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October 10, 2023

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
Submitted via regulations.gov

**RE: Comments in Response to the U.S. Department of Education's Proposed Income-Driven Repayment Plan (IDR) Request Form (Docket ID ED–2023–SCC–0145)**

Dear Secretary Cardona,

On behalf of our low-income clients, the National Consumer Law Center submits these comments in response to the U.S. Department of Education's request for comments on the proposed income-driven repayment (IDR) plan request form. Our comments reflect our expertise in the applicable IDR regulations as well as our experience working directly with low-income borrowers applying for IDR plans and feedback from other legal aid attorneys who provide IDR application assistance. All of our comments are intended to help ensure that the process of enrolling and remaining in IDR plans is smooth and accessible to all student loan borrowers, and to low-income and otherwise vulnerable borrowers in particular.

Prior to the pandemic, many low-income borrowers struggled to enroll or stay enrolled in an affordable payment plan, leading many to default or to experience serial forbearances that prevented them from making progress toward either paying down their loans or reaching IDR forgiveness.[1] The Department's recent reforms to the IDR program, including the IDR Account

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[1] *See, e.g.*, Nat'l Consumer Law Center & Student Borrower Protection Center, Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt (Mar. 2021) at https://www.nclc.org/wp-content/uploads/2022/08/IB_IDR-1.pdf; Pew Charitable Trust, Redesigned Income-Driven Repayment Plans Could Help Struggling Student Loan Borrowers (Feb. 2022) at https://www.pewtrusts.org/en/research-and-analysis/reports/2022/02/redesigned-income-driven-repayment-plans-could-help-struggling-student-loan-borrowers.

Adjustment and the introduction of the SAVE plan, have the potential to provide relief to many of the low-income clients we serve, but their success depends on effective implementation.

We applaud the recent improvements to the IDR application process, including the incorporation of FUTURE Act consent to data-sharing to simplify the process of recertifying IDR enrollment, the removal of co-sign requirements for married borrowers, and the incorporation of Loan Simulator information for borrowers using the online application. Each of these improvements is likely to meaningfully reduce barriers to enrolling and maintaining enrollment in IDR. But to fulfill the potential benefits of the SAVE plan and new IDR rules, and to ensure that vulnerable borrowers returning to repayment for the first time in more than three years are readily able to access the SAVE plan, further improvements are needed. The Department is currently engaged in a major push to educate borrowers on the new SAVE plan and to encourage those who would benefit to enroll, yet unnecessary complexity and burdens in the application process work against that goal, particularly for borrowers seeking to switch to SAVE from another IDR plan.

We offer the following recommendations, discussed in more detail below, to remove such burdens and to make the process of applying for, recertifying, and switching IDR plans easier to understand, faster, and less susceptible to errors, delays, or misunderstanding both by the borrowers seeking to benefit from the plans and by the servicing companies processing applications:

1. Make it easier for low-income borrowers to switch from IBR to SAVE by reducing the minimum one-month forbearance payment when switching from $5 to $0 [Section 6].

2. Consistent with the current application, instruct servicers to process and approve applications to enroll in the SAVE plan without requiring past years of income documentation for those who previously switched out or fell out of REPAYE.

3. Consistent with the current application, instruct servicers to process and approve applications to enroll in the SAVE plan for previously defaulted Direct Consolidation Loans in other IDR plans without requiring three months of non-$0 payments.

4. Address confusion stemming from the pop-up regarding previous IDR applications at the start of the online application, as the pop-up could lead borrowers not to apply for IDR.

5. Make the benefits of providing consent to data sharing clearer and reduce threatening legal language that may scare off borrowers [Section 5A].

6. Move the short instructions on how to complete the paper form from page 7 to page 1; instructions belong at the beginning [Section 8].

In our view, addressing the first two issues are the most important change the Department can make now to reduce barriers to accessing the SAVE plan for low-income borrowers, though we encourage the Department to address each of these issues as quickly as possible.

1. **Make it easier for low-income borrowers to switch from IBR to SAVE by reducing the minimum one-month forbearance payment when switching from $5 to $0 [Section 6]**

Currently, IBR-enrolled borrowers wanting to switch to SAVE or other IDR plans face an additional access barrier: they must first make a payment under the standard plan or a reduced payment forbearance before the change to a new plan can be completed.[2] The Department has implemented this requirement by allowing borrowers to request a reduced monthly payment of at least $5 in their IDR application. But because even a $5 payment can be a significant financial and logistical burden for low-income borrowers who are eligible for $0 IDR payments, and confusing for all borrowers seeking to switch to SAVE, we strongly recommend that the Department reduce the minimum reduced payment requirement from $5 to $0 and simplify the accompanying application language. Additionally, to simplify the process of switching from IBR to SAVE for all borrowers, and to make it less confusing and less prone to error, we further urge the Department to consider setting the default reduced forbearance payment at the amount the borrower will owe under SAVE, rather than the amount the borrower would owe under IBR.

Discussion of this unusual one-month payment requirement, and what borrowers must do, is buried within Section 6 of the IDR application–a section that is itself 1.5 pages long and covers a broad range of topics. The section notes the requirement to make one standard or reduced payment before a switch from IBR to another plan can be completed, includes an opt-out request for "a one-month reduced-payment forbearance in the amount of my current monthly IBR payment or $5, whichever is greater (unless I request another amount below or I decline the forbearance)," and provides an option to check a box to request a one-month reduced payment forbearance in an amount that the borrower must fill in, but must be at least $5.

In our experience, borrowers and even experienced attorneys working with borrowers find this requirement and language very confusing and do not understand what borrowers must do to successfully enroll in SAVE and why. We also expect that many borrowers will miss this requirement or not understand how it applies to them, especially as many borrowers do not know which of the alphabet soup of IDR plans they are currently enrolled in.

Though this confusion may not matter for most borrowers most of the time, as they may simply continue making their IBR payment for an extra month before their payment is reset to the SAVE amount (without experiencing a billing change or needing to take any special action), it is a real problem for all borrowers right now and for low-income borrowers now and in the future. First, it is a problem for all borrowers right now because the payment pause means that borrowers have not made IBR payments on their loans in more than 3 years, and when they apply for the SAVE plan, they expect to pay the amount that the Loan Simulator tells them they will owe in SAVE–not the significantly larger amount that they would owe in IBR for a month first.

Second, it is a big problem now and in the future for the lowest income borrowers in IBR–those with $0 payments–who wish to switch to SAVE for its superior terms. For those borrowers, the bill for $5 that they receive after filling out an application to switch to what they have been told is a "more affordable" payment plan will be an unpleasant surprise–a surprise that

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[2] 20 U.S. Code § 1098e (b)(8); 34 C.F.R. § 685.221(d)(2)(ii)).

they are not prepared for, may not be able to pay, or may not understand that they have to pay for their enrollment in SAVE to be successful. The $5 bill they will receive thus risks, at best, diminishing their trust in the SAVE plan and the student loan system, and at worst, preventing them from successfully enrolling in and accessing the benefits of the SAVE plan.

Though the $5 payment may seem like a nominal amount, it is a financial barrier for the borrowers with income below 150% of the federal poverty level who qualify for $0 payments in IBR. Indeed, the Department has created $0 payments in IDR for the lowest-income borrowers due to its recognition that even $5 is not affordable below a certain income threshold. Both NCLC and other legal aid attorneys that we partner with have frequently assisted clients with student loan debt who live in shelters and survive on minimal public benefits. For these borrowers, a $5 payment is a significant burden and a real barrier to switching from the $0 IBR plan to the ultimately more generous SAVE plan. Furthermore, even when the borrower could afford a $5 payment, they may not understand that they have to do so or why, and so may miss the payment. Additionally, the logistics involved in setting up and making a one-time payment for a borrower who has not previously been required to make payments and who will not have to make payments under SAVE are themselves a burden, and a burden that is particularly significant for low-income borrowers without a bank account.[3] **This administrative burden makes little sense simply to provide a one-time $5 payment to the government.**

**We therefore recommend that the Department reduce the $5 forbearance payment minimum to $0 for borrowers switching from IBR to SAVE.** This change would be consistent with the applicable regulations, which allow borrowers to make a one-month payment "under a forbearance that provides for accepting smaller payments than previously scheduled" and does <u>not</u> require that such "smaller payments" be at least $5. 34 C.F.R. § 685.221(d)(2)(ii)). For borrowers whose previously scheduled IBR payments are $0, the Department can and should accept a $0 payment pursuant to the one-month forbearance for borrowers switching from IBR to SAVE.[4]

**To simplify the process of switching from IBR to SAVE for all borrowers, and to make it less confusing and less prone to error, we further urge the Department to consider setting the reduced forbearance payment at the amount the borrower will owe under SAVE, rather than the amount the borrower would owe under IBR.** That way, after the borrower submits and the servicer processes their application, the servicer will only have to calculate one new payment amount for the borrower–the SAVE amount–and the borrower will receive consistent monthly bills reflecting the new, more affordable SAVE amount, rather than bills that change from month to month.

**Finally, if the Department adopts this change, that will allow it to significantly simplify the application language in Section 6.** In lieu of the current confusing language and need to check boxes and fill in reduced payment amount requests, the Department can simply omit reference to the switching requirements altogether, as they will happen seamlessly on the back-end without the borrower needing to take any additional action or make different payment

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[3] Federal Deposit Insurance Corporation, 2021 FDIC National Survey of Unbanked and Underbanked Household, (2021, updated July 2023), available at https://www.fdic.gov/analysis/household-survey/index.html#:~:text=An%20estimated%204.5%20percent%20of,the%20survey%20began%20in%202009.
[4] Additionally, a $0 payment is recognized as a viable payment throughout the IDR program.

amounts. Alternatively, the Department could include a single sentence within the acknowledgments stating:

I understand that . . .

- If I am currently repaying my Direct Loans under the IBR plan and I am requesting a change to a different income-driven plan, I will be placed in a one-month reduced payment forbearance before being officially transferred to the new plan; my payment amount that month will be the same amount as my monthly payment in the plan I am requesting to change to.

In short, removing the $5 minimum payment when transferring from IBR to SAVE, and further considering setting the reduced payment forbearance amount at the amount the borrower owes under SAVE, will streamline the process of switching from IBR to SAVE, make it easier for the lowest-income borrowers to enroll in SAVE, reduce administrative complexity, and allow for a simplified and more understandable application for everyone.

**2. Consistent with the current application, instruct servicers to process and approve applications to enroll in the SAVE plan without requiring past years of income documentation for those who previously switched out or fell out of REPAYE.**

The IDR application does not impose any additional burdens on borrowers who were previously in REPAYE and who wish to now enroll in SAVE. Nor does it identify any barriers to enrolling in SAVE for borrowers with such histories.

Yet some servicers seem to be applying additional application requirements, not included in the application, to borrowers who previously left REPAYE and now wish to enroll in SAVE. For example, NCLC heard from an attorney working with a Direct Loan borrower who was previously enrolled in REPAYE before switching to IBR years ago. After applying for SAVE, the borrower did not hear from her servicer for weeks and her application was not processed. Eventually, the borrower and attorney contacted the servicer and were told that her SAVE application could not be processed unless and until the borrower provided several years of prior income documentation, covering each year since the borrower left REPAYE.

Given the incredibly high rates at which borrowers previously fell out of REPAYE due to confusing and burdensome recertification requirements,[5] we are concerned that this additional documentation burden servicers are calling for–which goes far beyond anything required in the IDR request form–could pose a substantial and confusing barrier to enrollment in the new SAVE plan. Further, even to the extent this additional documentation may have previously been called

[5] A 2021 analysis of federal data suggests that roughly half of borrowers enrolling in the REPAYE plan failed to recertify on time and were moved into the alternative repayment plan. *See* Pew Charitable Trust, Redesigned Income-Driven Repayment Plans Could Help Struggling Student Loan Borrowers (Feb. 2022) (citing Student Borrower Protection Center, "Driving Into a Dead End: Why IDR Has Failed Millions with Decades-Old Debts" (2021), https://protectborrowers.org/wp-content/uploads/2021/10/SBPC_Driving_Into_A_Dead_End.pdf.)

for when borrowers left REPAYE than sought to "return to the REPAYE plan," it should not apply to borrowers who left REPAYE and now seek to enroll in the new SAVE plan.[6]

We therefore urge the Department to provide guidance to servicers instructing that, consistent with the IDR application, borrowers need only provide documentation of current income to enroll in SAVE, and that no prior year income documentation shall be required to approve SAVE enrollment for any borrowers. We further urge the Department to request that servicers audit their accounts to identify any borrowers whose IDR applications have already been held or denied on this basis.

3. **Consistent with the current application, instruct servicers to process and approve applications to enroll in the SAVE plan for previously defaulted Direct Consolidation Loans in other IDR plans without requiring three months of non-$0 payments.**

We are concerned that at least one student loan servicer, Aidvantage, has sent language to borrowers stating that "If you consolidated one or more defaulted loans, you were notified earlier that you're required to repay your new consolidation loan under an Income-Driven Repayment (IDR) plan. Per U.S. Department of Education requirements, if your monthly payment amount under the current IDR plan is $0.00 and you would like to change your repayment plan, you must first make three consecutive, on-time payments of at least $5.00."

This additional barrier to switching IDR plans for low-income borrowers does not appear to be wise, legally required,[7] or included within the IDR request form, and it presents another potential financial, logistical, and process barrier for the lowest income borrowers to enroll in SAVE. We therefore recommend that the Department issue guidance to Aidvantage and other servicers instructing that, consistent with the IDR application, borrowers paying previously defaulted Direct Consolidation Loans do not need to make any additional payments to switch into the more affordable SAVE plan.

4. **Address confusion stemming from the pop-up regarding previous IDR applications at the start of the online application, as the pop-up could lead borrowers not to apply for IDR.**

Currently, when a borrower who has at any point previously applied for IDR clicks "Apply for an Income-Driven Repayment Plan" on studentaid.gov, a pop-up appears asking the borrower "Are You Sure?" you want to continue. The pop-up, as pictured below, alerts the

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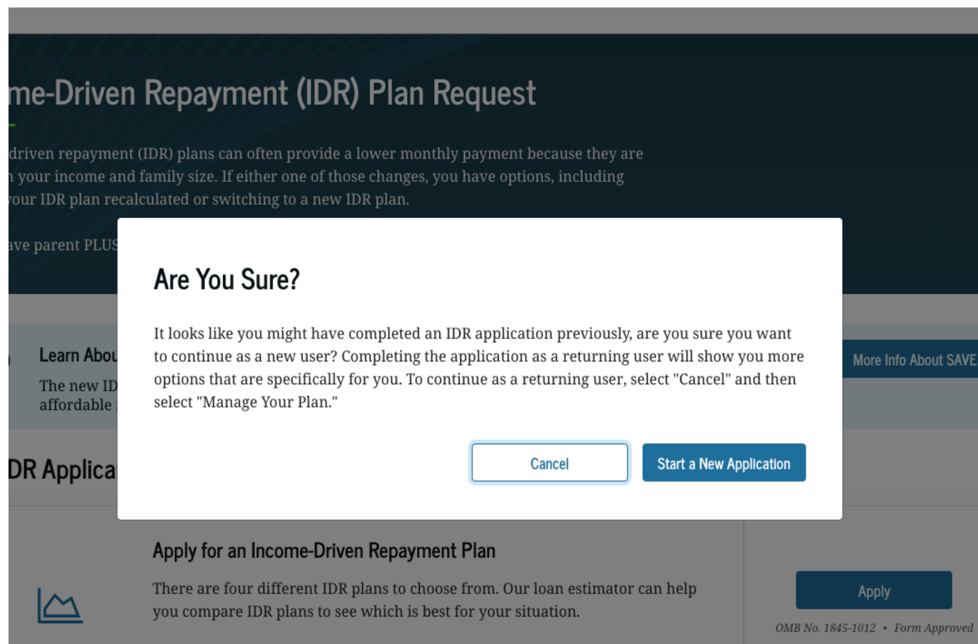
[6] The servicer may have been applying 34 CFR 685.209(c)(4)(vi)(D), part of the old REPAYE regulations that is not included in the new SAVE regulations and should not apply to enrollment in SAVE.

[7] It is unclear why Aidvantage is claiming this requirement. The only potentially relevant regulatory provision we identified is 34 CFR § 685.210(b)(1), but that provision should not preclude all borrowers who previously consolidated out of default and owe $0 payments to pay $5 for three months before switching to a different, and potentially more affordable IDR plan. Rather, that provision, understood in context of the options for consolidating out of default, appears to contemplate additional payment requirements only for switches from IDR to a non-IDR plan, and only in the immediate three-month period after the borrower exits default via consolidation. Additionally, the language should allow for making required IDR payments of any amount, including making $0 payments where $0 is the required payment based on the borrower's income.

borrower to a previously completed IDR application and asks if the borrower still wants to proceed.




Legal aid attorneys have reported to us that they and the borrowers they work with find the pop-up confusing and makes them second guess whether they need to proceed with an application at all or if they have already sufficiently applied. One attorney, from the Legal Aid Foundation of Los Angeles, reported that a client who received this pop-up had not applied for IDR since 2018, and thus might not be currently enrolled in an IDR plan at all, but that wasn't clear to the borrower, or the attorney and they questioned whether to proceed. We are therefore concerned that this pop-up could therefore inadvertently steer borrowers away from enrolling in SAVE or other IDR plans, as they might believe they have already applied and do not need to do anything further.

To remove potential ambiguity or confusion, we recommend that the Department take one of three actions:

- First, ideally the Department would simply automatically reroute borrowers it identifies as "returning IDR borrowers" to the appropriate online form for switching, recertifying, or otherwise managing enrollment in IDR plans, without pop-ups or depending on the borrower to understand and select the appropriate form. Both forms will effectively allow the borrower to do the same things, but as the Department identifies, the "manage your income-driven repayment plan" form is more appropriate for borrowers already enrolled in IDR.
- Second, it could simply remove the above pop-up and allow borrowers to proceed directly to the SAVE application when they click apply. This would reduce the risk that borrowers would understand the pop-up to mean that they don't need to do anything, though is likely suboptimal compared to simply auto-rerouting returning borrowers.

- Third, if the Department cannot use one of the above approaches, we recommend that the pop-up be limited to borrowers who are currently enrolled in an IDR plan and who are not yet required to recertify–i.e., borrowers who do not yet have to take any action to enroll or stay enrolled in IDR. This would ensure that the pop-up does not lead borrowers who need to take action to enroll or stay enrolled in IDR to incorrectly think that they do not need to act now.

5. **Make the benefits of providing consent to data sharing clearer and reduce threatening legal language that may unnecessarily scare off borrowers [Section 5A].**

We applaud the Department for providing an opportunity for borrowers to give their consent to ongoing data sharing for the purposes of enrolling and remaining enrolled in IDR, consistent with the FUTURE Act. We share the Department's hope that a more automated recertification process will significantly reduce the problem of borrowers unintentionally "falling out" of IDR because they do not complete recertification requirements on time every year, while also reducing administrative burdens for all borrowers in IDR.

To fulfill the potential of auto-recertification, it is important that borrowers understand the benefits of consenting to data sharing so that they will provide the necessary consent. We are concerned that the current version of the application, and the paper application in particular, do not clearly convey the benefit of consenting to data sharing, and thus borrowers who would benefit from data-sharing and who would choose it if they understood the benefits may decline. Additionally, we are concerned that the application may unnecessarily scare borrowers away from providing consent–who may already be wary of the prospect of giving up their data and the IRS–by including complicated, threatening legal language in the "**I APPROVE, CONSENT, AND AGREE**" choice.

We recommend that, before the next version of this application is published on July 1, 2024, the Department engage in a focused review of Section 5A following plain language principles and the Federal Plain Language Guidelines, and assess the portion of borrowers selecting to approve vs deny consent and any disparities in borrower populations to help better identify any needed changes and potentially user-test them. For now, we recommend at least two quick fixes to improve Section 5A immediately:

- First, we recommend changing the call-out box at the beginning of Section 5A to clarify and highlight the benefit of providing consent. The simplest fix would be adding the language already used in the online application information box in the same place in the paper application call-out box.[8] A further improvement would be to clarify that language further, for example, the language could incorporate language from the online FAQ, e.g.,

  "To stay enrolled in Income-Driven Repayment (IDR) plans, you must document your current income every year. If you approve and consent to the information-sharing described below, then you may be able to save time every year by having your income

[8] "Income-Driven Repayment (IDR) plans must be certified annually. By providing your approval and consent to use your information, granting us consent to access your information, you may be eligible for auto-recertification of your IDR plan on its recertification date. Plus, we will continue to do this each year so long as consent is still provided."

updated automatically based on your tax filing, without having to fill out new paperwork or document your income. If you do not consent to information-sharing, then you will need to document your income to Federal Student Aid every year that you wish to remain in IDR."

- Second, we recommend moving the acknowledgments of legal threats out of the paragraph with the checkbox that begins "**I APPROVE, CONSENT, AND AGREE**" and, to the extent the language is necessary, into a preceding paragraph that could be numbered 4. That way, the language next to the box to check for consent can be streamlined to simpler and less threatening language:

  "**I APPROVE, CONSENT, AND AGREE** to the disclosure of my information as described above."

**6. Move the short instructions on how to complete the paper form from page 7 to page 1; instructions belong at the beginning [Section 8].**

Currently, the instructions for completing the paper application are on page 7, Section 8. Best practice is to place instructions for filling out an application form at the beginning, particularly where, as here, the instructions are short. We recommend that the Department move the instructions to page 1 of the paper application. Ideally, the instructions could replace the current rather threatening opening warning "WARNING/IMPORTANT: Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097," with that warning moved toward the end of the application. Alternatively, the instructions could be added to the beginning of Section 2, which includes other recommendations for how to apply.

**Conclusion and contact information**

Thank you for the opportunity to comment on the proposed IDR plan request form. We would welcome the opportunity to meet with the Department to discuss ways to make this form more accessible and less burdensome to the borrowers we serve. Please contact Abby Shafroth (ashafroth@nclc.org) and Alpha Taylor (ataylor@nclc.org) with questions or if you would like to discuss further.