March 2, 2026

Submitted via Regulations.gov
Secretary Linda McMahon
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC, 20202

Re: Legal Aid Community Comments on Proposed Rules Regarding Student Loan Repayment and Rehabilitation (RISE NPRM, Docket ID ED-2025-OPE-0944)

These comments, submitted on behalf of the undersigned organizations that provide legal assistance to low-income people, address the Department of Education's proposal to implement changes required by the One Big Beautiful Bill Act ("OBBB") in regulations governing federal student loan repayment, deferrals related to economic hardship and unemployment, and rehabilitation of student loans out of default.[1] Our comments are informed by the experiences of legal assistance attorneys across the country who help low-income people struggling with student debt to navigate their student loan repayment options and seek redress for errors.

Drawing upon these experiences and our technical expertise in student loan law, our comments recommend that the Department:

- Collect data and improve practices during implementation of these major changes to protect low-income borrowers at risk of default (I.A.);
- Provide time-sensitive communication as soon as possible to borrowers who are losing key rights to affordable income-driven repayment (I.B);
- Clarify the rights of borrowers with Parent PLUS loans who consolidate by July 1, 2026 to access Income-Based Repayment ("IBR") (I.C);
- Clarify the rights of borrowers with FFEL loans who take out new Direct Loans to continue repaying their FFEL loans in IBR and to have their income-based FFEL and Direct Loan payments adjusted to reflect their full loan obligations (I.D);
- Clarify that REPAYE and SAVE payments made before July 1, 2028 constitute qualifying payments toward IBR forgiveness (I.E);
- Ensure that borrowers who make early or extra payments in RAP are not penalized for doing so and do not experience balance growth (I.F);
- Omit obsolete 2023 regulatory language sunsetting IDR plans that conflicts with OBBB's sunsetting provisions (I.G); and
- Increase access to and successful completion of rehabilitation out of default (II).

[1] Notice of Proposed Rulemaking, Reimagining and Improving Student Education, 91 Fed. Reg. 4251 (Jan. 30, 2026) (requesting comment on proposed federal student loan rules).

I. Comments on Proposed Changes to Repayment Options and Elimination of Economic Hardship and Unemployment Deferments for New Borrowers

A. The Department should collect data and improve practices in light of increased risk of default for lowest income borrowers stemming from OBBB

While OBBB includes some positive changes to repayment, such as providing interest subsidies and limited principal matches in the new Repayment Assistance Plan (RAP), the new law also makes several changes to student loan repayment for new borrowers that we expect will make it harder for people with low incomes to successfully manage their loans and avoid default. Changes that threaten the ability of low-income people to manage their loans include:

- requiring all new borrowers to make student loan payments while in income-driven repayment, even when their income is near or below the poverty line (i.e., eliminating $0 payment options);
- eliminating deferments for unemployment and economic hardship for new borrowers;
- lengthening the period borrowers must make payments in income-driven repayment until they qualify for forgiveness of the remaining balance to 30 years for new borrowers; and
- eliminating access to income-driven repayment for new Parent PLUS borrowers, as well as for existing Parent PLUS borrowers who do not consolidate before July 1, 2026 and apply for income-driven repayment before July 1, 2028.

Given our experience with low-income people with student debt, we are deeply concerned that these changes will lead to more defaults for the lowest income borrowers and borrowers who experience periods of unemployment or other economic distress. While forbearances will remain available to temporarily postpone payments during periods of economic distress, OBBB will limit general forbearances for new borrowers to no more than 9 months within any 24-month period. As a result of these changes, borrowers who experience longer-term unemployment, low wages, or other financial distress will be left without options for either payments they can afford or sufficient postponement of payments until their situation improves to avoid default.

Though we strongly disagree with these changes, we recognize that they are statutory and that the Department of Education is obligated to implement them in these regulations. In the remainder of our comments, we therefore focus on potential regulatory and subregulatory clarifications, technical fixes, and implementation practices that are within the Department's authority and are consistent with OBBB.

In addition, we urge the Department to collect and publish data that will allow for analysis of the impact of these changes, particularly as relates to default rates for new low-income borrowers with income below 150% of the federal poverty level (who would qualify for $0 payments under pre-OBBB law), as well as other populations at heightened risk of default due to financial limitations on ability to pay, including Pell grant recipients and Parent PLUS borrowers whose children qualified for Pell grants based on low family income.

Existing data gives reason for concern that the OBBB changes may increase default rates, and supports the call for additional data collection and analysis. For example, data released by the Department during this rulemaking in response to legal aid negotiator requests shows that 17% of Parent PLUS borrowers are currently in default, and that 23% of Parent PLUS borrowers who are enrolled in the Income-Contingent Repayment plan (ICR) have $0 payments—meaning their income is below 100% of the federal poverty threshold.[2] By eliminating access to ICR and all income-driven repayment plans for new Parent PLUS borrowers and existing Parent PLUS borrowers who do not jump through the hoops in time to be grandfathered in, OBBB threatens to leave many parents in poverty without an affordable repayment option, and so increase the Parent PLUS default rate.

Finally, we urge the Department to provide more robust servicing support to low-income borrowers who may be at higher risk of default due to the new rules, and to consider reforms to default and debt collection policies to protect income needed to meet basic needs. Borrowers who default due to poverty and inability to afford payments should not then face seizure of anti-poverty payments that they rely upon to meet their and their families' basic needs, including Social Security benefits and Earned Income Tax Credit payments. While we understand the Department's obligation to seek collection from those who can afford to pay, federal student loan collection should not come at the expense of pushing people who cannot afford to pay into poverty.

B. The Department should provide time-sensitive communication to borrowers who are losing key rights to affordable income-driven repayment

Over the course of the negotiated rulemaking, the legal aid negotiators raised concerns that under the proposed rules, many existing student loan borrowers would lose key rights to affordable income-driven repayment with no meaningful warning.

First, under the proposed rules, existing Parent PLUS borrowers must consolidate their Parent PLUS loans into a Direct Consolidation loan prior to July 1, 2026 in order to retain the right to an income-driven repayment plan with payments as low as $0 per month. Otherwise Parent PLUS borrowers, including very low-income Parent PLUS borrowers, will be permanently excluded from income-driven repayment options and left with only fixed or graduated payment options that will be unaffordable to many. Further, in practice this may require borrowers to submit consolidation applications well in advance of July 1, 2026—potentially in the next month or two—to ensure servicers process the application and disburse the new loan before July 1.

Second, under the proposed rules, existing Parent PLUS borrowers will unwittingly lose their ability to continue repaying in an income-driven repayment plan if a single additional loan is disbursed in their name on or after July 1, 2026, or if they consolidate their existing loans.

[2] The Department's data on Parent PLUS repayment and defaults is available at https://www.ed.gov/media/document/rise-data-request-parts-1-and-4-113127.pdf.

Third, under the proposed rules, existing Direct Loan borrowers who are repaying their loans in Income-Based Repayment (IBR) will lose their right to continue to do so if they take out even a single additional loan after July 1, 2026 in order to further their education, or if they consolidate their existing loans in an attempt to simplify repayment or get out of default.

While we strongly disagree with these changes, we recognize that the Department is constrained to implement them under the OBBB. However, we remain deeply concerned that the Department plans on implementing these changes—which will radically change payment options and make monthly payments much less affordable for the lowest income borrowers—in a little more than three months with little warning to current and prospective borrowers.

As legal aid practitioners around the country, we are currently fielding requests for advice and information about OBBB's changes to repayment not only from borrowers and their families, but also from high school guidance counselors, institutions of higher education, and even local governments. They come to us with questions because of the lack of clear guidance from the Department of Education. Further, when we share information about upcoming changes, and especially that existing Parent PLUS loan borrowers will soon lose access to income-driven repayment if they do not consolidate before July 1, 2026 or if they take out any new student loans, we are met with shock. We are troubled by the fact that we are hearing that the Department of Education has not conducted any outreach to inform them of these changes.

Even on the Department of Education's consumer-facing webpage, studentaid.gov, there is no warning of the imminent loss of the right to consolidate and enroll in income-driven repayment for Parent PLUS borrowers, including under the section that is specifically designed to provide information for parent borrowers. There is also no warning that existing borrowers who consolidate their loans or take out any new loans on or after July 1, 2026 will have a substantial change to their repayment options. The only warning listed pertains to the end of the SAVE plan. To be clear—putting information on the website is the floor, not the ceiling, of disclosures that the Department of Education should be making to student loan borrowers and their families, and we remain concerned that even that is not happening given the short timeline that borrowers have to take action.

We therefore urge the Department of Education to take immediate action to inform student loan borrowers, their families, and relevant stakeholders of these key changes to student loan repayment, and of deadlines to act to preserve their options. This should include emails, letters, website updates and banner flags, training for customer call center representatives for both repayment and default servicing, and outreach and guidance to schools, cities, and states. Parent PLUS borrowers in particular, and especially those in delinquency or default, should be alerted to the deadline to act, and all borrowers considering consolidation should be alerted to the consequences of consolidations that occur after July 1.

Additionally, we again urge the Department, when implementing the RISE regulations, to operationally recognize all Parent PLUS borrowers who have applied for a consolidation before July 1, 2026 as meeting the requirement to consolidate by July 1, 2026 to preserve eligibility for

income-driven repayment. Borrowers cannot control the speed with which their consolidation applications are processed, and should not be permanently excluded from an affordable payment plan that they are seeking as a result of servicer processing delays.

C. The Department should clarify that timely consolidated Parent PLUS loans are eligible for IBR prior to July 1, 2028, and simplify enrollment in IBR

Over the course of the negotiated rulemaking, the Department of Education repeatedly stated that under OBBB, Parent PLUS borrowers who consolidate prior to July 1, 2026 and who then make one ICR payment will now be able to enroll immediately in IBR, and need not wait until July 1, 2028 to switch to IBR. As a practical matter, this is important as many borrowers may be able to afford IBR payments but not the typically higher payments available in ICR. Legal aid negotiators raised concerns during the rulemaking that the following proposed language in 34 CFR § 685.209(c)(5)(iii)(A) could be understood to undermine the Department's assurances:

> "Through June 30, 2028, a borrower who has a Direct Consolidation Loan disbursed on or after July 1, 2025, which repaid a Direct Parent PLUS Loan, a FFEL Parent PLUS Loan, or a Direct Consolidation Loan that repaid a consolidation loan that included a Direct Parent PLUS or FFEL Parent PLUS Loan may not choose any IDR plan except the ICR plan."

However, when legal aid negotiators raised these concerns, the Department reiterated that Parent PLUS borrowers who consolidate before July 1, 2026 who make one ICR payment will then be able to transition to IBR without delay, and further shared that the Department is already operationalizing this policy, as reflected on its website.[3] The legal aid negotiator's consensus vote reflected that understanding.

Upon further review, we assume that the language in 34 CFR § 685.209(c)(5)(iii)(A) was left as-is by the Department because it is part of the 2023 SAVE regulations, and the Department may be waiting for the planned post-SAVE settlement rulemaking to omit it. However, the existence of this vestigial language is causing confusion for borrowers and the legal aid attorneys, financial counselors, and state and local governments who advise them. We therefore seek explicit confirmation in the final rules that borrowers who consolidate Parent PLUS loans before July 1, 2026 can enroll in IBR as soon as they make at least one payment in ICR, even if that is before July 1, 2028.

Finally, in implementing the regulations, we urge the Department of Education to consider operationalizing the legal aid negotiator's recommendation to streamline the IBR enrollment process for consolidated Parent PLUS loan borrowers by allowing borrowers to submit a single income-driven repayment application requesting to enroll in IBR rather than requiring them to first apply for ICR and then apply for IBR.[4] To satisfy legal requirements, the borrower may

---

[3] https://studentaid.gov/announcements-events/big-updates.

[4] Proposal by Legal Aid Negotiators to Rulemaking Committee to streamline enrollment in IBR for Consolidation Loans that repaid Parent PLUS loans, *available at*

consent to be placed in ICR for one month with a reduced payment forbearance calculated at the IBR payment amount or $10 before being enrolled in IBR. This process mirrors past approaches used by the Department to simplify IDR plan switching and will be more efficient for servicers and borrowers alike by reducing the number of IDR applications that must be submitted and processed.

D. The Department should confirm that FFEL borrowers retain access to IBR, even after taking out new loans after July 1, 2026, and that borrowers with both FFEL and Direct loans in IDR will continue to have their payments adjusted to reflect their total repayment obligations

Though the number of borrowers with FFEL loans is decreasing, the challenges facing FFEL borrowers remain significant. FFEL borrowers disproportionately struggle with repayment and are among the most likely borrowers to have defaulted student loans. Legal aid representatives often work with FFEL borrowers to resolve their defaulted student loans and enroll in IBR to avoid future default. Because new FFEL loans stopped being disbursed in 2010, remaining FFEL borrowers are often older adults who may have children for whom they need to obtain Parent PLUS loans. For this reason, legal aid representatives who work with student loan borrowers remain concerned about the repayment options for FFEL borrowers generally and for FFEL borrowers who take out new Direct Loans after July 1, 2026.

Although the Department generally will require borrowers to repay their loans in the same plan, the new RAP plan will not be available to repay FFEL loans, raising questions about what happens to existing borrowers with FFEL loans who take out a new Direct Loan after July 1, 2026. We read the proposed regulations to preserve the option for FFEL borrowers to repay their FFEL loans in IBR even if they have other post-July 1, 2026 Direct loans, meaning that such borrowers could repay their FFEL loans in IBR and their new Direct loans in RAP or the Tiered Standard Plan. The Department verbally confirmed this is the case in response to an inquiry by the legal aid negotiators during the negotiated rulemaking. We appreciate the Department's prior verbal confirmation, and because this issue is of significant concern to FFEL borrowers, we request that the Department provide written confirmation of this policy in the final rules or the preamble to the rules for the sake of clarity.

Additionally, current and longstanding regulations specify that if a borrower has both FFEL and Direct loans, Direct loan payments in IDR plans will be reduced proportionately to account for the FFEL repayment obligations, and FFEL payments in IBR will be reduced proportionately to account for the Direct loan repayment obligations. *See* 34 CFR §§ 685.209(g)(1)(ii) and 682.215(b)(1)(i). These provisions ensure that people do not have to pay more on their federal student loans simply because their loans are split across two different programs.

We seek confirmation that this will continue to be true, and that the proportional repayment obligation provisions will apply to RAP, such that a borrower with a FFEL loan in IBR who also

---

https://www.ed.gov/media/document/2025-rise-parent-plus-ibr-enrollment-proposal-submitted-tamar-hoffman-112540.pdf.

has a post-July 1, 2026 Direct Loan in RAP will have both their IBR and RAP payments reduced proportionately to account for their full federal student loan repayment obligations. We are concerned that while the proposed language continues to apply adjustments for people with both FFEL and Direct Loans to FFEL payments in IBR and to Direct Loan payments in IBR/PAYE/ICR, it may have inadvertently excluded a cross-reference to also apply such adjustments to payments in RAP. This could be addressed by adjusting proposed 685.209(g)(1) to apply to "Monthly payment amounts calculated under paragraphs (f)(1) through (5)" or by adjusting § 685.209(g)(3) to incorporate similar adjustment language to that in 685.209(g)(1)(ii).

E. The Department should clarify that REPAYE/SAVE payments before July 1, 2028 constitute qualifying payments toward IBR forgiveness

We seek clarification that REPAYE and SAVE payments made before July 1, 2028 constitute qualifying payments towards IBR forgiveness, and propose a minor change to the proposed regulations that will help accomplish this.

The current proposed regulation 34 CFR § 685.209(k)(4)(i)(A)-(B) reads:

> "For the PAYE, ICR, and IBR plans, a borrower receives a month of credit toward forgiveness by –
>
> (A) Notwithstanding paragraph (k)(4)(i)(B) of this section, making a payment under an IDR plan or having a monthly payment obligation of $0;
>
> (B) For the IBR plan only, making a payment on or before June 30, 2028, under the PAYE or ICR plan or having a monthly payment obligation of $0."

In this proposed text, clause (B) is confusing and superfluous. It should be stricken to improve clarity without changing the meaning of the text. Our concern is that clause (B) could be read incorrectly to suggest that for the IBR plan, any payments made in REPAYE prior to July 2028 do not count towards IBR forgiveness because PAYE and ICR are listed but REPAYE is not. However, we think the proper read is that clause (A) supersedes clause (B) and encompasses everything within (B): Clause (A) establishes that notwithstanding (B), payments in *all* IDR plans constitute qualifying payments for IBR, including pre-2028 payments in all of the IDR plans available prior to 2028, which include PAYE, ICR, and REPAYE/SAVE.

Clarifying this point is important to ensure that borrowers who have worked hard to make payments in IDR plans offered by the Department get credit for them as promised. Even if the SAVE plan is eliminated pursuant to the proposed settlement in the pending litigation, borrowers should receive credit for past payments made under the rules that were then in effect. Some borrowers will have nearly a decade of payments under REPAYE, which was created in 2015, and would be devastated if those payments were retroactively discredited and they had to spend nearly ten more years in debt as a result. We urge the Department to make clear that it will honor those payments and recognize them as earning credit toward IBR forgiveness.

F. The Department should ensure that borrowers who pay early or extra are not penalized for doing so in RAP and do not experience balance growth

A key feature of the RAP plan created by Congress is the inclusion of both an interest subsidy and limited principal match for all "on-time" monthly payments, which are designed to ensure that all borrowers who make their full, on-time payments will see their balances go down each month. This addresses long-term problems with IBR, PAYE, and ICR, in which many low-income borrowers have experienced negative amortization and ballooning balances as a result of being charged more in interest each month than their payment. As the Department trumpeted in its recent press release on these proposed regulations, "Borrowers who make on-time payments are shielded from runaway interest and able to make steady progress toward reducing their principal."[5] This is a major selling point of the RAP plan, encourages borrowers to make full and on-time payments, and is critical to RAP's success in helping borrowers pay down their loans.

During the rulemaking, legal aid negotiators urged the Department to ensure borrowers who pay early or extra on their loans beyond their required monthly payment in RAP are not penalized for doing so, either by losing the interest and principal subsidies available in the plan or by missing out on credit toward forgiveness in PSLF or RAP. This had previously been a problem in the PSLF program: borrowers who made extra payments on their loans when they were able to (or received an additional payment through an employee benefit program, or even inadvertently paid twice in a month due to servicer error, servicing transfer, or confusion), had their payment due dates advanced and did not receive credit toward PSLF forgiveness for monthly payments that they had either intentionally or unintentionally paid early. This resulted in confusion, frustration, and widely perceived unfairness, as borrowers who seemed to be doing everything right and never missed a payment were surprised to find that they hadn't earned PSLF credit for many months simply because they had paid extra or early on their loans. Fortunately, this issue was addressed retroactively by the PSLF Waiver, and going forward by the 2022 PSLF regulations, which are still in place today. The regulations specify that PSLF qualifying payments include payments made in advance of the borrower's scheduled payment due date for all months up to the borrower's next IDR recertification deadline (when their monthly payment amount will be reset).[6]

The Department has likewise included language in the proposed RISE rules to ensure that paying ahead in RAP does not cause borrowers to lose out on credit toward PSLF or RAP forgiveness. *See* proposed § 685.209(o)(3)(ii). We applaud this common sense provision. However, we are concerned that the Department has not applied the same approach to ensure that borrowers who pay early or extra in RAP do not lose out on RAP's interest and principal benefits, and has in fact proposed new language in the NPRM, not included in the consensus language, stating explicitly that borrowers in paid ahead status in RAP will not receive these benefits, and will have this penalty disclosed to them. The Department specifically invited comments on how it could improve its approach to this issue and protect borrowers from inadvertently missing out on RAP's benefits, which we offer below.

---

[5] Press Release, U.S. Department of Education Issues Proposed Rule to Make Higher Education More Affordable and Simplify Student Loan Repayment (January 29, 2026).
[6] 34 C.F.R. § 685.219(c)(2)(iii)–(iv) (effective July 1, 2023).

We are concerned that the new proposed language does not adequately address our concern that borrowers in RAP who make extra or early payments may be unfairly and unnecessarily punished for doing so by being deprived of the statutory benefits of the RAP interest subsidy and principal match. **This could, perversely, lead to borrowers who never miss a payment in RAP and actually pay *more* than required in an effort to pay down their loans faster to experience the opposite — by losing out on the subsidy benefits, these borrowers could experience the very negative amortization and balance growth that RAP is designed to avoid. Paying more could result in slower repayment.** As we previously saw with the pre-2022 PSLF policy on advance payments, this could cause confusion, frustration, distrust, and unfairness to borrowers who are trying to do the right thing, and discourage repayment.

This outcome is avoidable. The OBBB provides the RAP interest subsidy and principal match to borrowers who make "on-time" monthly payments. The Department has proposed to define "on-time" payments under RAP, for purposes of the interest subsidy and principal match, as payments that occur not only before the due date, but also after the prior month's due date. *See* Proposed § 685.209(o)(3). This definition is unnecessarily cramped and is contrary to the commonly accepted meaning of "on time" as "on or before the due date."

We recommend defining "on-time applicable monthly payments" for purposes of RAP in proposed § 685.209(o)(3) as follows: "For purposes of the Repayment Assistance Plan under this section, a borrower's monthly payment under (f)(5) of this section is considered on-time if the payment is received on or before the due date." The Department could then omit proposed § 685.209(o)(3)(i) and § 685.209(h)(4)(ii) entirely as unnecessary, as payments made in advance of their due date would be considered on time payments and would qualify for waiver of any monthly interest charged in excess of the borrower's payment, as well as for the limited principal match for borrowers whose payments reduce principal by less than $50 per month. This approach has much to recommend it: It complies with the language of OBBB, adopts the widely understood definition of "on time," encourages payment, ensures that borrowers in RAP who make their required payments do not experience negative amortization, and avoids confusion and unfairness to borrowers who pay early or extra, or inadvertently wind up in paid ahead status and continue making payments.

If the Department is concerned that operationalizing this approach could mean in practice that advance payments could be applied to principal before interest is charged, and that the borrower would then receive larger interest subsidies than Congress anticipated, it can address this concern directly. For example, the Department could specify in § 685.209(h)(4) that interest subsidies in RAP are limited to the amount of the subsidy the borrower would receive if their payment had been made during the month it was due (which can be readily modeled), or could specify that subsidies are limited to no more than the difference between the interest that accrues in the relevant month and the borrower's RAP monthly payment obligation.[7] Such limits

[7] For example, assume a borrower owes $60 per month in RAP, and made an extra payment of $60 in January that satisfied their February payment obligation and advanced their next due date to March. If their extra $60 was applied entirely to principal, and the borrower subsequently accrued $80 of interest for February, then the Department could limit the applicable February interest subsidy to $20 (the $80

would prevent any subsidy "windfalls" while ensuring that borrowers who pay ahead in RAP do not risk balance growth simply by paying earlier or more than required.

G. The Department should omit obsolete 2023 regulatory provisions sunsetting IDR plans that conflict with OBBB's sunsetting provisions

The proposed regulations include a confusing mix of new provisions implementing OBBB's requirement to sunset the various income-contingent repayment plans (ICR, PAYE, and REPAYE) on July 1, 2028 alongside older provisions from the 2023 SAVE rulemaking that set out a different—and now Congressionally superseded—pathway to sunset ICR, IBR, and PAYE and push borrowers toward the SAVE plan. Our understanding is that the Department is not applying these old provisions, which it considers blocked by the SAVE litigation, but is waiting until after the SAVE litigation is resolved to omit them. However, leaving the vestiges of the old, superseded sunsetting plan alongside the new, Congressionally-mandated sunsetting plan creates regulatory confusion and makes it even harder for current borrowers, and those who advise them, to understand their changing repayment options. In fact, we are already getting questions and concerns about what these old restrictions mean, whether they still apply, and how to explain the new IDR eligibility rules to borrowers. Beyond confusion, leaving these old provisions in could cause borrowers who apply for IDR plans— especially those who may have to apply for a new plan if the proposed SAVE settlement is approved—to be unnecessarily denied access to IDR.

We therefore encourage the Department to eliminate the old, superseded provisions from 2023 sunsetting and/or restricting enrollment in ICR, IBR and PAYE *now*, in the final RISE rules, rather than waiting until after the SAVE litigation ends and a new post-SAVE rulemaking can be completed. Specifically, we urge the Department to omit the following provisions, which are vestiges of the old 2023 sunsetting plans, from the final rules:

- **§ 685.209(c)(3)(ii)**, which prohibits enrollment in IBR for borrowers who have "made 60 or more qualifying repayments under the REPAYE plan on or after July 1, 2024." This obsolete language would only apply to borrowers who made 5 years of payments in REPAYE *after* July 1, 2024, which will not be possible since REPAYE will be eliminated by no later than July 1, 2028 as a result of OBBB.

- **§ 685.209(c)(4)(iv)**, which limits enrollment in PAYE to only those borrowers already repaying in PAYE on July 1, 2024, and prohibits re-enrolling in PAYE if the borrower has subsequently switched to a different repayment plan. This provision could cause significant problems and IDR denials for existing borrowers who switched or attempted

interest accrued minus the $60 payment credited to February). This interest subsidy would thus be similar to the subsidy the borrower would have received if they had made their February payment in February rather than in January, and would prevent the borrower's balance from growing as as a result of their February interest accrual exceeding the amount of their advanced monthly payment that satisfied their February payment obligation. If the Department instead denies any interest subsidy for February, the borrower will have their balance grow by $20 for the month of February, despite meeting all of their RAP payment obligations.

to switch to SAVE, and will likely be forced to switch out of SAVE if the proposed SAVE settlement is approved.

- **§ 685.209(c)(5)(i)(B)**, which limits enrollment in ICR to those borrowers already repaying in ICR on July 1, 2024, and prohibits re-enrollment in ICR if the borrower has subsequently switched to a different repayment plan unless the borrower has a Direct Consolidation Loan that repaid a Parent PLUS loan. This requirement is obsolete, complicated to communicate and for borrowers to understand, and could similarly cause problems and IDR denials for existing borrowers who will likely be forced to switch out of SAVE if the proposed SAVE settlement is approved.

It is not necessary to wait until after the SAVE litigation concludes to eliminate these specific provisions. These provisions were never challenged in the SAVE litigation and can be eliminated without interfering with the litigation. Further, because these provisions have been superseded by OBBB, which requires a different wind-down of ICR plans, it is appropriate to amend them now as part of OBBB implementation.

II. Improving Rehabilitation Access and Success

A. The Department should follow congressional intent to improve access to rehabilitation for borrowers

By including language in OBBB increasing the number of times borrowers can rehabilitate their loans out of default, Congress expressed its intent to reduce barriers that prevent borrowers from successfully rehabilitating their loans. We share that goal. With nearly 12 million borrowers in default or nearing default, rehabilitation is a critical vehicle that can help more borrowers get their defaulted loans back into good standing. But to succeed, rehabilitation must be modernized and made more accessible.

Below, we first identify existing unnecessary burdens and barriers that limit rehabilitation access and success (II.B), then offer several recommendations for subregulatory actions the Department can take in implementing OBBB to improve rehabilitation success (II.C). Finally, we recommend that the Department make a small amendment to the proposed regulations setting rehabilitation payments to align rehabilitation payments with the payments borrowers will now be responsible for post-rehabilitation in light of OBBB (II.D).

B. Current rehabilitation processes limit rehabilitation access and success

Unfortunately, there remain many subregulatory process barriers that prevent borrowers from being able to use rehabilitation successfully. While the Department has implemented important improvements to make it easier for non-defaulted student loan borrowers to make payments, it has not extended these same improvements to borrowers in default. Borrowers in repayment can now use an online loan simulator to see what their payments would be in various plans, apply for IDR plans online and import their income information directly from the IRS to simplify the application, make payments online, set up auto-pay online, and track PSLF qualifying

payments online. Borrowers in repayment can even consent to share their IRS income data on an ongoing basis to recalculate their payments without requiring annual re-applications.

In contrast, borrowers who want to use rehabilitation to remove their loans from default do not have these options and operate largely in a pre-digital system. Borrowers entering a rehabilitation agreement must call to request a rehabilitation agreement, provide their income information over the phone, then manually submit a copy of their most recent tax return or paystubs, wait for a rehabilitation agreement in the mail, then physically mail or fax it back. This part of the process alone often takes two weeks. In addition, many borrowers and legal aid attorneys report that materials they have faxed and mailed to support their rehabilitation are not timely received or are lost. There is no online platform to apply for rehabilitation, match income tax return information to document income and calculate payments, upload other income documentation as needed, execute rehabilitation agreements, or set up autopay. Further, there is no way for borrowers to see that their payments were received and to track their progress toward successful rehabilitation. As a result, rehabilitating defaulted student loans is a much more onerous, inefficient, and error-ridden process than enrolling in repayment plans and making regular on-time payments on loans in repayment.

These friction points prevent rehabilitation from serving as an indicator for whether borrowers will be able to comply with the requirement of their student loan repayment moving forward. Many borrowers currently in default might have been able to complete a rehabilitation and successfully repay their loans had they only been able to benefit from the same streamlining process improvements that borrowers with non-defaulted loans enjoy. Moreover, the lack of online, automated processes increases the costs to the Department to mail and process manual applications and payments for millions of borrowers, and increases the amount of time Department contractors must spend on the phone with borrowers seeking rehabilitation.

Additionally, legal aid attorneys have identified that borrowers often do not complete rehabilitation agreements because of the Department's continued use of its collection powers while they are making monthly rehabilitation payments. Low-income borrowers, in particular, often find that they cannot afford to make rehabilitation agreement payments while they are simultaneously subject to wage garnishment, Social Security offset, or tax refund intercept to collect on their student loans. Again, these are borrowers who could succeed in repaying their loans if not burdened with simultaneous collection and payment obligations that may double or more their effective payment obligations during rehabilitation.

Finally, for those borrowers who do successfully complete a rehabilitation, the transition to repayment servicing is messy, and requires that they begin communicating with and making payments to a new servicer, and affirmatively apply for an income-driven repayment plan or be billed at standard plan amounts that are likely much higher than their rehabilitation amounts. As a result, many borrowers who manage to successfully rehabilitate nonetheless re-default within a short period, and redefault at higher rates than borrowers who consolidate and are able to simultaneously apply for income-driven repayment. Government data shows that "[n]early one in three borrowers who exited default through rehabilitation defaulted for a second time within 24 months, and over 40 percent of borrowers re-defaulted within three years," and "borrowers who

did not enroll in IDR [after completing a rehabilitation agreement] were five times more likely to default for a second time."[8]

C. Subregulatory and practical recommendations to improve rehabilitation access and success

In order to achieve Congress's intent to make rehabilitation more accessible, we propose that the Department of Education implement the following reforms, which can be done outside of the regulatory process under existing authority:

- Allow borrowers to request and execute rehabilitation agreements online, including the option to import their IRS income data and upload alternative income documentation as needed for purposes of calculating their rehabilitation payments;
- Allow borrowers in default the option to opt into sharing their IRS income data with the Department of Education for the purpose of calculating their income-based repayment amounts, and thus their rehabilitation payment amounts;
- Allow borrowers in default to simultaneously enroll in IBR (or RAP) and rehabilitation, and to have their IBR payments count as rehabilitation payments;
- Allow borrowers who consent to data-sharing to request in their rehabilitation agreement that they be enrolled in an income-driven repayment (IDR) plan upon successful completion of their rehabilitation agreement;
- Allow borrowers to make rehabilitation payments online and to enroll in autopay for rehabilitation payments online;
- Create a way, such as through an online portal, for borrowers to track their progress towards completing a rehabilitation agreement, to clearly see when a rehabilitation payment is due, and to see how much is owed each month;
- Automatically enroll borrowers in an IDR plan post-rehabilitation if they have consented to data-sharing and requested an IDR plan;
- Ensure effective communication and servicing during transition from rehab to repayment, which can be a confusing time when borrowers can fall between servicing cracks.

Additionally, legal aid representatives have spoken with the Department about the problem of involuntary collections, including wage garnishments and Social Security offsets, preventing borrowers from having sufficient financial resources available to simultaneously make rehabilitation payments. These continued collections when a borrower is trying to make payments are counterproductive and can prevent successful repayment out of default. We encourage the Department to confirm in writing what it shared orally: that it will not initiate new collections once a borrower has applied for a rehabilitation, and will automatically suspend any

[8] CFPB Student Loan Ombudsman, Transitioning from Default to an Income-Driven Repayment Plan, (May 16, 2017), available at https://files.consumerfinance.gov/f/documents/201705_cfpb_Update-from-Student-Loan-Ombudsman-on-Redefaults.pdf.

previously initiated collections after no more than five rehabilitation payments. Based on our experience, however, this is not enough, and we continue to urge the Department to consider suspending all involuntary collection promptly when a borrower enters a rehabilitation agreement, and for so long as the borrower continues making their required payments. Ultimately, ending collections while a rehabilitation agreement is in process serves the purpose of encouraging borrowers to rehabilitate and reenter repayment, as intended by Congress.

D. The Department should align rehabilitation payment amounts with amounts borrowers would pay in the plans they will be eligible for under OBBB

Consistent with OBBB's change to make the minimum rehabilitation payment for new borrowers mirror the minimum possible payment those borrowers will be eligible for in RAP ($10), we recommend that the Department likewise align *all* rehabilitation payment amounts with the lowest payments borrowers will be eligible for under OBBB. This would comply with OBBB and ensure that rehabilitation payments continue to reflect the payments borrowers will have to make upon completion of their rehabilitation, and will help smooth the transition from rehabilitation into repayment.

The Higher Education Act provides that monthly rehabilitation payments shall be "reasonable and affordable based on the borrower's total financial circumstances," and sets a minimum payment amount, which the OBBB increased from $5 to $10 for borrowers with one or more new loans disbursed after July 1, 2027. 20 U.S.C. 1078–6(a)(1)(B)).[9] This $10 minimum aligns with the minimum payment that such borrowers could be eligible for in the new RAP plan, which will be the only IDR plan available to borrowers with new loans.

While the HEA doesn't define "reasonable and affordable," the Department previously adopted the IBR amount as the presumptive "reasonable and affordable" amount after the creation of the IBR plan. This made sense when IBR was widely available to FFEL and Direct loan borrowers who wished to make payments based on their income, as it established a rehabilitation amount that aligned with the income-based amount borrowers would have to continue paying after rehabilitating to keep their loans in good standing. However, in light of OBBB, it no longer makes sense for new borrowers to have their rehabilitation payment set at the IBR amount, as they will not be eligible for IBR. The IBR amount might be significantly higher or lower than what they will owe in RAP after rehabilitation, and therefore does not accurately reflect whether the borrower will be able to successfully repay after rehabilitating their loan.

We recommend that the Department amend proposed § 685.211(f)(1)(i) to make the presumptive rehabilitation payment "equal to the lowest monthly payment required under the plans that the borrower will be eligible for in repayment." For new borrowers, that is likely to be

[9] In reviewing the NPRM, we noticed a possible technical error – proposed §685.211(f)(1)(i) would increase the minimum rehabilitation payment to $10 for all borrowers after July 1, 2027, though OBBB only increases the minimum payment to $10 for borrowers with at least one new loan made on or after July 1, 2027. *See* OBBB sec. 82003.

the RAP amount. For many existing borrowers, it may be the amount they would pay under the IBR plan, but for others, it may be the amount they would pay under RAP or the standard plan.

In the alternative, if the Department finds this approach too complicated to implement, it should at minimum establish different rehabilitation amounts for new borrowers who will not be eligible for IBR. The Department could establish that presumptive rehabilitation amounts will continue to be "equal to the minimum payment required under the IBR plan" for borrowers with no loans disbursed on or after July 1, 2026, and will be "equal to the minimum payment required under the RAP plan" for borrowers with one or more loans disbursed on or after July 1, 2026.

III. Conclusion

Thank you for your work on developing these regulations, and for considering the legal aid perspective on how the regulations can be clarified, implemented, and communicated to better protect the interests of low-income people trying to manage student loan debt and help avoid delinquency and default. The legal aid community welcomes opportunities to work with the Department in understanding and meeting the needs of low-income borrowers, and is happy to meet to discuss these recommendations as well as other issues.

Sincerely,

Community Legal Services of Philadelphia
Community Service Society of New York
Housing and Economic Rights Advocates
Indiana Legal Services, Inc.
Legal Aid Chicago
Legal Aid DC
Legal Aid Foundation of Los Angeles
Legal Aid Society of San Diego
Legal Services NYC
National Consumer Law Center (on behalf of its low-income clients)
Pine Tree Legal Assistance
Project on Predatory Student Lending
Public Counsel
Volunteer Lawyers Project of CNY, Inc.