

## Memorandum

To: U.S. Department of Education; Negotiated Rulemaking Committee  
From: Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers  
Date: Nov. 2, 2021

Re: IDR Proposals: Structure of Forgiveness and Discretionary Income Threshold

### Introduction

Income-driven repayment (IDR) plans are meant to help borrowers successfully navigate repayment by keeping payments affordable. However, for many low-income borrowers who are struggling to make ends meet, IDR payments are simply not affordable, and the prospect of having to make them for twenty to twenty-five years is psychologically and financially overwhelming. And while struggling to make payments, many low-income borrowers nonetheless see their balances grow ever larger, leaving them feeling hopeless – and resulting in financial devastation if the borrower defaults and faces seizure of a far higher balance than they started with. Even those who stay in repayment suffer, wondering when they will ever be able to begin saving for their children’s education, or their retirement, or to stop living in debt and begin working toward financial security. And many borrowers, of course, are already in or approaching retirement—40% of student debt is held by borrowers over age 40,<sup>1</sup> and for these borrowers, the current IDR framework means that many will never be able to move past their debt.

To make IDR work for low-income borrowers, two critical changes are needed: (1) partial IDR cancellation should occur annually, rather than as “all-or-nothing” relief at the end of 20+ years, so that borrowers experience steady progress toward paying off their loan and can pay them off more quickly, and (2) the amount of income protected for necessary expenses should be increased.

- 1) IDR Should Provide Annual Cancellation and Should Cap the Total Repayment Term at 15 Years

Twenty to twenty-five years feels like a life sentence to most borrowers and is too long a repayment period. This is especially true for low-income borrowers who tend to have lower balances. Year after year, most low-income borrowers watch their balances increase and many cannot overcome bureaucratic barriers that ultimately push them out of an IDR plan.

Low-income student loan borrowers need a shorter and easier path to cancellation. The current repayment period fails to provide relief to borrowers and leads to borrowers feeling discouraged and crushed under the weight of their debt for decades.<sup>2</sup> We recommend that all student loan

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<sup>1</sup> <https://www.newyorkfed.org/microeconomics/topics/student-debt>.

<sup>2</sup> Jim Crow Debt: How Black Borrowers Experience Student Loans, EdTrust at 7-10(Oct. 20, 2021) [https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt\\_How-Black-Borrowers-Experience-Student-Loans\\_October-2021.pdf](https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt_How-Black-Borrowers-Experience-Student-Loans_October-2021.pdf); Borrowers Discuss the Challenges of Student Loan Repayment, Pew

borrowers should be in IDR repayment only for a maximum of fifteen years before they receive cancellation. In addition, we recommend that the Department cancel outstanding interest and a percentage of principal each year, with a varying percentage of principal cancelled depending on the borrower's income.

A) Cancellation Should Happen Annually So That Borrowers Can See Their Balance Decrease Each Year

A critical problem with the current structure of IDR is that the lowest income borrowers never see their balances decrease. Most recently available data shows only 32 have ever received cancellation in IDR even though 4.4 million borrowers have been in repayment for over 20 years.<sup>3</sup> Many of the borrowers we work with express skepticism that IDR will pay off for them, and given the voluminous problems with the administration of IDR documented in lawsuits and government enforcement actions,<sup>4</sup> that skepticism is warranted.

Flat or inflating balances harm borrowers both psychologically and financially. In a recent NPR interview, John Beshears, an economist at Harvard Business School who specializes in financial choices and decision-making, said that “[b]eing heavily indebted does change your cognitive capacity.”<sup>5</sup> He continued that “over-indebtedness is dehumanizing to the borrower” and described recent research that suggests that being relieved of debt has multiple benefits, including increasing workers’ productivity. Similarly, research by Di Maggio, Kalda, and Yao found that when borrowers’ student loan debt was discharged, borrowers were significantly less likely to be delinquent on other forms of debt (like credit cards, auto loans, or mortgages), borrowers’ geographic mobility increased, and they were able to earn more income.<sup>6</sup> This research mirrors what we often hear from low-income borrowers; large lingering balances impair borrowers’ credit scores and/or creates a debt-to-income ratio that makes borrowing an auto

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Charitable Trusts at 13-14, 32-33 (May 20, 2020) [https://www.pewtrusts.org/-/media/assets/2020/05/studentloan\\_focusgroup\\_report.pdf](https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf);

<sup>3</sup> Education Department’s Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt, National Consumer Law Center & Student Borrower Protection Center (March 2021) <https://www.nclc.org/uncategorized/issue-brief-education-departments-decades-old-debt-trap-how-the-mismanagement-of-income-driven-repayment-locked-millions-in-debt.html>; Education Department Responses to Data Request by Senator Warren (April 2, 2021) <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%20204-8-21.pdf>.

<sup>4</sup> See CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment, Consumer Fin. Prot. Bureau (Jan. 18, 2017) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>; MA AG Healey Sues to Protect Public Service Loan Forgiveness (Aug. 23, 2017); <https://www.mass.gov/news/ag-healey-sues-to-protect-public-service-loan-forgiveness>; Federal appeals court ruled Pennsylvania can continue its lawsuit against Navient <https://www.attorneygeneral.gov/wp-content/uploads/2020/07/2020-07-27-Navient-order.pdf>

<sup>5</sup> NPR, [How debt can affect our decision making \(Oct. 29, 2021\)](#); Elina Turunen & Heidi Hiilamo, Health Effects of Indebtedness, a Systemic Review, BMC Public Health (2014) <https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-14-489> (“Self-reported problems of indebtedness and financial stress were strongly associated with depression, and indebtedness was also associated with depression-related symptoms such as anxiety and anger”)

<sup>6</sup> Marco Di Maggio, Ankit Kalda, & Vincent Yao, Second Chance: Life Without Student Debt (2019) [https://www.nber.org/system/files/working\\_papers/w25810/w25810.pdf](https://www.nber.org/system/files/working_papers/w25810/w25810.pdf)

loan or mortgage untenable. With never ending debt, borrowers struggle to pay for housing and transportation to work, and are dependent on credit cards or other forms of high-cost debt to pay for life's necessities. They are stuck in debt and negative net worth, and worry they will never be able to start building assets and positive net worth. This has particularly concerning ramifications for the racial wealth gap.

For these reasons, we recommend the Department restructure loan cancellation to annually 1) cancel any unpaid interest and 2) cancel an amount based upon a percentage of the borrower's principal balance when they restarted repayment or when they entered IDR (whichever is higher). This plan would ensure that borrowers would see progress being made on their loan balances and would avoid the "all or nothing" approach adopted by current IDR plans.

#### B) The Amount that is Cancelled Annually Should be Based Upon the Borrower's Income

To address the recognized problem that low-income, often low-balance borrowers are left in repayment far too long under current IDR plans, and to further target the benefits of IDR to lower income borrowers, we recommend that Department develop an annual cancellation formula that would provide cancellation to the lowest income borrowers after 3 years, scaling up to 15 years for the highest-income borrowers. To accomplish this, the Department may scale the amount of loan cancellation that a borrower receives each year based upon their income at the last time that the Department certified the borrower's income.

Borrowers who live in persistent poverty (150% FPL) should be able to have their loans cancelled after 3 years in IDR, which the Department could accomplish by providing cancellation of 33.3% of their balance each year their earnings are below this threshold. This would provide the greatest benefit to borrowers who rely on means-tested public benefits such as Temporary Assistance for Needy Families (TANF) or the Supplemental Nutrition Assistance Program (SNAP).<sup>7</sup> Based on the eligibility criteria of SNAP (maximum income at 130% of the federal poverty level)<sup>8</sup> and TANF (maximum income varies by state but is almost always below 100% of the federal poverty level),<sup>9</sup> borrowers in these groups would qualify for \$0 payments under even the current income-driven repayment income thresholds (maximum income at 150% of the federal poverty level). We should not be keeping these borrowers in debt for decades.

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<sup>7</sup> Delaney, A. 2017, December 6. "How Long Do People Stay on Public Benefits?" *The Huffington Post*. Available at [https://www.huffpost.com/entry/public-benefits-safety-net\\_n\\_7470060](https://www.huffpost.com/entry/public-benefits-safety-net_n_7470060). Although we don't know what percent of student borrowers meet the 3-year threshold for public assistance, the Census Bureau's longitudinal survey data establishes that 43% of the 1 in 5 individuals who participated in means-tested public assistance during the 2009-2012 period did so for more than 3 years. This is likely an upper bound as the research also states that higher educational attainment reduces public assistance participation.

<sup>8</sup> Center on Budget and Policy Priorities. September 2020. *A Quick Guide to SNAP Eligibility and Benefits*. Available at <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.

<sup>9</sup> Falk, G. 2014, July 22. "Temporary Assistance for Needy Families (TANF): Eligibility and Benefit Amounts in State TANF Cash Assistance Programs." *Congressional Research Service*. Available at <https://fas.org/sgp/crs/misc/R43634.pdf>.

## 2) The Discretionary Income Threshold Should be Significantly Increased

Although current income-driven repayment plans often offer lower monthly payments than the standard ten-year repayment plan, many borrowers still struggle to afford these reduced payments in combination with other critical expenses like housing, childcare or medical costs, transportation, and payments on private student loans. This problem is particularly acute for low-income borrowers who earn above 150% of the federal poverty level (FPL) but who still do not earn enough to meet their families' basic living expenses, much less to meet those expenses and make federal student loan payments month after month for years or decades. Contrary to the assumptions underlying current IDR formulas, many borrowers who earn more than 150% of the FPL simply do not have any discretionary income--every dollar is needed to pay for necessities, and many are still in the red. To make loans truly affordable for low-income borrowers, and to ensure that federal student loan debt does not prevent low-income borrowers from achieving even modest financial security, it is critically important for the Department to substantially increase the amount of income that is protected as "non-discretionary" when calculating monthly payment amounts.

### A) Increasing the Amount of Protected Income Provides More Protection to Low-income Borrowers than Changing the Percentage of Income Owed

A borrower's monthly payment under an IDR plan is determined by two main variables: (A) the "income protection threshold," or "discretionary income threshold," which protects a certain amount of income recognized as needed to meet basic needs and excludes it from being considered as part of a borrower's discretionary income (under REPAYE, this threshold is set at 150% of the federal poverty level), and (B) the percentage of discretionary income that a borrower is required to put toward loan payments (10% under REPAYE). To provide more affordable monthly payments, the Department can change either or both of these variables.

Changing the threshold of protected income has a more pronounced effect on low- and moderate-income borrowers than changing the percentage of discretionary income, and so should be prioritized. By increasing the income protection threshold above its current, insufficient level, the low- and moderate-income borrowers who are struggling the most with student loan debt receive a targeted benefit that lowers their monthly payments and better enables them to cover other living costs.

### B) The Amount of Income Protected is Far Too Low to Meet Basic Expenses and Should be Significantly Increased

The current threshold between protected and "discretionary" income for income-driven repayment, 150% of the current federal poverty level (FPL), is far too low to meet our clients' basic needs. Below is a table reflecting the amount of income protected for necessary expenses under current IDR plans for families of different sizes:

# of Persons in Household	150% FPL
1	\$19,320
2	\$26,130
3	\$32,940
4	\$39,750

As an example, current IDR formulas assume that for a single parent with two children, any income over \$32,940 a year is “discretionary” and available for student loan payments. But in Boston, where NCLC is based, the average monthly rent for a non-luxury two-bedroom apartment is over \$2,500 per month--or \$30,000 per year.<sup>10</sup> Just paying for housing would consume the vast majority of the \$32,940 in protected income, and a parent has many more essential needs to pay for: food, childcare, healthcare, school supplies, clothing, utilities, and transportation, to start. Indeed, under the Department of Housing and Urban Development’s income standards for assessing need for housing assistance, a family of three in Boston would be considered “extremely low-income” if they earned less than \$36,250--an amount well in excess of the 150% of FPL protected in IDR. Moreover, a family of three in Boston would be considered “low-income” under the HUD standards if they earned less than \$90,950<sup>11</sup> -- which is more than 400% of FPL (\$87,840).

This example illustrates that the assumption underlying current IDR formulas--that any income over 150% of FPL is “discretionary” and not essential to meet basic needs, is wildly incorrect. The problem is rooted in the federal poverty level methodology itself. The Federal Poverty Guidelines are set based on a widely criticized and outdated formula: the annual cost of basic food for a household of a given size in 1964, multiplied by three, and then indexed for inflation.<sup>12</sup> It’s not clear that this calculation was ever a good measure of poverty, but it is particularly inappropriate now since the cost of food has decreased since 1964 while other costs--particularly housing, childcare, and healthcare have increased. As a result, food costs are much less than one-third of most people’s budgets today, and the resulting FPL are far too low.<sup>13</sup>

Additionally, a major flaw in both the federal poverty levels and the current structure of the income driven repayment formula is that they do not take into consideration variations in borrowers’ necessary expenses. Even “living wage” calculators, which generate living and “self-sufficiency” wage estimates by family size and location, and which typically find earnings well in

<sup>10</sup> <https://www.wbur.org/news/2021/09/17/greater-boston-rental-housing-allston-covid>.

<sup>11</sup> <https://www.huduser.gov/portal/datasets/il/il2021/2021summary.odn>.

<sup>12</sup> [https://ssir.org/articles/entry/beyond\\_the\\_poverty\\_line](https://ssir.org/articles/entry/beyond_the_poverty_line).

<sup>13</sup> Kolesnikova, N.A., & Liu, Y. 2012, July 1. “Understanding Poverty Measures and the Call to Update Them.” Federal Reserve Bank of St. Louis. Available at <https://www.stlouisfed.org/publications/regional-economist/july-2012/understanding-poverty-measures-and-the-call-to-update-them>.

excess of 150% of FPL are necessary to cover basic expenses, only look at “typical” expenses.<sup>14</sup> Within the pool of student loan borrowers, many borrowers live in regions with a high cost of living and/or have necessary expenses that are not “typical.” In our experience, borrowers of color and borrowers with disabilities or who have family members with disabilities often have non-typical expenses because of higher than average medical expenses, or because they are caring for extended family members. The racial wealth gap also means that many borrowers of color have fewer total resources available and must preserve a greater amount of their income to absorb shocks in expenses and income. Without an administratively complicated process of determining the total resources and total expenses of each borrower, the income driven repayment formula must be generous enough to ensure that all borrowers have an affordable repayment option.

**What is the right amount of income to protect for basic needs?** Research suggests that families need an income of at least 300% of the current federal poverty level to afford basic, essential living expenses.<sup>15</sup> We also know that basic expenses are higher still for many families due to high housing, childcare, and medical expenses as a result of both regional cost differences and differences in individual medical, family, and health situations. In the absence of a mechanism to readily consider such individual and regional differences in necessary expenses, we therefore propose a slightly higher threshold of 400% of FPL. This amount would be intended to protect the amount of income needed to meet necessary expenses for borrowers throughout the country with different family structures, childcare needs, and medical needs.

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<sup>14</sup> See, e.g., <http://www.selfsufficiencystandard.org/>, <https://livingwage.mit.edu/>.

<sup>15</sup> See, e.g., Kinsey Dinan, Nat'l Ctr. for Children in Poverty, Budgeting for Basic Needs: A Struggle for Working Families, (2009), [http://www.nccp.org/publications/pdf/text\\_858.pdf](http://www.nccp.org/publications/pdf/text_858.pdf) (“It takes an income of about 1.5 to 3.5 times the official poverty level . . . to cover the cost of a family’s minimum day-to-day needs”); Insight Ctr. for Cmty. Econ. Dev., 2011 California Family Economic Self-Sufficiency Standard (2011), [www.insightcced.org](http://www.insightcced.org) (finding a family of four in California would need nearly triple the federal poverty guideline to cover basic needs).