPECIFIED PLAN

	Quintile of lifetime income				
	1	2	3	4	5
Borrowers with only undergraduate debt					
Current REPAYE	$8,724	$11,813	$11,799	$11,654	$11,411
Proposed REPAYE	873	4,129	7,825	10,084	11,151
Average annual earnings in year of repayment entry	18,620	27,119	33,665	39,565	50,112
Average annual family earnings in year of repayment entry	40,600	42,469	49,312	53,524	67,748
Borrowers with any graduate debt					
Current REPAYE	7,002	10,259	11,849	12,592	12,901
Proposed REPAYE	6,267	8,689	10,476	11,344	12,248
Average annual earnings in year of repayment entry	19,145	28,099	35,316	42,226	54,039
Average annual family earnings in year of repayment entry	41,174	43,753	52,144	59,351	79,368

To compare the potential benefits for future borrowers from the proposed REPAYE plan, these simulations abstract from repayment plan choice and instead assume that all future borrowers enroll in a given plan (*i.e.,* the current or proposed REPAYE plan) and make their scheduled payments. Future borrowers' actual realized benefits will depend on the extent to which enrollment in IDR increases, which borrowers choose to enroll in IDR, and whether borrowers make their required payments. In general, the proposed REPAYE plan should reduce rates of delinquency and default by providing more borrowers with a $0 payment and automatically enrolling eligible borrowers once they are 75 days late. That said, borrowers could still end up delinquent or in default if they either owe a non-$0 payment or the Department cannot access their income information and thus cannot automatically enroll them on IDR.

The proposed regulations would make additional improvements to help borrowers navigate their repayment options by allowing more forms of deferments and forbearances to count toward IDR forgiveness. This ensures that borrowers are not required to choose between pausing payments and earning progress toward forgiveness by making IDR payments and allows borrowers to keep progress toward forgiveness when consolidating.

The proposed regulations streamline and standardize the Direct Loan Program repayment regulations by housing all repayment plan provisions within sections that are listed by repayment plan type: fixed payment, income-driven, and alternative repayment plans. The proposed regulations would also provide clarity for borrowers about their repayment plan options and reduce complexity in the student loan repayment system, including by phasing out the existing IDR plans to the extent the current law allows.

Costs of the Regulatory Changes

The proposed increased benefits on the REPAYE plan, including reduced monthly payments, a shorter repayment period for some borrowers, and not charging unpaid monthly interest, all represent costs in the form of transfers to borrowers. This will result in transfers to borrowers currently enrolled on an IDR plan, as well as those who choose to sign up for one in the future.

This plan may also result in changes in students' decisions to borrow and how much to borrow, which could have additional future effects on the size of transfers to borrowers. This could result in increased costs to taxpayers in the form of transfers to borrowers if more students choose to borrow than before and/or if borrowers take out greater amounts of loans than before, but then do not fully repay their loans. Some of these transfers to borrowers may be offset if the increased borrowing results in higher rates of postsecondary program completion and higher subsequent earnings, which generates additional federal income tax revenue.[64]

The proposed regulations may also result in costs resulting from reduced accountability for student loan outcomes at institutions of higher education, which would show up as increased transfers to some poor-performing schools. In particular, the provisions that result in more borrowers having a $0 monthly payment and automatically enrolling borrowers who are delinquent onto an IDR plan could significantly reduce the rate at which students default. This could in turn lead to fewer institutions losing access to Federal financial aid due to having high cohort default rates. However, the existing cohort default rate already was causing very few institutions to lose access to Federal aid. In the years before the national pause on repayment, only about a dozen institutions a year faced sanctions due to high cohort default rates. Most of these institutions had small enrollment, and many still maintained access to aid thanks to various appeal options. The most recent rates released in fall 2022 showed just eight institutions subject to potential loss of eligibility.[65] The effect of the cohort default rate will also remain small for several years into the future because no Direct Loan borrowers have been able to default since the pause on repayment began in March 2020.

Whether this effect on accountability results in an increased transfer to borrowers would depend on the likelihood that an aid recipient would have enrolled elsewhere and whether their alternative options would have resulted in higher or lower earnings that affected what they would pay on an IDR plan. Of greater concern would be the possibility that providing assistance for borrowers through the updated REPAYE plan would result in more aggressive recruiting by institutions that do not provide valuable returns on the premise that borrowers who do not find a job do not have to pay. This is a concern that already exists in current IDR plans but could increase with the more generous proposed benefits. Relatedly, institutions may be more inclined to raise tuition in order to shift costs to students when loans are more affordable. This effect may be more pronounced at graduate-level programs than at the undergraduate level because of differences in loan limits. Increases in tuition would not solely affect borrowers and, indirectly, taxpayers; students who do not borrow would face higher education costs as well.

The proposed regulations would also result in modest administrative costs to the Department to implement the changes to the plan, which would require modifications to contracts with servicers. We estimate that, based on comparable changes made in the past, those administrative costs would total approximately $10 million in systems and other changes. These are costs associated with activities, such as change requests to servicers to make alterations to their systems and servicing platforms. The Department is already in the process of developing data-sharing agreements to support the provision of tax information, pursuant to the FUTURE Act, and would seek to include the IDR provisions in these proposed regulations in those agreements.

It is currently unclear whether the proposed regulations would represent a net cost or benefit to servicers. On the one hand, the provisions that keep more borrowers current and prevent borrowers from defaulting would increase servicer compensation because they are currently paid more each month when a borrower is current. Similarly, any effect of this regulation to increase borrowing would raise compensation for servicers. On the other hand, if the regulations resulted in a decrease in student loan borrowers due to forgiveness then servicers would receive less compensation. It is likely that the factors that would increase compensation are greater than those that decrease it, but determining the exact amounts is not currently possible.

Benefits of the Regulatory Changes

The proposed IDR plan regulations would benefit multiple groups of stakeholders, especially Federal student loan borrowers. The proposed regulations would allow borrowers in default to make payments under the current IBR plan. The Department believes that this would make it easier for defaulted borrowers to access affordable payments by enrolling in an

[64] Some research has found evidence that reduced borrowing results in worse academic outcomes and lower levels of retention and completion, and that increased borrowing led to better performance and higher rates of credit completion. See, for example, Barr, Andrew, Kelli Bird, and Benjamin L. Castleman, The Effect of Reduced Student Loan Borrowing on Academic Performance and Default: Evidence from a Loan Counseling Experiment, EdWorkingPaper No. 19–89 (June 2019), *https://www.edworkingpapers.com/sites/default/files/ai19-89.pdf;* and Marx, Benjamin M. and Turner, Lesley, Student Loan Nudges: Experimental Evidence on Borrowing and Educational Attainment (May 2019). American Economic Journal: Economic Policy, Volume 11, Issue 2, *https://www.aeaweb.org/articles?id=10.1257/pol.20180279.* Black et al 2020 *https://www.nber.org/papers/w27658.*

[65] *https://www2.ed.gov/offices/OSFAP/defaultmanagement/cdr.html.*

IDR plan, make progress toward forgiveness of their loans, and avoid further consequences of default if they are not otherwise able to exit default through rehabilitation or consolidation.

The proposed regulations would also automatically allow the Department to enroll any borrowers who are at least 75 days delinquent on their loan payments and who have previously provided approval for the IRS to share their income information into the IDR plan that is most affordable for them. The Department believes that this would increase the likelihood that struggling borrowers will be enrolled in an IDR plan and will be able to avoid late-stage delinquency or default and the associated consequences. To ensure borrowers are enrolled in the most affordable plan, the Department would not auto-enroll a borrower whose current monthly payment would be less than their payment on the IDR plan that has the lowest payment for them. For instance, it is less likely that a very high-income borrower who is delinquent would be automatically enrolled in IDR because the payment based upon their earnings would be more than what they would pay on the standard 10-year plan.

For many borrowers, enrolling in an IDR plan reduces monthly payments and allows them to use such savings to address current needs. A study found that borrowers who enrolled in an existing IDR plan saw their monthly payments decrease by $355 compared with a standard non-IDR plan.[66] That study also found that those borrowers saw an identical increase in consumer spending that was roughly equal to the decrease in monthly student loan payments.[67] Another study estimated that the benefits—the ''welfare gains''—of moving from a loan system without IDR plans to a system with IDR plans, if ideally implemented, are ''significant,'' ranging from about 0.2 percent to 0.6 percent of lifetime consumption.[68]

The proposed regulations would increase the affordability of monthly payments on the REPAYE plan by increasing the amount of income exempt from payments, lowering the share of discretionary income put toward monthly payments for borrowers, providing for a shorter repayment period and earlier forgiveness for some borrowers, and forgiving all monthly unpaid interest to ensure borrowers pay less over their repayment terms. Each of these items provide benefits in different ways. Increasing the amount of income protected to 225 percent of the Federal poverty guidelines would provide two major benefits to borrowers. First, it would result in a larger share of borrowers having a $0 monthly payment instead of owing relatively small payments. For instance, using the 2022 Federal poverty guidelines, an individual borrower with no dependents who makes $30,577 a year would no longer make a payment, with the same true of a family of four that earns $62,437 or less. Single individuals without dependents at 225 percent of the poverty line make around $15 an hour, assuming they work full-time all year. By contrast, under the current REPAYE threshold of 150 percent of the Federal poverty guidelines, borrowers would have to make a payment once their income exceeds $20,385 for a single individual and $41,625 for a family of four. Those amounts correspond to a wage of roughly $10 an hour for the single individual. This change thus protects relatively low-wage borrowers from having to make a monthly loan payment.

For borrowers who have incomes above 225 percent of the 2022 Federal poverty guidelines and pay 10 percent of their discretionary incomes, the higher poverty threshold would provide a maximum additional savings of $85 a month for a single individual and $173 a month for a family of four compared to the existing REPAYE plan, by providing for their payments to be calculated based on a smaller portion of their incomes. By exempting a larger amount of discretionary income from loan payments, more IDR borrowers on this plan would be able to better afford their costs of living. All borrowers with income above the proposed minimum threshold would receive the same benefit from this aspect of the policy change. These payment reductions will provide critical benefits for borrowers who do make enough money to afford some degree of loan payment each month, but who cannot afford the payment they would be required to make under other existing IDR plans.

TABLE 4—MAXIMUM MONTHLY PAYMENT SAVINGS AT DIFFERENT LEVELS OF INCOME PROTECTION, 2022 FEDERAL POVERTY GUIDELINES (FPL)

Household size	Single		Four	
Payment as percent of discretionary income	5	10	5	10
150% FPL (Current REPAYE regulations)	$85	$170	$173	$347
225% FPL (Proposed REPAYE regulations)	127	255	260	520
Proposed REPAYE minus Current REPAYE	42	85	87	173

Note: The 2022 Federal Poverty Guideline is $13,590 for a single household and $27,750 for a house of four.

The Department's proposal would also reduce the percent of discretionary income that borrowers owe on the REPAYE plan from 10 percent to 5 percent on the share of a borrower's total original loan principal volume attributable to loans received as a student for an undergraduate program. A borrower who only borrowed for a graduate program would pay 10 percent of their discretionary income. So too would a borrower who had undergraduate loans, fully paid them off, and then took out graduate loans because they no longer have other outstanding loans when entering the IDR plan. A borrower with any outstanding undergraduate loans at the time of entering an IDR plan with a graduate loan would pay an amount between 5 and 10 percent based upon the weighted average of the original principal balances of the loans attributed to the undergraduate and graduate programs. Reducing the discretionary income share on undergraduate debt would particularly benefit borrowers who only have outstanding loans from their undergraduate education, as these

[66] Mueller, H., & Yannelis, C. (2022). Increasing Enrollment in Income-Driven Student Loan Repayment Plans: Evidence from the Navient Field Experiment. The Journal of Finance, 77(1), 367–402. *https://doi.org/10.1111/jofi.13088.*

[67] Ibid.

[68] Findeisen, S., & Sachs, D. (2016). Education and optimal dynamic taxation: The role of income-contingent student loans. Journal of Public Economics, 138, 1–21. *https://doi.org/10.1016/j.jpubeco.2016.03.009.*

borrowers are far more likely to struggle with loan repayment than those who also have graduate loans. As noted in the preamble to these proposed regulations, Department data show that 90 percent of borrowers who are in default on their Federal student loans had only borrowed for their undergraduate education. By contrast, just 1 percent of borrowers who are in default had loans only for graduate studies. Similarly, 5 percent of borrowers who only have graduate debt are in default on their loans, compared with 19 percent of those who have debt from undergraduate programs.[69] By ensuring the reduction in borrowers' payment rate is proportional to a borrowers' undergraduate borrowing, the Department would target assistance to borrowers who are the most likely to struggle with repayment, ensuring undergraduate borrowers are able to afford their monthly loan payments while minimizing the additional costs to taxpayers. The fact that undergraduate loans also have lower loan limits than graduate loans helps to balance the goal of providing assistance with ensuring taxpayers do not bear unwarranted costs.

Not charging unpaid monthly interest after applying a borrower's payment would provide both financial and non-financial benefits for borrowers. For some borrowers, particularly those who have low income for the duration of their time in repayment, this interest benefit results in not charging interest that would otherwise be forgiven after 20 or 25 years of qualifying monthly payments. While these borrowers do not receive a direct financial benefit in this situation, this policy provides a non-financial benefit because borrowers will not see their balances otherwise grow.[70] Qualitative research and borrower complaints received by the Department have shown that interest growth on IDR plans is a significant concern for borrowers.[71] Research has similarly shown that interest accumulation may discourage repayment.[72] The Department, thus, expects that this benefit may encourage borrowers to keep repaying.

A recent study found that, among borrowers who were at least 15 days late on their payments, switching to an IDR plan reduced the likelihood of delinquency by 22 percentage points and decreased borrowers' outstanding balances over the following 8 months.[73] It is reasonable to expect that more generous IDR plans would decrease the delinquency rate more. Other elements of the proposed regulations would provide benefits to borrowers by giving them more opportunities to earn credit toward forgiveness and by providing for a shorter repayment period before forgiveness for borrowers with smaller original loan principal balances. By counting certain deferments and forbearances toward forgiveness and allowing borrowers to maintain their progress toward forgiveness after they consolidate, borrowers will face fewer instances in which they inadvertently make choices that either give them no credit toward forgiveness or reset all progress made to date. Borrowers who benefit from these changes will receive forgiveness faster than they would have without these regulations. These changes would also reduce complexity in seeking IDR forgiveness, which could help more borrowers successfully navigate repayment and reduce the likelihood that a borrower is so overwhelmed by the process that they choose not to pursue IDR. The shorter time to forgiveness would provide small-dollar borrowers—often the borrowers who did not complete college and who struggle most to afford their loans and avoid default—with a greater incentive to enroll in the IDR plan, increasing the likelihood they avoid delinquency and default.

The proposed regulations would clarify borrowers' repayment plan options and eliminate complexity in the student loan repayment system, including by phasing out the existing IDR plans to the extent the current law allows. Student borrowers seeking an IDR plan would only be able to choose between the IBR Plan established by section 493C of the HEA and the REPAYE plan. Borrowers already enrolled on the PAYE or ICR plan would maintain their access to those plans. It is estimated that, because of the significantly larger benefits available through the REPAYE plan, most student borrowers would not be worse off by losing access to PAYE or ICR, especially since these would be borrowers not currently enrolled in one of those plans and not all borrowers are eligible for PAYE. The possible exceptions would generally be circumstances either involving graduate borrowers who would prefer higher payments in exchange for forgiveness after 20 years or borrowers who anticipate having payments based upon their income that would be above what they would pay on the 10-year standard plan. Overall, the Department thinks the benefits from simplification exceed the potential higher costs for these borrowers. For the first group, they would still have access to lower monthly payments than they would under either the standard 10-year plan or other IDR plans. For the second group, they would still have lower monthly payments until they reached an amount equal to what they would owe on the 10-year standard plan. These efforts to simplify the available IDR plans thus would help ensure borrowers can easily identify plans that are affordable and appropriate for their circumstances.

The Department believes that, despite the additional costs to taxpayers of the proposed REPAYE plan, both borrowers and the Department would greatly benefit from a plan that helps borrowers avoid delinquency and default, which are loan statuses that create additional challenges, costs, and administrative complexities for collection, as well as carry additional consequences for borrowers. This includes the possibility of having their wages garnished, their tax refunds or Social Security seized, and declines in their credit scores.

In sum, borrowers would benefit from a more affordable plan that limits their loan payments, reduces the amount of time over which they need to repay, provides more protected income for borrowers to meet their family's basic needs, and reduces the chances of default. The Department would benefit from streamlining administration, and taxpayers would benefit from the lower rates of delinquent/defaulted loans.

Net Budget Impacts

These proposed regulations are estimated to have a net Federal budget

[69] Department of Education analysis of loan data by academic level for total borrower population and defaulted borrower population, conducted in FSA's Enterprise Data Warehouse, with data as of December 31, 2021.

[70] The Pew Charitable Trusts. Borrowers Discuss the Challenges of Student Loan Repayment. (2020). *https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment.*

[71] Ibid.; FDR Group. Taking Out and Repaying Student Loans: A Report on Focus Groups with Struggling Student Loan Borrowers. (2015). *https://static.newamerica.org/attachments/2358-why-student-loans-are-different/FDR_Group_Updated.dc7218ab247a4650902f7afd52d6cae1.pdf.* The Department has also received many comments regarding IDR or student loan interest during the rulemaking process and through the FSA Ombudsman's office.*https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf; https://static.newamerica.org/attachments/2358-why-student-loans-are-different/FDR_Group_Updated.dc7218ab247a4650902f7afd52d6cae1.pdf.* The Department has also received many comments regarding IDR or student loan interest during the rulemaking process and through the FSA Ombudsman's office.

[72] Ibid.

[73] Herbst, D. The Impact of Income-Driven Repayment on Student Borrower Outcomes. American Economic Journal: Applied Economics. *https://www.aeaweb.org/articles?id=10.1257/app.20200362.*

impact in costs over the affected loan cohorts of $137.9 billion, consisting of a modification of $76.8 billion for loan cohorts through 2022 and estimated costs of $61.1 billion for loan cohorts 2023 to 2032. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

IDR Plan Changes

The changes to the REPAYE plan would offer borrowers a more generous IDR plan that would have a net budget impact of approximately $137.9 billion, consisting of a modification of $76.8 billion for cohorts through 2022 and $61.1 for cohorts 2023–2032. This estimate is based on the President's Budget for 2023 baseline as modified to account for the PSLF waiver, the IDR waiver, the payment pause extension to December 2022, and the August 2022 announcement that the Department will discharge up to $20,000 in Federal student loans for borrowers who make under $125,000 as an individual or $250,000 as a family.

The net budget estimate in this RIA was produced prior to the announcement of a subsequent extension of the payment pause beyond December 31, 2022. The effect of this payment pause extension on the net budget impact will be reflected in the final rule. The net budget impact also takes into account the regulatory changes in the Notices of Final Rule for Affordability and Students that published on November 1, 2022, 87 FR 65904 and Final Regulations: Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control that published on October 28, 2022, 87 FR 65426, that would make changes to several other areas relating to Federal student loans including interest capitalization, loan forgiveness programs, loan discharges, and the 90/10 rule.

The proposed regulations would result in costs for taxpayers in the form of transfers to borrowers, as borrowers enrolled in the REPAYE plan would generally make lower payments on the new plan as compared to current IDR plans. Not charging remaining monthly interest after applying a borrower's payment also increases costs for taxpayers in the form of transfers, as borrowers may otherwise eventually repay some of the accumulating interest prior to forgiveness on current IDR plans. Costs to taxpayers would also increase if the availability of improved repayment options increases the volume and quantity of loans for future cohorts of students. The budget estimates assume that there will be no change in volume or quantity of loans issued due to the improved terms. Additional borrowing would likely increase costs of the regulations, but the magnitude of the impact would depend on the characteristics of those borrowing more and data limitations make it challenging to anticipate who such borrowers would be. To estimate the effect of the proposed changes, the Department revised the payment calculations in the IDR sub-model used for cost estimates for the IDR plans. Changing the percentage of income applied to a payment is a straightforward change with a significant effect on the cashflows when compared to the baseline. The element that is less clear is what decision about plan choice existing borrowers will make when the revised REPAYE plan is available in 2023 and beyond. As in the case of the current REPAYE plan, the new REPAYE plan does not include a standard repayment cap that limits borrowers' maximum monthly payment. In this case, the Department has run the payment calculations twice for each borrower—once under the revised REPAYE option and again under the borrower's baseline plan—and assumed each borrower chooses the option with the lowest net present value (NPV) of costs. Table 5 shows the result of this plan assignment.

TABLE 5—PLAN ASSIGNMENT FOR BORROWERS ENTERING REPAYMENT IN FY 2024

Percent Distribution of Borrowers in Baseline Plan When Revised REPAYE is Available				
Baseline plan	ICR	IBR—15 percent	IBR—10 percent	Revised REPAYE
ICR	0			100
IBR—15 percent		20.94		79.06
IBR—10 percent			8.41	91.59
REPAYE				100
Total	0	1.12	5.3	93.59

In categorizing plans, we include the 10-percent and 15-percent IBR plans with PAYE borrowers included in the IBR–10 percent row, as borrowers cannot choose PAYE in 2024 or later. Those remaining in 15-percent IBR represent approximately 5 percent of borrowers who first borrowed prior to 2008 and entered repayment for the last time in 2024.

This approach assumes borrowers know their income and family profile trajectories over the life of their loans and choose the plan that offers the lowest lifetime, present-discounted payments. The payment comparison for plan assignment assumes borrowers do not experience any events that disrupt their time to forgiveness or payoff, such as prepayment, discharge, or default, under either the baseline or proposed plan revisions. It does take into account the effect of broad-based forgiveness when doing the comparison. Possible alternatives include choosing the plan that has the most favorable monthly payments in 2023 or another near-term year, assuming that a graduate borrower whose estimated income in a given year or averaged across their repayment period would result in payment at the standard repayment cap would remain in their existing plan and setting a minimum amount of payment reduction that would trigger borrowers to change plans. The Department recognizes that borrowers may use different logic when choosing a repayment plan, such as comparing near-term monthly payments, and will not have information about their future incomes and family patterns to match this type of analysis, but we believe any decision logic would result in a high percentage of borrowers in the new REPAYE plan. By assuming IDR borrowers take the plan with the lowest long-run cost, this generates a higher-end estimate of the net budget impact of the proposed changes for borrowers currently enrolled in IDR plans, though the IDR overall estimate is potentially understating total costs. While it is possible that more people may be willing to take on student loan debt with the safety net of the more generous IDR plan, we have not estimated the extent to which there could be increases in loan volumes or Pell Grants from potential new students. Absent evidence of the magnitude of increase, loan type distribution, risk group profiles, and future income profiles of these potential borrowers, whose postsecondary educational decisions likely involve more than just concern about repayment of debt, the net budget impact of this potential volume increase is unknown. The impact of borrowers switching into IDR plans from non-IDR plans is also a potential factor that we do not estimate here. We have limited information on these borrowers' income and family profiles in repayment and already have high rates of IDR participation in our model. Administrative issues, lack of information, or simply sticking with the default option may be the reason many of these borrowers are not in an IDR plan already, but others may have made the choice that a non-IDR plan is preferable for them. Depending on their anticipated income profiles or comfort with their existing plan, the potential shift of these borrowers is very uncertain and, without information on the income profiles of potential shifters, we are not able to estimate the potential budget impact of this change. As a result, we are concerned that building in a sensitivity analysis that includes adjustments for increased take up could present inaccurate estimates. We will, however, continue to review this issue during the public comment period to see if there are any possible additional refinements. Regardless, to the extent such increases in volume and increases in IDR participation are observed, they will be reflected in future loan program re-estimates.

With the significant budget impact from these proposed revisions, the Department seeks to show the effects of the various changes individually. Table 6 details the scores for the modification cohorts through 2022 and the outyears through 2032 when the proposed changes are run with one or more elements kept as in the baseline. This provides an indication of the impact of the specific proposed changes. The scores for each component will not sum to the total because of the significant interaction between elements of the proposed changes. For example, when the change to 5 percent of income and to 225 percent of the Federal poverty level are combined, the estimated impact is $127.4 billion compared to $132.3 billion when adding the individual savings together. These estimates are removing the proposed change from the estimate of the total package, so a negative value represents a savings from the total policy estimate. This negative value indicates that the element has a cost when included, by reducing transfers from borrowers to the government and taxpayers.

TABLE 6—IDR COMPONENT ESTIMATES

[$ in billions]

	Income protection kept at 150% of FPL	No 5% of income payment	No elimination of interest accrual	No balance-based early forgiveness	Other provisions
Modification through cohort 2022	−$37.3	−$29.6	−$5.4	−$1.2	−$3.4
Outlays for cohorts 2023–2032	−36.4	−29.0	−9.6	−2.5	−4.5
Total	−73.7	−58.6	−14.9	−3.7	−7.9

Note: Savings are relative to the scenario in which the proposed rule is implemented in full, so a negative number reflects a smaller increase in costs.

As can be seen in Table 6, the increase in the income protection to 225 percent of the Federal poverty guidelines and the percentage of income on which payments are based are the most significant factors in the estimated impact of the proposed changes. Borrowers' projected incomes are another important element for cost estimates for IDR plans, so we have run two sensitivity analyses that shift borrower incomes. The Department uses NSLDS income data to adjust the projected incomes used in its IDR model for accuracy. For the alternate scenarios, we increase the income adjustment factor by 5 percentage points and decrease it by 10 percentage points to examine the impact of changes in income. For example, the income adjustment factor used in the baseline was .65, so the adjustment factor for the sensitivities are .70 and .55, respectively. From past sensitivity runs, we know that increasing and decreasing the incomes by the same factor results in similar changes in costs, so the different variations here provide a sense of two different shifts in incomes. When compared to the same baseline, we estimate that regulations with a 5-point increase in incomes would cost a total of $97.0 billion and the 10-point decrease would cost $209.4 billion. Recall that our central estimate of the proposed rule's net budget impact is $137.9 billion above baseline. Incomes are likely the factor in the IDR model with the greatest effect, but other aspects, such as projected family size, events such as defaults, or discharges, also affect the estimates.

We also wanted to consider the distributional effects of the proposed changes to the extent we have information. One benefit we hope to see from the regulations is reduced delinquency and default which should particularly benefit lower-income borrowers, but these potential benefits are not currently included in the model. The sample of borrowers used to estimate costs in IDR plans have projected income profiles of 31 years of AGIs for the borrower or household, depending on tax filing status. Table 7 summarizes the change in payments between the President's budget baseline for FY 2023 as modified for waivers, broad-based debt relief, and recent regulatory packages and the proposed regulation for a representative cohort of borrowers, those entering repayment in FY 2024.

TABLE 7—ESTIMATED EFFECTS OF IDR PROPOSALS BY INCOME RANGE AND GRADUATE STUDENT STATUS FOR BORROWERS ENTERING REPAYMENT IN FY 2024

	<$65,000	$65,000 to $100,000	Above $100,000
Only Undergraduate Borrowing:			
% of Pop	25.8%	24.1%	13.2%
% of Debt	9.9%	12.1%	7.6%
Mean Debt	$27,452	$35,843	$40,722
Mean Payment Reduction	$12,329	$19,807	$16,702
	<$65,000	$65,000 to $100,000	Above $100,000
Borrowed as Graduate Student:			
% of Pop	6.6%	12.2%	18.2%
% of Debt	10.7%	20.4%	39.3%
Mean Debt	$128,467	$124,361	$145,093
Mean Payment Reduction	$16,876	$17,277	$(2,803)

Note: Debt is measured as the outstanding balance when the borrower enters repayment, reductions in payments are measured over the life of the loan, and income is the average income over the potential repayment period for borrowers entering repayment in FY 2024.

As can be seen, all groups would see significant reductions in average payments, except those who borrowed as graduate students and have over $100,000 in average income. There are some limitations to the savings for the borrowers with earnings at or below $65,000, because a portion of these borrowers already have a $0 payment under the current REPAYE plan. Once their payment hits $0 they cannot receive any greater savings under the new plan. Moreover, borrowers in this category generally have lower loan balances; thus, the amount of potential savings is also smaller. Finally, the marginal benefit of a dollar saved is greater for lower-income borrowers than higher-income borrowers, suggesting that similar or lower savings in absolute dollar terms could generate greater value for lower-income groups relative to high-income groups.

Since graduate student borrowers have higher debt, on average, they are less likely to benefit from the reduced time to forgiveness based on a low balance, as shown in Table 8. The high-income, high-debt graduate students may not benefit from the rate reduction and the continued absence of the standard payment cap on REPAYE will likely affect them more. Some may still choose revised REPAYE if their payments are lower in the beginning and then get higher at the end of the repayment period. Table 7 does not account for any timing effects, as such effects are likely to be idiosyncratic and challenging to model in a systemic manner. Payments on loans attributed to graduate programs would remain at a 10 percent discretionary income level and these borrowers have high balances so would not benefit from reduced time to forgiveness. That means two of the major drivers of reductions in borrower payments from the proposed regulations—early forgiveness and the reduction to 5 percent for payments attributed to undergraduate loans—are less likely to apply to that population. The number of expected years to forgiveness in Table 8 is based on the borrower's balance and does not take into account any deferments, forbearances, or early payoffs.

TABLE 8—YEARS TO FORGIVENESS AND DISTRIBUTION OF BALANCES FOR BORROWERS ENTERING REPAYMENT IN FY 2024 UNDER PROPOSED RULE

Expected years to forgiveness	Under-graduate-only borrowers	Any graduate borrowing	Overall
10	12.89	0.31	8.05
11	1.35	0.04	0.85
12	1.53	0.05	0.96
13	1.67	0.07	1.05
14	1.9	0.11	1.21
15	2.0	0.1	1.27
16	2.29	0.08	1.44
17	2.21	0.08	1.39
18	2.44	0.1	1.54
19	2.41	0.09	1.52
20	69.32	0.13	42.7
21		0.21	0.08
22		0.1	0.04
23		0.19	0.07
24		0.21	0.08
25		98.13	37.75

Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

TABLE 9—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits
Improved options for affordable loan repayment	Not quantified.
Increased college enrollment, attainment, and degree completion	Not quantified.
Reduced risk of delinquency and default for borrowers	Not quantified.
Reduced administrative burden for Department due to reduced default and collection actions	Not quantified.

Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements	TBD	TBD
Increased administrative costs to Federal government to updates systems and contracts to implement the proposed regulations	$1.1	$1.3

Category	Transfers	
	7%	3%
Reduced transfers from IDR borrowers due to increased income protection, lower income percentage for payment, potential early forgiveness based on balance, and other IDR program changes	16,285	14,832

Alternatives Considered

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, borrowers, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

The Department considered creating a new repayment plan. However, we determined that modifying the existing REPAYE plan, rather than creating a new repayment plan, could reduce concerns of introducing new complexity, a goal the negotiators primarily shared.

The Department also considered keeping payments set at 10 percent of discretionary income for 20 years for all undergraduate borrowers and 25 years for all graduate borrowers, the cost of which is shown in Table 6 as −$58.6 billion less than the full package that includes the reduction in payments. However, negotiators largely opposed that proposal as insufficient to address the needs of some borrowers. The Department has evaluated the needs of borrowers and determined that the benefits of providing a more generous repayment plan, which will help to encourage borrowers to enroll in a single plan and ultimately contribute to a more streamlined set of repayment options, outweighed the benefits of retaining the current plan. The Department also believes that, for many borrowers, 10 percent of discretionary income may be too high and 20 years may be too long, especially for borrowers who accrued only small amounts of debt over a short period of time in postsecondary education. We are concerned these factors may lead borrowers not to enroll in IDR plans, even when it would make their payments more affordable and help them to avoid delinquency and default.

The Department also considered annual cancellation of some debt for borrowers, a suggestion proposed by several negotiators, but determined that doing so is not within our statutory authority under the HEA. The Department felt that its proposal not to charge accrued-but-unpaid interest, preventing negative amortization, effectively addressed the substance of the problem while ensuring that borrowers who earn more after leaving school repay more of their loans.

Regulatory Flexibility Act

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this proposed regulatory action would not have a significant economic impact on a substantial number of "small entities." The Small Business Administration (SBA) defines "small institution" using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of this NPRM, the Department proposes to continue defining "small entities" by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for a small two-year institution is less than 500 full-time-equivalent (FTE) students and for a small four-year institution, less than 1,000 FTE students.[74]

[74] In previous regulations, the Department categorized small businesses based on tax status. Those regulations defined "non-profit organizations" as "small organizations" if they were independently owned and operated and not dominant in their field of operation, or as "small entities" if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations as small and no public institutions as small. Under

TABLE 10—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	328	1,182	27.75
2-year	Private	182	199	91.46
2-year	Proprietary	1,777	1,952	91.03
4-year	Public	56	747	7.50
4-year	Private	789	1,602	49.25
4-year	Proprietary	249	331	75.23
Total		3,381	6,013	56.23

Source: 2018–19 data reported to the Department.

Table 11 summarizes the number of institutions affected by these proposed regulations. The Department has determined that there would be no economic impact on small entities affected by the regulations because IDR plans are between borrowers and the Department. As seen in Table 11, the average total revenue at small institutions ranges from $2.3 million for proprietary institutions to $21.3 million at private institutions.

TABLE 11—TOTAL REVENUES AT SMALL INSTITUTIONS

Control	Average total revenues for small institutions	Total revenues for all small institutions
Private	21,288,171	20,670,814,269
Proprietary	2,343,565	4,748,063,617
Public	15,398,329	5,912,958,512

Note: Based on analysis of IPEDS enrollment and revenue data for 2018–19.

The IDR proposed regulations will not have a significant impact to a substantial number of small entities because IDR plans are between the borrower and the Department. As noted in the Paperwork Reduction Act section, burden related to the proposed regulations will be assessed in a separate information collection process and that burden is expected to involve individuals more than institutions of any size.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed § 685.209 contains information collection requirements. Under the PRA, the Department would, at the required time, submit a copy of these sections and an Information Collections Request to OMB for its review. PRA approval would be sought via a separate information collection process. The Department would publish these information collections in the **Federal Register** and seek public comment on those documents. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 685.209—Income-Driven Repayment Plans

Requirements: The Department proposes to amend § 685.209 to include regulations for all of the IDR plans, which are plans with monthly payments based in whole or in part on income and family size. These amendments include changes to the PAYE, REPAYE, IBR and ICR plans. Specifically, § 685.209 would be amended to modify the terms of the REPAYE plan to reduce monthly payment amounts to 5 percent of discretionary income for the percent of a borrower's total original loan volume attributable to loans received as students for an undergraduate program; under the modified REPAYE plan, increase the amount of discretionary income exempted from the calculation of payments to 225 percent; under the modified REPAYE plan, discontinue the practice of charging unpaid accrued interest each month after applying a borrower's payment; simplify the alternative repayment plan that a borrower is placed on if they fail to recertify their income and allow up to 12 payments on this plan to count toward forgiveness; reduce the time to forgiveness under the REPAYE plan for borrowers with low original loan balances; modify the IBR plan regulations to clarify that borrowers in default are eligible to make payments under the plan; modify the regulations for all IDR plans to allow for periods under certain deferments and forbearances to count toward

the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

forgiveness; modify the regulations applicable to all IDR plans to allow borrowers an opportunity to make catch-up payments for all other periods in deferment or forbearance; modify the regulations for all IDR plans to clarify that a borrower's progress toward forgiveness does not fully reset when a borrower consolidates loans on which a borrower had previously made qualifying payments; modify the regulations for all IDR plans to provide that any borrowers who are at least 75 days delinquent on their loan payments will be automatically enrolled in the IDR plan for which the borrower is eligible and that produces the lowest monthly payments for them; and limit eligibility for the ICR plan to (1) borrowers who began repaying under the ICR plan before the effective date of the regulations, and (2) borrowers whose loans include a Direct Consolidation Loan made on or after July 1, 2006, that repaid a parent PLUS loan.

Burden Calculation: These changes would require an update to the current IDR plan request form used by borrowers to sign up for IDR, complete annual recertification, or have their payment amount recalculated. The form update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0102, Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs. Consistent with the discussions above, Table 12 describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections.

TABLE 12—PRA INFORMATION COLLECTION

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost unless otherwise noted
§ 685.209 IDR Plans.	The proposed regulations at § 685.209 would be amended to include regulations for all of the IDR plans. These amendments include changes to the PAYE, IBR, and ICR plans, and primarily to the REPAYE plan..	1845–0102 Burden will be cleared at a later date through a separate information collection for the form..	Costs will be cleared through separate information collection for the form.

We will prepare an Information Collection Request for the information collection requirements following the finalization of this NPRM. A notice will be published in the **Federal Register** at that time providing a draft version of the form for public review and inviting public comment. The proposed collection associated with this NPRM is 1845–0102.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations do not have federalism implications.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. List of Subjects in 34 CFR Part 685.

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 685 of title 34 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 2. In § 685.102, in paragraph (b) amend the definition of ''satisfactory repayment arrangement'' by revising paragraph (2)(ii) to read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement:

(2) * * *

(ii) Agreeing to repay the Direct Consolidation Loan under one of the income-driven repayment plans described in § 685.209.

* * * * *

■ 3. Section 685.208 is amended by:

■ a. Revising the section heading.

■ b. Revising paragraphs (a) and (k).

■ c. Removing paragraphs (l) and (m).

The revisions read as follows:

§ 685.208 Fixed payment repayment plans.

(a) *General.* Under a fixed payment repayment plan, the borrower's required monthly payment amount is determined based on the amount of the borrower's Direct Loans, the interest rates on the loans, and the repayment plan's maximum repayment period.

* * * * *

(k) The repayment period for any of the repayment plans described in this section does not include periods of authorized deferment or forbearance.

■ 4. Section 685.209 is revised to read as follows:

§ 685.209 Income-driven repayment plans.

(a) *General.* Income-driven repayment (IDR) plans are repayment plans that base the borrower's monthly payment amount on the borrower's income and family size. The four IDR plans are—

(1) The Revised Pay As You Earn (REPAYE) plan;

(2) The Income-Based Repayment (IBR) plan;

(3) The Pay As You Earn (PAYE) Repayment plan; and

(4) The Income-Contingent Repayment (ICR) plan;

(b) *Definitions.* The following definitions apply to this section:

Discretionary income means the greater of $0 or the difference between the borrower's income as determined under paragraph (e)(1) and—

(i) For the REPAYE plan, 225 percent of the applicable Federal poverty guideline;

(ii) For the IBR and PAYE plans, 150 percent of the applicable Federal poverty guideline; and

(iii) For the ICR plan, 100 percent of the applicable Federal poverty guideline.

Eligible loan, for purposes of determining partial financial hardship status and for adjusting the monthly payment amount in accordance with paragraph (g) of this section means—

(i) Any outstanding loan made to a borrower under the Direct Loan Program, except for a Direct PLUS Loan made to a parent borrower, or a Direct Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan made to a parent borrower; and

(ii) Any outstanding loan made to a borrower under the FFEL Program, except for a Federal PLUS Loan made to a parent borrower, or a Federal Consolidation Loan that repaid a Federal PLUS Loan or a Direct PLUS Loan made to a parent borrower.

Family size means, for all IDR plans, the number of individuals that is determined by adding together—

(i) The borrower;

(ii) The borrower's spouse, for a married borrower filing jointly;

(iii) The borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower; and

(iv) Other individuals if, at the time the borrower certifies family size, the other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support from the borrower for the year for which the borrower certifies family size.

Income means either—

(i) The borrower's and, if applicable, the spouse's, Adjusted Gross Income (AGI) as reported to the Internal Revenue Service; or

(ii) The amount calculated based on alternative documentation of all forms of taxable income received by the borrower and provided to the Secretary.

Income-driven repayment plan means a repayment plan in which the monthly payment amount is primarily determined by the borrower's income.

Monthly payment or the equivalent means—

(i) A required monthly payment as determined in accordance with paragraphs (k)(4)(i) through (iii) of this section;

(ii) A month in which a borrower receives a deferment or forbearance of repayment under one of the deferment or forbearance conditions listed in paragraphs (k)(4)(iv) of this section; or

(iii) A month in which a borrower makes a payment in accordance with procedures in paragraph (k)(6) of this section.

New borrower means—

(i) For the purpose of the PAYE plan, an individual who—

(A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date the borrower receives a new loan after October 1, 2007; and

(B) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, or a Direct Consolidation Loan on or after October 1, 2011, except that a borrower is not considered a new borrower if the Direct Consolidation Loan repaid a loan that would otherwise make the borrower ineligible under paragraph (1) of this definition.

(ii) For the purposes of the IBR plan, an individual who has no outstanding balance on a Direct Loan or Federal Family Education Loan (FFEL) loan on July 1, 2014, or who has no outstanding balance on such a loan on the date the borrower obtains a loan after July 1, 2014.

Partial financial hardship means—

(i) For an unmarried borrower or for a married borrower whose spouse's income and eligible loan debt are excluded for purposes of determining a payment amount under the IBR or PAYE plans in accordance with paragraph (e) of this section, a circumstance in which the Secretary determines that the annual amount the borrower would be required to pay on the borrower's eligible loans under the 10-year standard repayment plan is more than what the borrower would pay under the IBR or PAYE plan as determined in accordance with paragraph (f) of this section. The Secretary determines the annual amount that would be due under the 10-year Standard Repayment plan based on the greater of the balances of the borrower's eligible loans that were outstanding at the time the borrower entered repayment on the loans or the balances on those loans that were outstanding at the time the borrower selected the IBR or PAYE plan.

(ii) For a married borrower whose spouse's income and eligible loan debt are included for purposes of determining a payment amount under the IBR or PAYE plan in accordance with paragraph (e) of this section, the Secretary's determination of partial financial hardship as described in paragraph (1) of this definition is based on the income and eligible loan debt of the borrower and the borrower's spouse.

Poverty guideline refers to the income categorized by State and family size in the Federal poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the Federal poverty guidelines, the Federal poverty guideline to be used for the borrower is the Federal poverty guideline (for the relevant family size) used for the 48 contiguous States.

Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(c) *Borrower eligibility for IDR plans.* (1) Except as provided in paragraphs (d)(2) of this section, defaulted loans may not be repaid under an IDR plan.

(2) Any Direct Loan borrower may repay under the REPAYE plan if the borrower has loans eligible for repayment under the plan;

(3)(i) Except as provided in paragraph (c)(3)(ii) of this section, any Direct Loan borrower may repay under the IBR plan if the borrower has loans eligible for repayment under the plan, and has a partial financial hardship when the borrower initially enters the plan.

(ii) A borrower who has made 120 or more qualifying repayments under the REPAYE plan on or after July 1, 2023, may not enroll in the IBR plan.

(4) A borrower may repay under the PAYE plan only if the borrower—

(i) Has loans eligible for repayment under the plan;

(ii) Is a new borrower;

(iii) Has a partial financial hardship when the borrower initially enters the plan; and

(iv) Began repaying under the PAYE plan before the effective date of these regulations and wishes to continue repaying under the PAYE plan. A borrower who is repaying under the PAYE plan and changes to a different repayment plan in accordance with § 685.210(b) may not re-enroll in the PAYE plan.

(5)(i) Except as provided in paragraph (c)(4)(ii) of this section, a borrower may repay under the ICR plan only if the borrower—

(A) Has loans eligible for repayment under the plan; and

(B) Began repaying under the ICR plan before the effective date of these regulations and wishes to continue repaying under the ICR plan. A borrower who is repaying under the ICR plan and changes to a different repayment plan in accordance with § 685.210(b) may not re-enroll in the ICR plan unless they meet the criteria in paragraph (c)(4)(ii) of this section.

(ii) Any borrower may choose the ICR plan to repay a Direct Consolidation Loan made on or after July 1, 2006, that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan.

(d) *Loans eligible to be repaid under an IDR plan.* (1) The following loans are eligible to be repaid under the REPAYE and PAYE plans: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans that did not repay a Direct parent PLUS Loan or a Federal parent PLUS Loan;

(2) The following loans, including defaulted loans, are eligible to be repaid under the IBR plan: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans that did not repay a Direct parent PLUS Loan or a Federal parent PLUS Loan.

(3) The following loans are eligible to be repaid under the ICR plan: Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and all Direct Consolidation Loans (including Direct Consolidation Loans that repaid Direct parent PLUS Loans or Federal parent PLUS Loans), except for Direct PLUS Consolidation Loans made before July 1, 2006.

(e) *Treatment of income and loan debt.* (1) *Income.*

(i) For purposes of calculating the borrower's monthly payment amount under the REPAYE, IBR, and PAYE plans—

(A) For an unmarried borrower, a married borrower filing a separate Federal income tax return, or a married borrower filing a joint Federal tax return who certifies that the borrower is currently separated from the borrower's spouse or is currently unable to reasonably access the spouse's income, only the borrower's income is used in the calculation.

(B) For a married borrower filing a joint Federal income tax return, except as provided in paragraph (e)(1)(i)(A) of this section, the combined income of the borrower and spouse is used in the calculation.

(ii) For purposes of calculating the monthly payment amount under the ICR plan—

(A) For an unmarried borrower, a married borrower filing a separate Federal income tax return, or a married borrower filing a joint Federal tax return who certifies that the borrower is currently separated from the borrower's spouse or is currently unable to reasonably access the spouse's income, only the borrower's income is used in the calculation.

(B) For married borrowers (regardless of tax filing status) who elect to repay their Direct Loans jointly under the ICR Plan or (except as provided in paragraph (e)(1)(ii)(A) of this section) for a married borrower filing a joint Federal income tax return, the combined income of the borrower and spouse is used in the calculation.

(2) *Loan debt.* (i) For the REPAYE, IBR, and PAYE plans, the spouse's eligible loan debt is included for the purposes of adjusting the borrower's monthly payment amount as described in paragraph (g) of this section if the spouse's income is included in the calculation of the borrower's monthly payment amount in accordance with paragraph (e)(1) of this section.

(ii) For the ICR plan, the spouse's loans that are eligible for repayment under the ICR plan in accordance with paragraph (d)(3) of this section are included in the calculation of the borrower's monthly payment amount only if the borrower and the borrower's spouse elect to repay their eligible Direct Loans jointly under the ICR plan.

(f) *Monthly payment amounts.* (1) For the REPAYE plan, the borrower's monthly payments are—

(i) $0 for the portion of the borrower's income, as determined under paragraph (e)(1) of this section, that is less than or equal to 225 percent of the applicable Federal poverty guideline; plus

(ii) 5 percent of the portion of income as determined under paragraph (e)(1) of this section that is greater than 225 percent of the applicable poverty guideline, prorated by the percentage that is the result of dividing the borrower's original total loan balance attributable to eligible loans received for undergraduate study by the borrower's original total loan balance attributable to all eligible loans, divided by 12; plus

(iii) 10 percent of the portion of income as determined under paragraph (e)(1) of this section that is greater than 225 percent of the applicable Federal poverty guidelines, prorated by the percentage that is the result of dividing the borrower's original total loan balance attributable to eligible loans received for graduate or professional study by the borrower's original total loan balance attributable to all eligible loans, divided by 12.

(2) For new borrowers under the IBR plan and for all borrowers on the PAYE plan, the borrower's monthly payments are the lesser of:

(i) 10 percent of the borrower's discretionary income, divided by 12; or

(ii) What the borrower would have paid on a 10-year standard repayment plan based on the eligible loan balances and interest rates on the loans at the time the borrower entered the IBR or PAYE plans.

(3) For those who are not new borrowers under the IBR plan, the borrower's monthly payments are the lesser of:

(i) 15 percent of the borrower's discretionary income, divided by 12; or

(ii) What the borrower would have paid on a 10-year standard repayment plan based on the eligible loan balances and interest rates on the loans at the time the borrower entered the IBR plan.

(4)(i) For the ICR plan, the borrower's monthly payments are the lesser of:

(A) What the borrower would have paid under a repayment plan with fixed monthly payments over a 12-year repayment period, based on the amount that the borrower owed when the borrower entered the ICR plan, multiplied by a percentage based on the borrower's income as established by the Secretary in a **Federal Register** notice published annually to account for inflation; or

(B) 20 percent of the borrower's discretionary income, divided by 12.

(ii)(A) Married borrowers may repay their loans jointly under the ICR plan. The outstanding balances on the loans of each borrower are added together to determine the borrowers' combined monthly payment amount under paragraph (f)(4)(i) of this section;

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

(g) *Adjustments to monthly payment amounts.* Monthly payment amounts calculated under paragraphs (f)(1) through (3) of this section will be adjusted in the following circumstances:

(1) In cases where the spouse's loan debt is included in accordance with paragraph (e)(2)(i) of this section, the borrower's payment is adjusted by—

(i) Dividing the outstanding principal and interest balance of the borrower's eligible loans by the couple's combined outstanding principal and interest balance on eligible loans; and

(ii) Multiplying the borrower's payment amount as calculated in accordance with paragraphs (f)(1) through (3) of this section by the percentage determined under paragraph (g)(1)(i) of this section.

(2) In cases where the borrower has outstanding eligible loans made under the FFEL Program, the borrower's calculated monthly payment amount, as determined in accordance with paragraphs (f)(1) through (3) of this section or, if applicable, the borrower's adjusted payment as determined in accordance with paragraph (g)(1) of this section is adjusted by—

(i) Dividing the outstanding principal and interest balance of the borrower's eligible loans that are Direct Loans by the borrower's total outstanding principal and interest balance on eligible loans; and

(ii) Multiplying the borrower's payment amount as calculated in accordance with paragraphs (f)(1) through (3) of this section or the borrower's adjusted payment amount as determined in accordance with paragraph (g)(1) of this section by the percentage determined under paragraph (g)(2)(i) of this section.

(h) *Interest.* If a borrower's calculated monthly payment under an IDR plan is insufficient to pay the accrued interest on the borrower's loans, the Secretary charges the remaining accrued interest to the borrower in accordance with paragraphs (h)(1) through (3) of this section.

(1) Under the REPAYE plan, during all periods of repayment on all loans being repaid under the REPAYE plan, the Secretary does not charge the borrower's account any accrued interest that is not covered by the borrower's payment;

(2)(i) Under the IBR and PAYE plans, the Secretary does not charge the borrower's account with an amount equal to the amount of accrued interest on the borrower's Direct Subsidized Loans and Direct Subsidized Consolidation Loans that is not covered by the borrower's payment for the first three consecutive years of repayment under the plan, except as provided for the IBR and PAYE plans in paragraph (h)(2)(ii) of this section;

(ii) Under the IBR and PAYE plans, the 3-year period described in paragraph (h)(2)(i) of this section excludes any period during which the borrower receives an economic hardship deferment under § 685.204(g); and

(3) Under the ICR plan, the Secretary charges all accrued interest to the borrower.

(i) *Changing repayment plans.* A borrower who is repaying under an IDR plan may change at any time to any other repayment plan for which the borrower is eligible, except as otherwise provided in § 685.210(b).

(j) *Interest capitalization.* (1) Under the REPAYE, PAYE, and ICR plans, the Secretary capitalizes unpaid accrued interest in accordance with § 685.202(b).

(2) Under the IBR plan, the Secretary capitalizes unpaid accrued interest—

(i) In accordance with § 685.202(b);

(ii) When a borrower's payment is the amount described in paragraphs (f)(2)(ii) and (f)(3)(ii) of this section; and

(iii) When a borrower leaves the IBR plan.

(k) *Forgiveness timeline.* (1) In the case of a borrower repaying under the REPAYE plan who is repaying at least one loan received for graduate or professional study, or a Direct Consolidation Loan that repaid one or more loans received for graduate or professional study, a borrower repaying under the IBR plan who is not a new borrower, or a borrower repaying under the ICR plan, the borrower receives forgiveness of the remaining balance of the borrower's loan after the borrower has satisfied 300 monthly payments or the equivalent in accordance with paragraph (k)(4) of this section over a period of at least 25 years;

(2) In the case of a borrower repaying under the REPAYE Plan who is repaying only loans received for undergraduate study, or a Direct Consolidation Loan that repaid only loans received for undergraduate study, a borrower repaying under the IBR plan who is a new borrower, or a borrower repaying under the PAYE plan, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 240 monthly payments or the equivalent in accordance with paragraph (k)(4) of this section over a period of at least 20 years;

(3) Notwithstanding paragraphs (k)(1) and (k)(2) of this section, a borrower receives forgiveness if the borrower's total original principal balance on all loans that are being paid under the REPAYE plan was less than or equal to $12,000, after the borrower has satisfied 120 monthly payments, plus an additional 12 monthly payments or the equivalent over a period of at least 1 year for every $1,000 if the total original principal balance is above $12,000.

(4) For all IDR plans, a borrower receives a month of credit toward forgiveness by—

(i) Making a payment under an IDR plan, including a payment of $0, except that those periods of deferment or forbearance treated as a payment under (k)(4)(iv) of this section do not apply for forgiveness under paragraph (k)(3) of this section;

(ii) Making a payment under the 10-year standard repayment plan under § 685.208(b);

(iii) Making a payment under a repayment plan with payments that are as least as much as they would have been under the 10-year standard repayment plan under § 685.208(b), except that no more than 12 payments made under paragraph (l)(10)(iii) of this section may count toward forgiveness under the REPAYE plan;

(iv) Deferring or forbearing monthly payments under the following provisions:

(A) A cancer treatment deferment under section 455(f)(3) of the Act;

(B) A rehabilitation training program deferment under § 685.204(e);

(C) An unemployment deferment under § 685.204(f);

(D) An economic hardship deferment under § 685.204(g), which includes volunteer service in the Peace Corps as an economic hardship condition;

(E) A military service deferment under § 685.204(h);

(F) A post active-duty student deferment under § 685.204(i);

(G) A national service forbearance under § 685.205(a)(4);

(H) A national guard duty forbearance under § 685.205(a)(7);

(I) A Department of Defense Student Loan Repayment forbearance under § 685.205(a)(9); or

(J) An administrative forbearance under § 685.205(b)(8) or (9).

(v) (A) If a borrower consolidates one or more Direct Loans or FFEL program loans into a Direct Consolidation Loan, the payments the borrower made on the Direct Loans or FFEL program loans prior to consolidating and that met the criteria in paragraph (4) of this section, or in 34 CFR 682.209(a)(6)(vi) and which were based on a 10-year repayment period, or 34 CFR 682.215 will count as qualifying payments on the Direct Consolidation Loan.

(B) For borrowers whose Direct Consolidation Loan repaid loans with more than one period of qualifying payments, the borrower will receive credit for the number of months equal to the weighted average of qualifying payments made rounded up to the nearest whole month.

(vi) Making payments under paragraph (k)(6) of this section.

(5) For the IBR plan only, a payment made pursuant to paragraph (k)(4)(i) or (k)(4)(ii) of this section on a loan in default or amounts collected through Administrative Wage Garnishment or Federal Offset that are equivalent to the amount a borrower would owe under paragraph (k)(4)(ii) of this section also satisfy a monthly repayment obligation for the purposes of forgiveness under paragraph (k) of this section.

(6)(i) For any period in which a borrower was in a deferment or forbearance not listed in paragraph (k)(4)(iv) of this section, the borrower may obtain credit toward forgiveness as defined in paragraph (k) of this section for any months in which the borrower makes a payment equal to or greater than the amount the borrower would have been required to pay during that period on any IDR plan under this section, including a payment of $0.

(ii) Upon request, the Secretary informs the borrower of the months for which the borrower can make payments if the borrower provides any additional information the Secretary requests to calculate a payment under an IDR plan under this section.

(l) *Application and annual recertification procedures.* (1) Unless a borrower has provided approval for the disclosure of applicable tax information to enter an IDR plan, a borrower must complete an application for IDR on a form approved by the Secretary;

(2) As part of the process of completing a Direct Loan Master Promissory Note or a Direct Consolidation Loan Application and Promissory Note, the borrower may approve the disclosure of applicable tax information in accordance with sections 455(e)(8) and 493C(c)(2) of the Act;

(3) If a borrower does not provide approval for the disclosure of applicable tax information under sections 455(e)(8) and 493C(c)(2) of the Act when completing the application for an IDR plan, the borrower must provide documentation of the borrower's income and family size to the Secretary;

(4) If the Secretary has received approval for disclosure of applicable tax information, but cannot obtain the borrower's AGI and family size from the Internal Revenue Service, the borrower and, if applicable, the borrower's spouse, must provide documentation of income and family size to the Secretary;

(5) After the Secretary obtains sufficient information to calculate the borrower's monthly payment amount, the Secretary calculates the borrower's payment and establishes the 12-month period during which the borrower will be obligated to make a payment in that amount;

(6) The Secretary then sends to the borrower a repayment disclosure that—

(i) Specifies the borrower's calculated monthly payment amount;

(ii) Explains how the payment was calculated;

(iii) Informs the borrower of the terms and conditions of the borrower's selected repayment plan; and

(iv) Tells the borrower how to contact the Secretary if the calculated payment amount is not reflective of the borrower's current income or family size;

(7) If the borrower believes that the payment amount is not reflective of the borrower's current income or family size, the borrower may request that the Secretary recalculate the payment amount. The borrower must also submit alternative documentation of income or family size not based on tax information to account for circumstances such as a decrease in income since the borrower last filed a tax return, the borrower's separation from a spouse with whom the borrower had previously filed a joint tax return, the birth or impending birth of a child, or other comparable circumstances;

(8) If the borrower provides alternative documentation under paragraph (l)(7) of this section or if the Secretary obtains documentation from the borrower or spouse under paragraph (l)(4) of this section, the Secretary grants forbearance under § 685.205(b)(9) to provide time for the Secretary to recalculate the borrower's monthly payment amount based on the documentation obtained from the borrower or spouse;

(9) Once the borrower has only three monthly payments remaining under the 12-month period specified in paragraph (l)(5) of this section, the Secretary follows the procedures in paragraphs (l)(4) through (l)(8) of this section.

(10) If the Secretary requires information from the borrower under paragraph (l)(4) of this section to recalculate the borrower's monthly repayment amount under paragraph (l)(9) of this section, and the borrower does not provide the necessary documentation to the Secretary by the time the last payment is due under the 12-month period specified under paragraph (l)(5) of this section—

(i) For the IBR and PAYE plans, the borrower's monthly payment amount is the amount determined under paragraph (f)(2)(ii) or (f)(3)(ii) of this section;

(ii) For the ICR plan, the borrower's monthly payment amount is the amount the borrower would have paid under a 10-year standard repayment plan based on the balances and interest on the loans being repaid under the ICR Plan when the borrower initially entered the ICR Plan; and

(iii) For the REPAYE plan, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount the borrower would have paid on a 10-year standard repayment plan based on the current loan balances and interest rates on the loans at the time the borrower was removed from the REPAYE plan.

(11) At any point during the 12-month period specified under paragraph (l)(5) of this section, the borrower may request that the Secretary recalculate the borrower's payment earlier than would have otherwise been the case to account for a change in the borrower's circumstances, such as loss of income or employment or divorce. In such cases, the 12-month period specified under paragraph (l)(5) of this section is reset based on the borrower's new information.

(12) The Secretary tracks a borrower's progress toward eligibility for forgiveness under paragraph (k) of this section and forgives loans that meet the criteria under paragraph (k) of this section without the need for an

application or documentation from the borrower.

(m) *Automatic enrollment in an IDR plan.* The Secretary places a borrower on the IDR plan under this section that results in the lowest monthly payment based on the borrower's income and family size if—

(1) The borrower is otherwise eligible for the plan;

(2) The borrower has approved the disclosure of tax information under paragraph (l)(2) or (l)(3) of this section;

(3) The borrower is in repayment and has not made a scheduled payment on the loan for at least 75 days; and

(4) The Secretary determines that the borrower's payment under the IDR plan would be lower than the payment on the plan in which the borrower is enrolled.

■ 5. Section 685.210 is revised to read as follows:

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower with a description of the available repayment plans and requests that the borrower select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) or (c) for the borrower, as applicable.

(3) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that—

(i) A borrower of a Direct PLUS Loan or a Direct Consolidation Loan that is not eligible for repayment under an income-driven repayment plan may repay the Direct PLUS Loan or Direct Consolidation Loan separately from other Direct Loans obtained by the borrower; and

(ii) A borrower of a Direct PLUS Consolidation Loan that entered repayment before July 1, 2006, may repay the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(b) *Changing repayment plans.* (1) A borrower who has entered repayment may change to any other repayment plan for which the borrower is eligible at any time by notifying the Secretary. However, a borrower who is repaying a defaulted loan under the income-based repayment plan or who is repaying a Direct Consolidation Loan under an income-driven repayment plan in accordance with § 685.220(d)(1)(i)(A)(*3*) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the IBR plan or other income-driven repayment plan in each of the prior three months; or

(ii) The borrower was not required to make payments but made three reasonable and affordable payments in each of the prior three months; and

(iii) The borrower makes and the Secretary approves a request to change plans.

(2)(i) A borrower may not change to a repayment plan that would cause the borrower to have a remaining repayment period that is less than zero months, except that an eligible borrower may change to an income-driven repayment plan under § 685.209 at any time.

(ii) For the purposes of paragraph (b)(2)(i) of this section, the remaining repayment period is—

(A) For a fixed repayment plan under § 685.208 or an alternative repayment plan under § 685.221, the maximum repayment period for the repayment plan the borrower is seeking to enter, less the period of time since the loan has entered repayment, plus any periods of deferment and forbearance; and

(B) For an income-driven repayment plan under § 685.209, as determined under § 685.209(k).

■ 6. Section 685.211 is amended by:

■ a. Revising the heading of paragraph (a).

■ b. Revising paragraph (a)(1).

■ c. Revising paragraph (f)(3)(ii).

The revisions read as follows:

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1)(i) Except as provided for the Income-Based Repayment plan in paragraph (a)(1)(ii) of this section, the Secretary applies any payment in the following order:

(A) Accrued charges and collection costs.

(B) Outstanding interest.

(C) Outstanding principal.

(ii) The Secretary applies any payment made under the Income-Based Repayment plan in the following order:

(A) Accrued interest.

(B) Collection costs.

(C) Late charges.

(D) Loan principal.

* * * * *

(f) * * *

(3) * * *

(ii) Family size as defined in § 685.209; and

* * * * *

■ 7. Section 685.219, as proposed to be amended November 1, 2022 at 87 FR 66063, and effective July 1, 2023, is further amended by:

■ a. Revising paragraph (b)(i) of the definition of ''Qualifying repayment plan''.

■ b. Revising paragraph (c)(2)(iii).

■ c. Revising paragraph (g)(6)(ii).

The revisions read as follows:

§ 685.219 Public Service Loan Forgiveness Program (PSLF).

* * * * *

(b) * * *

(*Qualifying repayment plan*) * * *

(i) An income-driven repayment plan under § 685.209;

* * * * *

(c) * * *

(2) * * *

(iii) For a borrower on an income-driven repayment plan under § 685.209, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date under the qualifying repayment plan in which the borrower is enrolled;

* * * * *

* * * * *

(g) * * *

(6) * * *

(ii) Otherwise qualified for a $0 payment on an income-driven repayment plans under § 685.209.

§ 685.220 [Amended]

■ 8. Section 685.220, in paragraph (h), is amended by adding ''§ 685.209, and § 685.221,'' after ''§ 685.208,''.

■ 9. Section 685.221 is revised to read as follows:

§ 685.221 Alternative repayment plan.

(a) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in §§ 605.208 and 685.209 are not adequate to accommodate the borrower's exceptional circumstances.

(b) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(c) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(d) A borrower must repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

■ 10. Section 685.222 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 685.222 Borrower defenses and procedures for loans first disbursed on or after July 1, 2017, and before July 1, 2020, and procedures for loans first disbursed prior to July 1, 2017.

* * * * *

(e) * * *

(2) * * *

(ii) Provides the borrower with information about the availability of the income-driven repayment plans under § 685.209;

* * * * *

■ 11. Section 685.403, as proposed to be amended November 1, 2022 at 87 FR 66063, and effective July 1, 2023, is further amended by revising (d)(1) to read as follows:

§ 685.403 Individual process for borrower defense.

* * * * *

(d) * * *

(1) Provides the borrower with information about the availability of the income-driven repayment plans under § 685.209;

* * * * *

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