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Fighting Together for Economic Justice

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Nicholas Kent
Under Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC, 20202

Submitted via regulations.gov

RE: Comment on Notice of Intent to Establish A Negotiated Rulemaking Committee on Student Loan Repayment, Docket ID ED-2025-OPE-0151

Dear Under Secretary Kent,

The National Consumer Law Center,[1] on behalf of its low-income clients, submits this comment in response to the Department of Education's announcement of intent to establish two negotiated rulemaking committees (RISE and AHEAD) to make changes to federal student aid programs authorized under Title IV of the Higher Education Act (HEA) of 1965, as amended.[2] In these comments we offer information and recommendations regarding the substance of the planned RISE and AHEAD rulemaking. In a separate letter, submitted on behalf of legal aid organizations, we make nominations to the committees and comment on the composition of the committees.

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

[2] Intent To Establish Negotiated Rulemaking Committee, 90 Fed. Reg. 35261 (July 25, 2025), corrected July 28, 2025.

1. RISE Recommendations

As the Department works to implement changes to the student loan repayment, deferment, forbearance, and rehabilitation regulations required by the One Big Beautiful Bill Act ("OBBB Act"), we urge the Department to look for opportunities to improve outcomes for low-income people managing student loan debt. Regulatory reforms can make it easier for borrowers to access and maintain enrollment in income-driven repayment plans, successfully navigate repayment options, avoid financial devastation from default, and get out of default and back into good standing. With more than 20 million borrowers currently in forbearance or other nonpayment status and nearly one in four of those who are required to make payments behind, the Department should take every opportunity to improve repayment success and reduce delinquencies and defaults.

a. Repayment Rules

First, the Department should restore provisions of the 2023 IDR regulations that are unrelated to the challenged SAVE plan but have been swept up inadvertently in the preliminary injunction. For example, the Department should restore:

- **Automatic enrollment** in IDR for distressed borrowers who fall behind on payments and qualify for a lower payment in IDR (34 C.F.R § 685.209(m));
- **Automatic annual recertification** in IDR plans after initial enrollment using data-sharing (§ 685.209(l));
- **Preservation of the weighted average of qualifying payments** toward forgiveness in IDR that borrowers made prior to consolidation, which ensures that consolidating loans does not inadvertently result in borrowers starting their repayment and forgiveness clocks back at zero (§ 685.209(k)(4)(vi));
- **Treatment of specified deferments and forbearances as qualifying time toward IDR forgiveness,** including deferments and forbearances associated with cancer, military status, administrative processing, unemployment, and while making payments in a bankruptcy plan (§ 685.209(k)(4)(iv));
- **The "buyback" process** to allow borrowers to obtain qualifying time toward forgiveness and become debt-free sooner by making additional payments to cover prior months in nonqualifying deferments or forbearances (§ 685.209(k)(6));
- **Allowing borrowers with loans in default to repay in IBR (and in RAP starting in 2026)** and counting payments made through wage garnishment or other involuntary collections toward IBR/RAP forgiveness (§ 685.209(k)(5)).

Second, the Department should expect widespread borrower confusion about upcoming changes to repayment options, as well as servicing complications and errors in implementing changes, that will put borrowers at heightened risk of misinformation, confusion, and servicing errors, and ultimately delinquency and default. The Department should therefore work to create additional support for borrowers in the rules, minimize disruptions and demands on borrowers, and protect against negative consequences for borrowers when things predictably go wrong. We offer the following specific recommendations towards those ends:

- **Maintain the PAYE, ICR, and—to the extent permitted by the courts—SAVE plans until July 1, 2028** before requiring existing borrowers to switch to IBR or RAP. This will provide borrowers with the full amount of time contemplated by Congress to learn about the changes to their repayment options, determine which plan makes most sense for them, and enroll in their preferred plan before they face being automatically switched into a new plan—which may carry a higher monthly payment—by the Department.
- **Provide that borrowers shall not be treated as delinquent for making partial payments or missing payments for the first six months following a forced change in repayment plans** (from the legacy plans that they contracted for and signed up for to IBR or RAP). Such change will be unexpected for many borrowers and it will take time for borrowers to realize that their required payment has increased, determine whether it is accurate, and rework their budgets to afford increased monthly payments.
- **Allow existing borrowers who will be eligible for both IBR and the new RAP plan to switch** between the two plans without barriers so that borrowers can choose the plan that makes most sense for their situation and do not get locked into a 20- to 30-year financial decision on what might be incorrect or confusing information.
- **For married borrowers in RAP,** apply the same approach to income and proportional payments (where applicable) as exists for IBR. This means for a married borrower filing separately, the borrower's payment is based only on their individual income (this aligns student loan treatment with tax treatment and greatly simplifies auto-enrollment and recertification for borrowers who file their taxes separately). For two borrowers who are married and file taxes jointly, their combined income is used to calculate total payments for the couple and then each spouse is assessed a payment proportional to their share of the total student loan debt.
- **Consistent with the OBBB Act, allow borrowers who have consolidated Parent PLUS Loans into a Direct Consolidation Loan to enroll in IBR so long as they have been enrolled in *any* IDR plan** at any time between July 4, 2025 and June 30, 2028. *See* 20 U.S.C. § 1098e(a)(2)(b)(ii) (as amended). The Department's new regulations cannot and should not restrict IBR access only to Parent PLUS borrowers who enrolled in *ICR*, as suggested in a recent studentaid.gov update.[3] As the Department previously

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[3] *See* https://studentaid.gov/announcements-events/big-updates (last visited Aug. 26, 2025) ("With the passage of the Act, the IBR Plan now has updated eligibility criteria that allow the following types of borrowers to enroll:

- Borrowers who don't have partial financial hardship
- Parent PLUS borrowers who have consolidated their parent PLUS loans into Direct Consolidation Loans and who have enrolled in the Income-Contingent Repayment (ICR) Plan immediately before enrolling in the IBR Plan

acknowledged (88 Fed. Reg. 43820, 43836 (July 10, 2023)), some Parent PLUS borrowers who have consolidated more than once have been enrolled by servicers into other IDR plans beyond ICR, and Congress specifically included such borrowers in the group eligible for IBR.

  - **The Department can further simplify the process of accessing IBR by allowing Parent PLUS borrowers who consolidated into a Direct Consolidation Loan to enroll directly in IBR** without having to first apply and enroll in ICR and make one monthly payment before applying for IBR. Streamlining this process from two IDR applications to one would not only be better for borrowers, but would also be more efficient for the Department and its servicers, which currently have a backlog of nearly 1.4 million unprocessed IDR applications.[4]

- **Set repayment periods for Parent PLUS loans that must be repaid using the new Standard plan based on the borrower's total outstanding student loan balance,** including the outstanding balance on any loans borrowed for their own education that they choose to repay in RAP or IBR. If repayment periods are instead set only based on the Parent Plus loans, without taking into account other loans in repayment, then Parent PLUS borrowers with loans for their own education will often be forced to pay down their loans faster and at higher monthly cost than they may be able to afford, worsening the affordability problem Parent PLUS borrowers will already face by being ineligible for RAP or IBR. We also encourage the Department to look carefully at the interaction of the new payment plans with older loan types, such as FFEL and Perkins loans.
- **Provide remedy to the subset of borrowers whose repayment terms in IBR will be materially worse than the PAYE or REPAYE terms provided in their student loan contract.** In particular, this remedy should go to borrowers who signed Master Promissory Notes that laid out their qualification for balance forgiveness in PAYE or REPAYE after 20 or 25 years of paying 10% of discretionary income, but who borrowed prior to July 1, 2015, and thus will have to pay 15% of discretionary income for 25 years when forced from PAYE or REPAYE/SAVE to IBR.

b. Forbearance and Deferment Rules

The Department should take great care when amending its regulations to limit forbearances and eliminate economic hardship and unemployment deferments pursuant to the OBBB Act. While we always prefer to see borrowers in repayment plans that they can afford over being placed in a forbearance or deferment, sometimes a borrower simply cannot afford to make student loan payments during times of financial hardship, and they will become delinquent and default unless

(Note: To be considered enrolled in the ICR Plan, a borrower must make one full payment after entering the ICR Plan.).)

[4] *See* Status Report, *AFT v. U.S. Department of Education*, No. 1:25-cv-802-RBW, Dkt. 39 (D.D.C. Aug. 15, 2025).

they have the option to postpone payments. This problem will become more acute among new borrowers after 2027. Because the OBBB Act requires the Department both to raise minimum IDR payments for new borrowers living in poverty and to eliminate their ability to temporarily postpone payments during periods of unemployment or economic hardship, there will be an increased risk of very low-income people defaulting not because they do not want to pay, but because they simply cannot afford to make payments and lack options to postpone payments until they can. Indeed, this will be the first time in 30 years when people living below the poverty line will have no option to forgo making student loan payments for more than 9 months.

NCLC and legal aid attorneys across the country have worked with people with young children who have lost jobs, face eviction or utilities cut-offs, or are living in shelters after fleeing abusive relationships, and others who are experiencing incredible financial stress. The option to temporarily postpone student loan payments until their life has stabilized is an essential lifeline to prevent default and further economic distress. We urge the Department to please keep these folks in mind, and to consider adopting new protections designed to ensure that falling behind on payments a borrower cannot afford does not lead to financial devastation. For example, the Department could amend its regulations to cap annual collections for defaulted borrowers enrolled in IBR or RAP at no more than what the borrower owes in IDR that year, which would at least limit the financial fallout for low-income borrowers who default because they cannot afford even a $10 payment, while allowing the Department to collect payments.

c. Rehabilitation Rules

The Department can and should do more to help borrowers who have fallen behind get back into good standing through rehabilitation. Changing the limit on the number of times a borrower can rehabilitate their loans to get back into good standing from one time to two, as required by the OBBB Act, is a step in the right direction. But to make rehabilitation work at scale for the over 5 million borrowers already in default and the millions more on track to default this fall, much more is needed. We offer the following recommendations:

- **Ease entry to rehabilitation:** The Department should make it easier for people to enter rehabilitation agreements by allowing them to apply for rehabilitation online—just as borrowers already can for consolidation and IDR. The current, out-dated process of calling and trading paperwork back and forth to calculate rehabilitation repayment amounts and enter a rehabilitation agreement is slow, confusing, and creates many opportunities for mistakes, delays, or for people to fall out of the process. While retaining a paper and phone option is important to reach some populations, many borrowers would benefit from adding an online rehabilitation option. An online process would also benefit the Department by improving servicing efficiency and likely increasing the number of borrowers who enroll in rehabilitation.

- **Increase successful completion of rehabilitations:** Legal aid attorneys are often wary of recommending rehabilitation to their low-income clients because they have witnessed their clients struggle to successfully complete rehabilitation due to the unnecessary barriers the Department erects to making rehabilitation payments. The Department can increase rehabilitation success rates by:
  - Requiring monthly notices to borrowers regarding their rehabilitation payment amount, due date, and how to make their payment;
  - Allowing borrowers to make rehabilitation payments via auto-pay and other electronic payment options;
  - Suspending involuntary collections, including wage garnishment, when the borrower enters the rehabilitation agreement, so borrowers aren't having to make double payments—which many cannot afford.
- **Increase Repayment Success Following Rehabilitation:** The Department should fix the well-established problem of borrowers completing a rehabilitation and then quickly redefaulting because their payments jump from the "reasonable and affordable" rehabilitation amount to standard plan amounts that they cannot afford. Instead, the Department should adopt the approach that it already successfully uses with consolidation out of default, whereby borrowers are able to request enrollment in IDR at the same time that they apply for removal from default.
  - As applied to rehabilitation, the Department should by default (with an opt-out in the rehabilitation agreement) enroll borrowers who apply for rehabilitation and consent to data-sharing into IBR or RAP upon successfully completing their rehabilitation.
  - Additionally, the Department should define the presumptive "reasonable and affordable" rehabilitation payment amount as the amount the borrower would owe in IBR or RAP. For new borrowers after July 1, 2026, who will only be eligible for RAP, the Department should use the RAP amount. For existing borrowers, the Department should either set the rehabilitation payment as the lower of the IBR or RAP amount, or set it to align with the plan the borrower requests to enroll in upon successful rehabilitation. (We also encourage the Department to retain the existing option for borrowers to seek an alternative rehabilitation payment amount when they cannot afford the amount set through the standard calculation.)
  - Additionally, the Department should take steps to ensure effective and timely communications to the borrower about their new repayment obligations following rehabilitation.

2. AHEAD Recommendations

Low-performing schools have a long history of disproportionately enrolling low-income students and saddling them with debt they will be unlikely to be able to repay. It is important that the

Department restrict access to programs where the graduates will not earn enough to repay their loans. It is also important that the Department take steps to increase programmatic transparency about completers' post-graduate earnings and debt-to-income ratios of all programs that receive federal student aid funding so that students have a full picture of what loan repayment could look like before they enroll or take out loans. While the Department of Education's College Scorecard provides prospective students and their families with institution-level data, it does not provide enough program-level data for them to understand the cost or the earnings associated with a specific course of study.

We urge the Department to not weaken its existing school accountability regulations when promulgating new regulations to implement the OBBB Act. The existing Gainful Employment (GE) and Financial Value Transparency (FVT) rules and the new program accountability provisions within the OBBB Act each cover different types of programs receiving federal student aid, despite also covering some of the same programs.[5] For example, the new program accountability provisions do not apply to undergraduate certificate programs, and thus weakening existing accountability rules would reduce much needed accountability for those programs and put their students at greater risk.

Additionally, the FVT and GE regulations bring critical transparency needed for informed decisions about school selection and borrowing that the new OBBB provisions do not. The FVT and GE rules require disclosures to currently enrolled students and prospective students where the debt-to-earnings ratio and/or earnings premium threshold is not met. They also require public transparency so that students can use meaningful data in their college attendance decisions; the regulations state that the Department will create a website with institutional program-level data for the public and will publish a variety of datapoints, including the median earnings of students who completed a specific program, the total net cost of attendance paid by students completing the program, and whether students who graduate from the program are required to complete additional schooling to obtain licensure for independent practice.[6] In contrast, the OBBB Act does not require data transparency or disclosures to prospective students.

The disclosures and data transparency required by the GE and FVT regulations are invaluable to low-income students. Low-income students are often the first in their families to go to college, are unfamiliar with the higher education system, and may struggle to discern whether a specific

[5] The GE rules do not apply to degree programs at nonprofit private and state programs, but do apply to programs at proprietary schools and also non-degree programs at public and private nonprofit institutions. 20 USC §§ 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088; 34 CFR Part 668 Subpart S. The FVT regulations do not require student acknowledgements for undergraduate degree programs that fail the debt to earnings rates, but do apply to most other programs. 34 CFR Part 668 Subpart Q. However, most programs must report data to the Department pursuant to the FVT rules. *See* Regulatory Requirements for Financial Value Transparency and Gainful Employment, Gen-24-04 (Updated Sept. 16, 2024). The new program accountability rules in 20 USC § 1087d(c)(2) (as amended) do not apply to undergraduate certificate programs, but do apply to programs that provide "undergraduate degree[s], graduate or professional degree[s], or graduate certificate[s]."

[6] 34 CFR § 668.43(d).

program is a worthwhile investment or what it will mean to owe a specific amount of federal student loan debt when they enter employment with their new credential. Many low-income borrowers have shared that they believed enrollment was a good investment because the school they enrolled in was eligible for federal student aid, mistakenly believing this meant the government provided a stamp of approval. The GE and FVT disclosures increase the likelihood that these students will actually see data that indicates whether or not the program they are considering enrolling in is a risky investment—data they likely would not otherwise know was available.

In addition, the data transparency required by the GE and FVT regulations is important to the broader action needed to reduce the number of students from low-income families enrolling in programs that leave them worse off. Public data will make it possible for prospective students and their families to test the truth of schools' advertisements and admissions counselors' pitches. In addition it will significantly help counselors working at nonprofits or high schools that advise low-income students during the application and enrollment process to discern which programs are worthwhile investments. The data is also immensely valuable to researchers and policymakers looking to identify high- and low-quality programs. Given the importance of this information to the most vulnerable students, we ask that the Department maintain the current Gainful Employment and Financial Value Transparency regulations and expedite publishing the data it has collected under these regulations. We urge the Department to engage in consumer testing to ensure that a public-facing website posting programmatic level data is easily accessible to the public, an action that would be in line with President Trump's broader goal of improving federal government operated websites.[7]

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

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

[7] Executive Order, *Improving Our Nation Through Better Design* (Aug. 21, 2025) https://www.whitehouse.gov/presidential-actions/2025/08/improving-our-nation-through-better-design/; Fact Sheet, *President Donald J Trump Improves our Nation Through Better Design* (Aug. 21, 2025) https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-improves-our-nation-through-better-design/.