ED-2023-OPE-0004

February 10, 2023

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
Via https://www.federalregister.gov

Dear Secretary Cardona:

This is a comment on the U.S. Department of Education's proposed regulations under the title "Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program" with a Docket ID of ED-2023-OPE-0004.

The Department of Education is right to express interest in determining how to minimize default while incentivizing borrowers to repay their student loans. However, the proposed regulation neglects to consider other important factors.

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277), requires federal agencies to conduct a Family Policymaking Assessment before implementing any policy or regulation that may affect family well-being. In this case, the statutory requirement to "assess such actions with respect to whether … the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment" is highly pertinent, as many borrowers will be making decisions regarding marriage and childbearing during the years in which they are repaying their loans.

Specifically, a key provision of the proposed rule would disadvantage married couples relative to single individuals and may make some couples less likely to marry or more likely to divorce.

The proposed rule requires payments under the Revised Pay as You Earn (REPAYE) repayment plan equal to 5 percent of adjusted gross income exceeding 225 percent of the federal poverty guidelines for the borrower's family size. Because the federal poverty guideline of $19,720 for a married couple is less than twice the federal poverty guideline of $14,580 for a single individual, married couples filing jointly are allowed to exclude less total income under this provision than are unmarried couples. This provision would financially penalize married couples without justification and is therefore arbitrary and capricious.

A single borrower would be required to make non-zero payments only if his or her income exceeds $32,805. Thus, an unmarried couple, both of whom are borrowers, could have combined income as high as $65,610 and have zero payments. However, a married couple filing jointly with even one borrower would be required to make non-zero monthly payments if their income exceeds just $44,370. For a typical couple with income of $65,610, the marriage penalty would be $1,062 per year.

The department could mitigate this marriage penalty by setting the excludable income amount for a single individual equal to half the excludable income amount of a married couple. As our colleagues Adam Kissel and Lindsey Burke noted in comment ED-2023-OPE-0004-0493, the proposed rule would incentivize a large proportion of borrowers to choose an income-driven repayment plan with zero monthly payments, at a substantial cost to taxpayers. Instead setting the excludable amount for a single individual at $22,185, or approximately 152 percent of the federal poverty guidelines, would increase the number of borrowers with non-zero monthly payments, reduce marriage penalties, and lower the cost of the rule.

To what extent would the proposed rule strengthen or erode the stability or safety of the family and, particularly, the marital commitment? The department has not fully investigated this question and must fulfill its statutory obligation to conduct a Family Policymaking Assessment before a rule is finalized.

Furthermore, by failing to consider the effects of the proposed rule on family stability, the Department has “entirely failed to consider an important aspect of the problem,” resulting in a proposed rule that is “arbitrary and capricious” under the standards of *Motor Vehicle Manufacturers Assoc. of the United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Thank you for considering these concerns.

Respectfully submitted,

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