AccessLex INSTITUTE®

January 30, 2023

Richard Blasen
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

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

Docket Number: ED-2023-OPE-0004

Dear Mr. Blasen:

I am writing on behalf of AccessLex Institute® in response to the January 11, 2023, Federal Register notice soliciting comments to improve income-driven repayment (IDR) for the William D. Ford Federal Direct Loan Program. Thank you for the opportunity to weigh in on critical changes to the IDR program. Below you will find AccessLex Institute's support for several of the Education Department's (ED) proposals improving IDR and our recommendations for steps that should be taken to prevent the disparate treatment of graduate and professional borrowers.

AccessLex Institute, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. We advocate for policies that make legal education work better for students and society alike; conduct research on the most critical issues facing legal education today; seek to expand access to legal education for underrepresented students through research, grantmaking, data analysis, and the dissemination of information and resources; and aim to increase first-time bar exam passage nationwide.

In our **comment letter** to ED on June 28, 2021 regarding programs authorized under Title IV of the Higher Education Act (HEA), AccessLex made a number of recommendations regarding IDR plans and how ED could make improvements to better assist low-income borrowers. Below are our thoughts on the proposals contained in the current Notice of Proposed Rule Making (NPRM), which makes changes to the existing Revised Pay as You Earn (REPAYE) plan.

We are deeply concerned with the disparate treatment of graduate borrowers regarding monthly payment caps and years of repayment. Graduate and professional borrowers have historically been harmed by federal policies that are less beneficial than those for undergraduates. Under current law, these borrowers are prohibited from using Pell Grants to finance their graduate education. In addition, the *Budget Control Act of 2011* eliminated Direct Subsidized Loans for graduate and professional students. As a result, these borrowers receive loans that have higher interest rates and that accrue interest while in school, increasing their loan balances by thousands of dollars. The current REPAYE plan also requires graduate borrowers to pay for five years longer than their undergraduates peers.

AccessLex is opposed to the provisions in the NPRM that would result in disparate treatment of graduate borrowers, such as allowing undergraduate borrowers to pay a lower percentage of their discretionary income than those borrowers who have any graduate education loans. Similarly, continuing to require graduate borrowers to remain in repayment for an additional five years penalizes them for getting an advanced degree and makes doing so more expensive. We urge ED to craft final regulations that treat graduate and undergraduate borrowers equally in terms of the amount of discretionary income paid and the length of the repayment period.

In justifying the unequal treatment of graduate and professional students, it is often touted that these borrowers are in better financial positions and can shoulder the burden of higher monthly payments. However, this is a misconception particularly as it relates to those enrolled in IDR plans which are designed to make repayment more affordable for borrowers with more student loan debt than their current income allows them to repay under a standard 10-year repayment plan. Requiring these borrowers, who are often saddled with more debt than undergraduates, to pay more than undergraduate borrowers will unfairly harm those who need help the most.

Additionally, today's job market increasingly requires a graduate degree for jobs that previously did not, thus pushing applicants to obtain a graduate degree to remain competitive in certain fields. Requiring graduate borrowers to pay more also creates an equity issue: seventy-nine percent of Black students rely on financial aid for graduate school compared to 56 percent of White students.[1] Black students must also earn a credential beyond a bachelor's degree to receive pay similar to their White peers who only hold a bachelor's degree. Currently, Black bachelor's degree-holders make 20 percent less than White bachelor's degree-holders.[2] Requiring graduate borrowers to pay a higher percentage of their income for a longer period of time will penalize them for structural issues outside of their control and will cut against the government's stated role in higher education: access.

Lastly, graduate and professional degrees do more than simply serve the individual. Many of the fields that require these degrees, such as mental health, education, healthcare, and legal aid, serve the public good. These fields are also some of the most in-demand professions and highly sought after in rural and underserved areas. Limiting federal benefits for graduate and professional students will disincentivize people from pursuing these degrees and entering these professions because of their high debt and relatively low salaries. At a time when the need for advanced education and training is becoming even more essential to our country's future and economy, actions should be taken to encourage individuals to pursue and persist in these fields.

---

[1] Ben Miller, Center for American Progress, Graduate School Debt: Ideas for Reducing the $37 Billion in Annual Student Loans That No One Is Talking About (2020). https://cdn.americanprogress.org/content/uploads/2020/01/10090256/CollegeAffordabilityGap-report5.pdf.

[2] 7 Anthony P. Carnevale, Stephan J. Rose, & Ban Cheah, Georgetown University Center on Education and the Workforce, The College Payoff: Education, Occupations, Lifetime Earnings (2011). https://cewgeorgetown.wpenginepowered.com/wp-content/uploads/collegepayoff-completed.pdf.

We applaud ED's proposal to provide borrowers with credit for loan consolidations and certain deferments and forbearances. Currently, when a well-meaning borrower consolidates multiple federal student loans into a Direct Consolidation Loan, any payments made prior to consolidation no longer count toward IDR. Additionally, deferments and forbearances only count toward payment progress in very limited circumstances – economic hardship and Peace Corps service. This creates a situation whereby a borrower could be close to meeting the payment requirement for forgiveness but does not earn it. For many, who may not have clearly understood the terms of consolidation, deferment, or forbearance, this further frustrates the progress toward forgiveness for struggling borrowers. That is why we applaud ED for proposing to allow borrowers to receive a weighted average for credit toward forgiveness for payments made prior to consolidating their loans, and for proposing to give borrowers credit toward loan forgiveness for certain periods of deferments or forbearances that were not previously counted.

We support ED's plan to protect at-risk borrowers by allowing them to access affordable IDR plans. In 2018, it was reported that nearly 40 percent of borrowers entering college for the 2003-2004 academic year would experience defaulted student loans by 2023.[3] Research also found that 41 percent of these borrowers would re-default five years later.[4] This data highlights the pitfalls that too many struggling borrowers fall into, even though affordable, and sometimes zero dollar, alternatives exist. That is why we support ED taking the steps necessary to protect these borrowers by proposing to automatically enroll borrowers that are 75 days delinquent into an IDR plan and allowing defaulted borrowers to use an IDR plan to rehab their loans. These guardrails will go a long way in helping struggling borrowers avoid default and providing those who have already defaulted with a pathway to lowered monthly payments.

AccessLex supports ED's proposal to phase out new repayment plans other than REPAYE. It has long been our position that the availability of five different federal IDR plans is not an optimal situation for borrowers and can lead to confusion with unintended financial consequences due to the slightly different terms of each plan. In fact, in our June 2021 comment letter, we recommended that ED create a new IDR plan with better terms that would be the only income-driven option for new borrowers. So, we applaud ED's proposal to phase out new enrollment in the Pay As You Earn (PAYE) and Income-Contingent Repayment (ICR) plans and limit the circumstances where a borrower can later switch into the Income-Based Repayment plan. Doing so will help to ensure that borrowers are guided into a plan that has the best and most affordable repayment terms without having to navigate through multiple confusing repayment options.

We are pleased to see that ED retained the provision in REPAYE that excludes financial hardship as a criterion for eligibility. Unlike some of the other IDR plans which require that a borrower have a partial

[3] Judith Scott-Clayton, Brookings Institute, The Looming Student Loan Default Crisis is Worse Than We Thought (2018). https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.

[4] Ama Takyi-Laryea, The Pew Charitable Trusts, Government Hits Reset on Student Loan Defaults, But Many Could Experience Default Again (2022). https://www.pewtrusts.org/en/research-and-analysis/articles/2022/06/14/government-hits-reset-on-student-loan-defaults-but-many-could-experience-default-again.

financial hardship, a distinct feature of REPAYE is that there is no such requirement. In our previous comment letter to ED, we recommended ED retain this feature in whatever new plan was created and that any eligible borrower with a qualifying loan be able to enroll. This provision will ensure that borrowers are not prevented from receiving repayment assistance they may desperately need.

ED must not delay revamping its technology system to support data sharing for automatic recertification of income as outlined in the *Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act*. As ED data shows, of the nearly 60 percent of borrowers in an IDR plan that failed to recertify on-time between November 2013 and October 2014, 30 percent went into a hardship-related forbearance or deferment.[5] Under these proposed rules, ED plans to place borrowers who do not recertify their income into an alternative payment plan where monthly payments will equal the amount a borrower would pay each month on their original balance in equal installments over 10 years. It is imperative that ED improve its computer systems to better facilitate automatic recertification of income to ensure that borrowers remain in REPAYE and avoid payment increases they cannot afford.

AccessLex supports ED's proposal to forgive debt after 10 years, instead of 20 years, for those with $12,000 or less in debt. One of the hallmark features of IDR plans is allowing borrowers to have the remainder of their debt forgiven after making payments for 20 or 25 years. However, for borrowers who began with $12,000 or less of debt, 20 to 25 years of debt service will needlessly prolong the repayment window for those who are often the most vulnerable as they likely never completed a degree, or have less than a bachelor's degree,[6] making it difficult for them to earn enough to repay. Providing these borrowers with forgiveness after 10 years of repayment strikes the right balance between ensuring that debts are paid down and protecting struggling borrowers from a lifetime of debt by providing them with repayment terms that align better with their financial needs.

AccessLex supports defining discretionary income as 225 percent of the federal poverty level. With inflation consistently increasing over the past year, the economic hardship caused by a global pandemic, and the cost of living steadily rising over the last 40 years, many borrowers have been struggling to make ends meet. Given these factors, many families have less and less money to put towards student loans. That is why AccessLex applauds ED's proposal to define discretionary income as 225 percent of the federal poverty line. This move will allow borrowers to protect a greater share of their income so that they don't have to make decisions between feeding their families or making monthly student loan payments.

We applaud ED's proposal to cover a borrower's unpaid monthly interest. Negative amortization and interest capitalization and accrual cause the loan balances of many borrowers to grow over time, despite on-time monthly payments. We expressed in our July 2021 letter that it was counterproductive to allow balances that will ultimately be forgiven to increase. We also highlighted that, according to the Congressional Budget Office, graduate and undergraduate borrowers in IDR plans will repay 82.5 percent and 84 percent of their original loan disbursement, respectively. This indicates that the amount

[5] 9 U.S. Dep't of Educ., Sample Data on IDR Recertification Rates for ED-Held Loans (2015). https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf.
[6] Tara Siegel Bernard, The New York Times, They Got the Debt, but Not the Degree (2022). https://www.nytimes.com/2022/06/01/your-money/student-loan-debt-degree.html.

that will be forgiven after 20 or 25 years in repayment, in many cases, is mostly accumulated interest. We are happy to see that ED heard us and is taking the step to help struggling borrowers by covering the cost of unpaid monthly interest so loan balances will not balloon due to interest.

Thank you for your work on these issues and for considering our recommendations to revise and improve IDR plans. If you have any questions, please do not hesitate to contact me at **cchapman@accesslex.org** or Nancy Conneely, Managing Director of Policy, at **nconneely@accesslex.org**.

Sincerely,

Christopher P. Chapman
President and Chief Executive Officer