February 8, 2023

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Ave, 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" Docket ID ED-20230OPE-0004. The Department has not adequately justified its rationale for this proposed regulation.

Unexplained equivalence between undergraduate and graduate borrowers

As justification for amending income-driven repayment (IDR) plans and debt forgiveness, the Department of Education argues for "greater parity" between graduate and undergraduate student-loan borrowers. To that end, the proposed regulation states that reducing student loan payments for undergraduate-level debt to five percent of a borrower's discretionary income "would allow a single borrower with only undergraduate loans up to $75,500 in 2016 income to receive benefits" from choosing an IDR plan, with that $75,500 threshold being nearly the same as the $80,000 break-even point for graduate borrowers, based on median graduate debt. "The Department believes charging borrowers 5 percent of discretionary income for the undergraduate portion of their debt provides the appropriate amount to ensure greater parity between graduate and undergraduate borrowers, in terms of their incentives to choose an IDR plan."

However, the Department's goal of parity between graduate and undergraduate borrowers' incentives to choose an IDR plan is never explained nor justified. It is unclear why such parity would be beneficial to borrowers, educational institutions, or taxpayers. The two groups of borrowers have different average and median incomes, both present and lifetime, and they have different levels of debt.[1] No justification is provided as to why both groups of borrowers should choose IDR plans at the same rate or have the same incentive to choose those plans. The Department's failure to explain why its goal of parity is worth achieving is arbitrary and capricious.

Arbitrary choice of graduate borrowers as a reference

The Department also does not justify seeking to alter undergraduate borrowers' choice of repayment plans to match graduate borrowers' choices, as opposed to the other way around, assuming achieving some kind of parity is even appropriate or desirable. Additionally, the Department does not compare the costs and benefits of these two approaches to achieving parity.

[1] Bureau of Labor Statistics (2022). https://www.bls.gov/careeroutlook/subject/education_level.htm

These failures render the proposal arbitrary and capricious. If anything, since undergraduate borrowers are far more numerous than graduate borrowers, the Department should seek parity with undergraduate borrowers, although that too would be irrational without an explanation.

The Department gives an example of an undergraduate and a graduate borrower as a key part of its justification for this proposed regulation. The graduate borrower is assumed to have a relatively higher level of debt and a relatively higher interest rate on that debt compared to the undergraduate student, which are both realistic assumptions. Yet, in that same example, both borrowers are assumed to have the same income, a very unlikely scenario since both the median and average graduate borrower earns more than the corresponding undergraduate borrower.[2] This analytic mistake—which is both belied by the facts about undergraduate and graduate borrowers and inconsistent with the Department's own assumptions as detailed above—materially affected the proposal, because it alters the difference between the amounts an undergraduate borrower pays under an IDR plan and traditional repayment plans.

By overestimating the undergraduate borrower's income while underestimating the graduate borrower's income, relative to one another, the Department's rationale correspondingly overestimates the amount by which the graduate borrower's monthly payment is reduced in an IDR plan while underestimating the amount by which the undergraduate borrower's monthly payment is reduced in that same IDR plan. Thus, a highly unlikely assumption causes graduate borrowers to choose an IDR plan more often than undergraduate borrowers in the Department's reasoning. In a much more realistic scenario, the undergraduate borrower has a lower income than the graduate borrower, which increases both the monthly savings and total savings over the life of a loan for the undergraduate borrower in absolute terms and relative to the graduate borrower. Therefore, the Department's proposed regulation would not achieve parity between graduate and undergraduate borrowers choosing IDR plans, but instead cause undergraduate borrowers to choose those plans at even greater rates. Failing to account for this, the Department has underestimated the costs of this proposed regulation and this error could plausibly change the content of the proposal. No explanation is given for the assumption of graduate and undergraduate borrowers having the same income, making it arbitrary and capricious.

Moral hazard from forgiving debt

The Department also does not consider the unintended consequences of undergraduate borrowers being incentivized by these changes to borrow additional funds in anticipation of not repaying them due to the proposed IDR plans' lower monthly payments, as low as zero dollars, and forgiveness of their unpaid balance, often after 120 payments. There is no estimate of the costs which would stem from this moral hazard.

Yet, the Department expressed this very concern in the proposed regulation as the rationale for not reducing the threshold of discretionary income for graduate borrowers: "The Department is concerned that setting payments at 5 percent of discretionary income for graduate loans could result in borrowers taking on significant additional debt that they will not be able to repay." Thus, the Department determined that the costs of this change to graduate-level debt outweighed

[2] Bureau of Labor Statistics (2022). https://www.bls.gov/emp/documentation/education-training-system.htm

the benefits of the change, but no corresponding analysis is made for undergraduate-level debt. Applying this logic to graduate borrowers but not undergraduate borrowers is arbitrary and capricious.

Disparity in delinquency and default rates

Another difference between graduate and undergraduate borrowers which the Department recognizes is the disparity in delinquency and default rates.[3] "The Department is more concerned about the potential for undergraduate borrowers to struggle with delinquency and default than it is for graduate borrowers." This indicates that undergraduate borrowers are already borrowing too much relative to their incomes after graduation, compared to their graduate-level counterparts. Yet, the proposed regulation would only increase the amount of undergraduate borrowing and shift the burden of repayment onto taxpayers as the federal government assumes the unpaid balance of that debt once the required number of payments have been made, including payments of zero dollars.

Thus, default and delinquency rates would fall even as borrowing increased. The underlying problem of undergraduate students borrowing too much would be exacerbated while the cost of that borrowing is shifted to taxpayers, most of whom either do not have a college degree, repaid their student loans in full, or did not borrow to pay for their college degree. The Department makes no justification as to why these latter groups should finance the education of others as well as their own.

No accounting for response of educational institutions

The Department also makes no estimation as to the effect on, and response of, educational institutions stemming from this proposed regulation. Since the proposed regulation will increase borrowing (stemming from the reduced payments and additional loan forgiveness, as acknowledged by the Department's concern in reducing the threshold of discretionary income for graduate loan payments), educational institutions will respond by increasing costs for attendance.[4] Thus, this proposed regulation will increase costs of education not only for borrowers, but also for all college attendees as well as taxpayers who will incur larger costs from increased loan forgiveness. Future loan forgiveness will be larger not only because of the direct changes under this proposed regulation which increase the portion of current borrowing levels that is forgiven, but also because the costs of attendance and level of future borrowing will increase while required monthly payments decrease, as low as zero dollars. The Department has no estimate as to these additional costs on taxpayers.

Arbitrary consideration of variation in the costs of living

[3] This acknowledgment by the Department betrays the assumption it made that graduate and undergraduate borrows would have the same income. Since the Department acknowledges that graduate borrowers not only have more debt but also higher interest rates, and thus larger monthly payments, the only explanation for lower default and delinquency rates would be if graduate borrowers have higher incomes than undergraduate borrowers.

[4] Federal Reserve Bank of New York (2017). https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf

The proposed regulation also argues for reducing the threshold of discretionary income a borrower would pay on the grounds that "the current amount of income required to be devoted to payments is too high and that it is a particular challenge for borrowers who are located in areas with higher costs of living, because current IDR formulas do not consider expenses."

Given the large disparity in cost of living around the nation, if it is true that the threshold is too high in some places then it must be too low in others. This is the case because existing metrics used by the Department rely on national averages. Since the Department acknowledges some borrowers live in conditions above the average, other borrowers must live in conditions below the average. It is important to note that the Department's existing threshold for current IDR formulas has not merely been keyed to the lowest cost-of-living in country, but national averages. Yet, the proposed change does not address the underlying problem of varied cost of living. Some borrowers will still have a relatively low cost of living while others have a relatively high one. A better alternative would be just to address the problem the Department claims to have discovered by pegging repayment options to the cost of living. That solution would better address the problem the Department has identified, because it would both more adequately respond to the situations of borrowers with the highest cost-of-living while avoiding giving unjustified windfalls to borrowers who are not experiencing the problem the Department seeks to solve. Regional Price Parities are already available at both the state and metropolitan area levels, giving the Department a relatively easy and cost-efficient way to account for cost-of-living.[5] Failure to consider this superior alternative would be arbitrary and capricious.

Regulation cannot move forward without addressing these concerns

In its proposed state, the regulation suffers from a number of deficiencies outlined above. The Department must provide justification for arbitrary aspects of the rule, along with an opportunity for the public to comment on this justification; it also must give a complete accounting of the relevant costs and benefits before moving forward with finalizing the rule. Specifically, the Department must give an accounting of the relevant costs and benefits of viable alternatives, including but not limited to those mentioned in this comment, to demonstrate why the Department's proposed regulation is the best available alternative. This includes accounting for the moral hazards created by the proposed regulation and the number of borrowers who will choose IDR plans under more reasonable assumptions about those borrowers' incomes.

Thank you for addressing these concerns.

Respectfully submitted,

E. J. Antoni

[5] Bureau of Economic Analysis (2022). https://www.bea.gov/data/prices-inflation/regional-price-parities-state-and-metro-area