May 5, 2025

The Honorable Linda E. McMahon
Secretary, U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Docket ID: ED-2025-OPE-0016

Dear Secretary McMahon:

This is a comment on the Department of Education's request for comment regarding possible "proposed regulations pertaining to title IV regulations that have impacted institutions, States, and other partners and if their implementation may be inhibiting innovation and contributing to rising college costs," Docket ID ED-2025-OPE-0016. We address the following proposed topics: public service loan forgiveness (PSLF), pay as you earn (PAYE), income-contingent Repayment (ICR), and other topics related to accreditation and streamlining current federal student financial assistance programs.

In broad terms, the Biden administration's Title IV changes, both through the rulemaking process and through dictate, often implicated the Major Questions Doctrine and went beyond the Department of Education's authority. Supreme Court decisions limiting the interpretive power of the administrative state further warrant a systemic, careful review and reform of the Department of Education's Title IV regulations and guidance documents across all elements of Title IV.

(1) Refining definitions of a qualifying employer for the purposes of determining eligibility for the Public Service Loan Forgiveness program.

Regarding the definitions of a qualifying employer to determine eligibility for the Public Service Loan Forgiveness program, we believe the government should not privilege certain kinds of workers at the expense of others. At least, the Department should reconsider and narrow the definition of "public service" and limit PSLF eligibility to organizations (including 501(c)(3)s) whose primary purpose is providing direct public services, thereby excluding the following types of organizations: think tanks, public policy and lobbying organizations, research-only nonprofits, grantmaking foundations, professional associations or trade groups, and other organizations not engaging face-to-face with service populations. Such types of organizations generally do not provide direct provision of services.

We also ask the Department to regulate other elements of PSLF.

First established under the *College Cost Reduction and Access Act of 2007,* PSLF was designed to cancel federal Direct Loan balances after 10 years of full-time work in qualifying public service jobs.[1] Since the establishment of the program, only 7,000 borrowers had received debt cancellation through PSLF before the Biden administration assumed office. However, after assuming office, the Biden administration made several changes to PSLF that exacerbated its cost and scope. By the time they left office, it was estimated

[1] Alexandra Hegji, "The Public Service Loan Forgiveness Program: Selected Issues," October 19, 2018, https://sgp.fas.org/crs/misc/R45389.pdf.

that the Biden administration had approved relief for 1,069,000 borrowers, amounting to approximately $78.46 billion in loan cancellation.[2]

Not only do loan cancellation programs including PSLF transfer large amounts of student debt onto the backs of taxpayers, but they also encourage excessive borrowing on the part of students, confident that after a certain number of years, their loans will be eliminated. A recent report from the Urban Institute highlights the large balances that students have accrued under PSLF; based on data reported from the Department of Education, the average balance forgiven through PSLF as of 2023 was $98,000, which "substantially [exceeds] the aggregate limit for undergraduate students and typical debt levels for bachelor's degrees."[3] Under PSLF, there are currently no caps on how much debt can be canceled, so, for example, borrowers with Direct PLUS loans for graduate and professional students, which have no aggregate borrowing caps, can qualify for cancellation.

Some changes made by the Biden administration to PSLF include instituting a temporary waiver in October 2021 that allowed borrowers with any loan type and repayment plan to gain credit toward PSLF.[4] This waiver enabled previously ineligible borrowers, such as those with high incomes, to become eligible for loan cancellation.[5] The Biden administration's efforts to create a new income-driven repayment plan in January 2023 called "Saving on a Valuable Education" were also problematic, as this plan significantly increased the cost of PSLF by lowering borrowers' payments, resulting in a higher amount of loans being canceled. The Urban Institute noted that with this change, for example, borrowers with a bachelor's degree in social work who are enrolled in SAVE would only repay about 15 percent of their initial balance if they qualified for PSLF.[6]

In addition to those reforms, the Biden administration also published rules pertaining to PSLF that implemented a one-time account adjustment toward repayment for actions that previously did not count as a qualifying payment including: time in forbearance (12 or more consecutive months, or 36 or more cumulative months), deferment before 2013 (excluding in-school), any time in repayment on any plan, and/or time before consolidation counts, which was previously lost. In addition to those one-time adjustments, the rule, which went into effect in July 2023, made two significant and permanent changes to PSLF, including: "allowing borrowers to obtain credit for late, partial, and lump sum payments if the borrower also certifies qualifying employment; or awarding credit for certain months in deferment or forbearance, such as those tied to military service or deferments for economic hardship or cancer treatment if the borrower also certifies qualifying employment."[7]

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[2] "Biden-Harris Administration Surpasses 5 Million Borrowers Approved for Student Loan Forgiveness," US Department of Education, January 14, 2025, https://edprepmatters.aacte.org/biden-harris-administration-surpasses-5-million-borrowers-approved-for-student-loan-forgiveness/#:~:text=New%20PSLF%20Approvals&text=The%20Department%20approved%20relief%20for,of%20the%20Biden%2DHarris%20Administration.

[3] Jason Delisle, "Public Service Loan Forgiveness and the SAVE Plan for Federal Student Loans," Urban Institute, August 2023, https://www.urban.org/sites/default/files/2023-08/Public%20Service%20Loan%20Forgiveness%20and%20the%20SAVE%20Plan%20for%20Federal%20Student%20Loans.pdf.

[4] Preston Cooper, "The student debt cancellation cheat sheet," FREOPP, April 2, 2024, https://freopp.org/oppblog/the-student-debt-cancellation-cheat-sheet/.

[5] Ibid.

[6] "Public Service Loan Forgiveness and the SAVE Plan for Federal Student Loans."

[7] "Education Department Announces Permanent Improvements to the Public Service Loan Forgiveness Program and One-time payment Count Adjustment to Bring Borrowers Closer to Forgiveness," U.S. Department of

The Department therefore should consider the following additional reforms to PSLF to ensure taxpayers are shielded from paying for future debt forgiveness: The Department should rescind the 2023 changes to PSLF as part of the negotiated rulemaking process. It should reinstate strict on-time, full payment requirements, exclude payments made during periods of deferment or forbearance, and bar any retroactive credit for previously non-qualifying payments. The changes under the Biden administration allowed borrowers to obtain credit for late or partial payments and awarded credit for certain months in deferment or forbearance, all to meet a campaign promise of loan cancellation rather than substantially considering the economic effects on the vast majority of American taxpayers, the national debt, and the American economy generally. The Department should also codify that waivers cannot override regulatory definitions, even temporarily, and should bar future Secretaries of Education from using similar flexibilities without full negotiated rulemaking.

(2) Regarding Pay As You Earn (PAYE) and Income Contingent Repayment (ICR) repayment plans

The first Income Contingent Repayment (ICR) plan was promulgated in 1995, with terms being that monthly payments are the lesser of 20 percent of the borrower's discretionary income or what the borrower would pay on a 12-year fixed repayment plan.[8] Then in 2012, under the same statutory authority for an income-contingent repayment plan, the Department of Education promulgated a new ICR plan named Pay As You Earn (PAYE), which required borrowers to make monthly payments at 10 percent of discretionary income, providing debt cancellation after 20 years of qualifying payments.[9]

Three years later, the Department of Education once again issued regulations to create a third type of ICR plan called Revised Pay As You Earn (REPAYE) without a partial financial hardship[10] to make monthly payments equal to 10 percent of their discretionary income.[11] The maximum repayment timeline for borrowers with undergraduate debt is 20 years; for borrowers with graduate debt, it is increased to 25 years. For PAYE and REPAYE, in instances "where a borrower's required monthly payment amount is insufficient to pay all of the monthly interest that accrued on the borrower's Subsidized Loans or the subsidized component of a Direct Consolidation Loan, 100 percent of the unpaid accrued interest is not charged for a period of up to three years from the date the borrower first began repaying according to the plan."[12] REPAYE also gives borrowers an additional interest subsidy. After the three years described above, the borrower is "not charged 50 percent of the portion of the unpaid accrued interest."[13]

Education, October 25, 2022, https://www.einpresswire.com/article/597739764/education-department-announces-permanent-improvements-to-the-public-service-loan-forgiveness-program-and-one-time-payment-count-adjustment-to-bring.

[8] Rita Zota, Alexandra Hegji, and Kyle Shohfi, "The Department of Education's Notice of Proposed Rulemaking on Improving Income Driven Repayment for the Direct Loan Program: Frequently Asked Questions," February 9, 2023, https://www.congress.gov/crs-product/R47418.

[9] Ibid.

[10] CRS defines a partial financial hardship as "the circumstance in which a borrower's annual amount due on all of their qualifying federal student loans as calculated under the standard 10-year repayment plan is greater than 15% of their discretionary income."

[11] "The Department of Education's Notice of Proposed Rulemaking on Improving Income Driven Repayment for the Direct Loan Program: Frequently Asked Questions."

[12] Ibid.

[13] Ibid.

The Biden administration exceeded its authority in this area by creating a new plan called the SAVE plan, as described by our colleague E.J. Antoni in 2024:

> When the Eighth Circuit Court of Appeals blocked the Biden-Harris administration's latest student loan bailout scheme, it potentially saved American taxpayers nearly half a trillion dollars.
>
> Now the Supreme Court has spoken. By unanimously rejecting the administration's request to lift the lower court's injunction, it effectively blocked this loan cancellation gambit while underlying litigation proceeds—and prevented Americans from footing the bill for an Ivy League bailout.
>
> The seven-state lawsuit challenged the Saving on a Valuable Education (SAVE) plan, which the states argued was just another version of the bailout scheme that the Supreme Court struck down last summer. The Eighth Circuit apparently agreed, even scolding the administration for flouting previous rulings and directing it to put further attempts at "forgiveness" on ice.
>
> To be clear, so-called forgiveness is just a euphemism for foisting these student loans onto the backs of taxpayers. The administration's SAVE plan aimed to do just that for millions of borrowers, who would have their loans "forgiven" after 10 years, without paying a single dime toward either principal or interest. In many cases, interest wouldn't even accrue.
> But by the time this latest injunction was handed down, the Biden-Harris administration had already used the SAVE plan to conduct $5.5 billion in student loan bailouts.[14]

The Department of Education should consider phasing out all existing income-driven repayment plans for new borrowers and promulgating one new income-driven repayment plan, consistent with the law, that would exempt income up to 100 percent of the poverty line and raise payments to 15 percent of non-exempt income, or similar negotiated amounts. Ideally, no debt cancellation would be possible after a certain number of payments, but if not, existing law may require canceling any remaining balance after 25 years.

(3) Potential topics that would streamline current federal student financial assistance program regulations while maintaining or improving program integrity and institutional quality.

(a) We recommend reform of regulations regarding accreditation (implementing 20 U.S. Code Chapter 28, Part H) and of "financial responsibility" and "administrative capability" regulations (34 CFR 668) to conform to the law and to improve program integrity and institutional quality.

Since accreditors are generally failing to ensure program integrity and institutional quality (see below), regulatory intervention is warranted at both the accreditor level and the institutional level. Higher-quality accreditors are needed urgently, which means that the Department should streamline the approval process and should streamline the reapproval process for accreditors that have shown good stewardship of their responsibilities so that they can focus on accreditation instead of costly and wasteful paperwork.

In particular, accreditors generally are not substantially complying with their responsibilities under 20 U.S.C. § 1099b(a), which states, in relevant part, that "[n]o accrediting agency or association may be

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[14] E.J. Antoni, "Federal Court to Biden on the Student Loan Bailout—It's (Still) Illegal," August 30, 2024, https://www.heritage.org/courts/commentary/federal-court-biden-the-student-loan-bailout-its-still-illegal.

determined by the Secretary [of Education] to be a reliable authority as to the quality of education or training offered for the purposes of this chapter or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. … Such criteria shall include an appropriate measure or measures of student achievement."

Stig Leschly and Yazmin Guzmin found, using extensive evidence from the Department of Education's Database of Accredited Postsecondary Institutions and Programs (DAPIP), the following with regard to accreditors recognized by the Department:

> Of the 31,699 accreditor actions that we analyze, all of which occurred between 2012 and 2021, only 2.7% were ones in which an accreditor disciplined or sanctioned a college for inadequate student outcomes or low-quality academic programming. The other 97.3% of formal oversight activity by accreditors was supportive of colleges or focused on non-academic matters (governance, finances, general compliance, etc.).
>
> Low graduation rates, high loan default rates, and low median student earnings did not increase the likelihood that an accreditor would take disciplinary action towards a college.
>
> Only 564 (11%) of the 5,195 colleges in our sample experienced one or more disciplinary actions related to student outcomes or academic program quality from an accreditor. Sixty-four percent (64%) of these institutions were small certificate-granting institutions, mainly beauty and barber schools, overseen by national accreditors.[15]

Additionally, regarding student outcomes as a measure of program and institutional quality—graduation rates and alumni return on investment—one of us (Kissel) wrote in March of this year:

> Accreditors (formally known as "accrediting agencies") also used to be reliable indicators of college quality. But their role in quality assurance has become something of a farce.[16] Accreditors rarely sanction an institution on academic grounds, despite many accredited colleges and universities having extremely poor graduation rates and financial outcomes for those who do graduate.
>
> Take, for example, the graduation rates of a few colleges accredited by a [formerly] "regional" accreditor, the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC). According to the American Council of Trustees and Alumni's database, which uses public sources, the four-year graduation rate at Southern University at New Orleans (SUNO) is eight percent.

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[15] Stig Leschly and Yazmin Guzmin, "Oversight of Academic Quality and Student Outcomes by Accreditors of US Higher Education: Evidence from the Database of Accredited Postsecondary Institutions and Programs," Harvard Business School (College101), Spring 2022, https://postsecondarycommission.org/wp-content/uploads/2022/06/College101-Accreditor-College-Quality-Report-FINAL-062822.pdf.

[16] Andrew Gillen, "Should College Accreditation Be Replaced or Reformed?," Defense of Freedom Institute, February 2025, https://dfipolicy.org/wp-content/uploads/2025/02/Should_College_Accreditation_Be_Replaced_or_Reformed_Gillen_Andrew_2_25_2025.pdf.

> Allen University in South Carolina, accredited by SACSCOC, is at nine percent. Georgia Gwinnett College, accredited by SACSCOC, is at four percent. Four. Percent. There are many more such examples at the bottom. […]
>
> If you think four-year rates are unfair, check out six-year graduation rates. These also are ugly at the bottom. Depending on the source, Georgia Gwinnett College's six-year rate is published at 20–28 percent.
>
> Look to your right, they used to say at the first freshman convocation, and look to your left. One of you won't be here next year. At many colleges today, the reality is: Look anywhere you want, and look at yourself; chances are, you'll be looking at somebody who will have debt but no degree.
>
> Yet where is SACSCOC?
>
> As for financial outcomes, a program-by-program report calculating return on investment (ROI) by the Foundation for Research on Equal Opportunity shows many colleges and universities with extremely poor outcomes for many programs. Brevard College in North Carolina, with SACSCOC accreditation, has a psychology bachelor's program with a negative ROI to the tune of -$118,912. Western Carolina University's bachelor's degree in psychology, which is "one of the largest undergraduate majors at the university," is similarly poor at -$66,570 for those who graduate.[17]
>
> Yet where is SACSCOC?[18]

Existing accreditors should do their core job of quality assurance, yet they usually are not doing it. The Department accordingly should open negotiated rulemaking with regard to accreditors and institutions to improve student outcomes, which should include streamlining review processes for new and existing accreditors at the Department where warranted—and holding accreditors to their statutory responsibilities where warranted.

In particular, new accreditors should only have to demonstrate one year, not two years, of accreditation experience in order to be approved by the Department.

Finally, having new entrants in the accreditation ecosystem, along with other possible reforms to improve accreditor competition, would improve accreditor quality even in areas where the Department is prohibited by law from regulating.

(b) The Department of Education should consider implementing risk-sharing elements via program participation agreements (PPAs). PPAs are essentially contracts between institutions of higher education

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[17] Preston Cooper, "Is College Worth It?," Foundation for Research on Equal Opportunity, n.d., https://freopp.org/roi-undergraduate; Cooper, "Does College Pay Off? A Comprehensive Return On Investment Analysis," May 8, 2024, https://freopp.org/whitepapers/does-college-pay-off-a-comprehensive-return-on-investment-analysis; Western Carolina University, "Psychology," 2025, https://www.wcu.edu/learn/departments-schools-colleges/ceap/psydept.

[18] Adam Kissel, "End the Unjust Stratification of Accreditors," James G. Martin Center for Academic Renewal, March 10, 2025, https://jamesgmartin.center/2025/03/end-the-unjust-stratification-of-accreditors.

and the Department, required for schools to participate in federal Title IV student aid programs.[19] The Department has historically used PPAs to impose additional oversight on high-risk institutions, especially for-profit colleges. The Department can use negotiated rulemaking to modify or expand the role of PPAs (under Section 487 of the Higher Education Act) to tie Title IV eligibility to performance (regarding default rates, graduation rates, or repayment success), and/or require "skin-in-the-game" commitments for schools with poor outcomes, such as introducing performance improvement plans or risk mitigation strategies for schools with high cohort default rates or low repayment metrics.

The Department should also consider implementing transparency requirements for institutional outcomes via negotiated rulemaking. These measures could include requiring public disclosure of metrics such as graduation and retention rates, median student debt, post-graduation earnings, and loan repayment rates; and mandating timely updating and accurate information via the College Scorecard.

We urge the Department to completely abandon the Biden-era and Obama-era method of going beyond the Department's authority in promulgating "gainful employment" regulations and "borrower defense to repayment" regulations. Such regulations have fallen in litigation and should be rescinded even if they are unenforceable due to judiciary actions.

Instead, we ask the Department to consider tying transparency obligations to PPAs as part of compliance expectations. The Department should have the authority to do this under Sections 132 and 485 of the Higher Education Act, and Title IV eligibility regulations require certain outcome disclosures as a condition of institutional participation. Disclosures, assurances, and certifications can be powerful tools for compliance within the law. Including such measures will give students and families more data points to make better and better-informed decisions. Such measures should require colleges to be more transparent with the public about their graduation outcomes, median student debt, and similar outcomes that impact not only student resources but also state and federal resources.

Finally, the Department of Education should consider inviting the following organizations and groups to negotiated rulemaking committees, as any changes made to the topics mentioned above would substantially impact them. At the least, such categories of stakeholders should be represented. We note that they have often been underrepresented or completely unrepresented in the Department's previous rulemaking.

- Loan servicers and holders:
    - MOHELA
    - Nelnet
    - Aidvantage
- For-Profit Institutions and Associations:
    - Career Education Colleges and Universities (CECU)
- Faith-based Institutions and Associations:
    - Council for Christian Colleges and Universities (CCCU)
    - Association of Christian Schools International (ACSI)
- Taxpayer Advocacy Organizations:
    - Committee for a Responsible Federal Budget

[19] Alexandra Hegji, "Eligibility for Participation in Title IV Student Financial Aid Programs," October 16, 2024, https://www.congress.gov/crs-product/R43159#:~:text=By%20signing%20a%20PPA%2C%20an,eligibility%20for%20such%20funds%2C%20and.

- Public Interest Law and Legal Groups:
    - New Civil Liberties Alliance
    - Pacific Legal Foundation

Our identification and contact information appears below. We would be delighted to answer any questions. Thank you for the opportunity to comment.

Sincerely,

/s/

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