August 16, 2012

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
c/o Jessica Finkel
1990 K Street, NW, Room 8031
Washington, DC 20006-8502

Re: Docket ID ED-2012-OPE-0010

Dear Secretary Duncan:

As advocates for students, consumers, higher education, civil rights and college access, we thank you for proposing changes that will make it easier for federal student loan borrowers to repay their loans and for borrowers who become severely and permanently disabled to discharge their loans. The July 17, 2012 Notice of Proposed Rulemaking takes several important steps towards making the Income-Based Repayment (IBR) and Income-Contingent Repayment (ICR) programs more accessible and helpful to borrowers and simplifying the process of discharging loans in cases of total and permanent disability (TPD).

The economic downturn has left many student loan borrowers – at all stages of life – struggling to manage their bills and start and/or support a family. Half of recent college graduates are either unemployed or underemployed—the highest share in more than a decade.[1] The proposed changes are, therefore, particularly timely. We write to express our strong support for the proposed regulations and to recommend important improvements.

We applaud the proposed regulations implementing the "Pay As You Earn" repayment plan (also called ICR-A). This plan is expected to help more than 1.6 million recent borrowers qualify for lower monthly payments and earlier loan forgiveness than what IBR currently provides.[2] Under the proposed rules, ICR-A has several additional important features, including capping the amount of interest that can be capitalized and allowing borrowers to change repayment plans without penalty.

All borrowers in IBR and ICR plans will benefit from being notified about when they need to submit their income information and when they may qualify for loan forgiveness, eliminating high-stakes guesswork. We are also pleased that the current form of ICR (referred to as ICR-B) will remain available to all Direct Loan borrowers.

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[1] Yen, Hope. "Half of New Grads are Jobless or Underemployed." *NBC News.* http://www.msnbc.msn.com/id/47141463/ns/business-stocks_and_economy/#.UBhkWrSe52B.
[2] U.S. Department of Education. "Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule." 77 Federal Register 42086-42148. http://www.gpo.gov/fdsys/pkg/FR-2012-07-17/pdf/2012-15888.pdf.

Additionally, we are pleased that beginning next month, Direct Loan borrowers applying for IBR will be able to provide their income information electronically, using a process similar to the one already in use for the FAFSA.[3] We understand that Direct Loan borrowers in IBR will soon be able to use this same simple process to provide their annual income documentation. We urge the Department to make this process available to all borrowers in IBR to help ensure that their loan payments remain at levels they can afford.

While some of the organizations signing this letter will be submitting more detailed public comments as well, we write now to immediately suggest four ways in which the proposed regulations should be strengthened to provide more protections for struggling borrowers.

1. Reduce the Extreme and Disproportionate Penalty for Late Paperwork. Every year, borrowers in IBR and ICR are required to provide documentation of their income, which is used to determine the size of their loan payments for the following year. The deadline is tied to when the borrower first entered the repayment program. Under the proposed rules, borrowers who miss their deadline by more than 10 days will see all of their unpaid accrued interest capitalized and added to their principal loan balance. This penalty is unduly harsh and highest for borrowers with the lowest incomes. Credit card late fees are based on a combination of the size of the balance and the lateness of the payment. In contrast, this penalty is based on how long the borrower has had a very low income, penalizes late paperwork rather than a late payment, and does not distinguish between paperwork that is 11 or 99 days late.

Take, for example, a single borrower who enters IBR with $50,000 in debt and is unable to find a job for three years during the economic downturn. Right before her fourth year in IBR, she finds a job paying $45,000, but misses the deadline for submitting her income documentation. As a result, under the proposed regulations, her scheduled monthly payment would skyrocket to $575, and over $10,000 of unpaid accrued interest would capitalize.[4] Interest now begins accruing on her new principal balance of $60,200, rather than her original balance of $50,000, and she will end up paying $25,000 more over 25 years than if her unpaid interest had not capitalized. Some borrowers will never be able to pay off their loan balances after their interest capitalizes. No one should be subjected to such a harsh and disproportionate penalty for late paperwork.

We strongly recommend that the penalty for late paperwork be changed so that it is proportionate to the lateness of the paperwork. For instance, interest capitalization could be limited to the interest that accrues between the end of the borrower's annual payment period and the filing of his or her paperwork.

2. **Count Qualifying Payments Made Before and After Consolidation Towards Forgiveness.** After borrowers make 20 or 25 years of qualifying payments in IBR or ICR (depending on the version of the program), any outstanding loan balance and accrued interest are forgiven. However, under the proposed regulations, qualifying payments are not counted toward forgiveness if the loans are later consolidated. Borrowers who consolidate their loans should get

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[3] See http://www.fafsa.ed.gov/help/irshlp9.htm.

[4] Calculations are based on a 6.8% interest rate, a 2% annual increase in the borrower's salary, the 2012 poverty level, and the current IBR formula, which caps monthly loan payments at 15% of discretionary income and forgives any remaining debt after 25 years of qualifying payments.

the appropriate credit for what may be years of qualifying payments. There is a precedent for tracking payments made on loans before consolidation: the Department and FFEL lenders already track pre-consolidation payments on subsidized loans in order to provide a three-year period of interest subsidy.[5]

3. **Ensure Borrowers Can Exit IBR to Enter a Different Repayment Plan Without Prohibitive Penalty.** While IBR payments are intended to be manageable, they may become unmanageable for some borrowers due to private student loan debt, high medical bills, or other financial circumstances that are not factored into the payment formula. Such borrowers might want to leave IBR to enter an extended repayment plan that would cost the borrower more in total but provide for even lower monthly payments.

Currently, such borrowers would be required to make one potentially massive "exit payment" under the standard repayment plan before they could leave IBR and enter a different repayment plan. Borrowers with non-consolidation loans who were in IBR for 10 years or more would automatically face a required, one-time exit payment of their *entire loan balance* (including unpaid accrued interest), because they would have used up all the time on the standard repayment clock. Borrowers who could not afford such high exit payments would not be able to leave IBR.

To enable borrowers to leave IBR, the proposed rules allow for a reduced exit payment under forbearance. While this is a step in the right direction, the proposed regulations give lenders total discretion over whether to grant this forbearance and what the reduced payment amount will be. The final regulations need to set clear guidelines for granting forbearances for this purpose, to ensure borrowers are always able to exit IBR if they need to do so to keep their payments manageable.

4. **Accept Social Security Administration (SSA) Disability Determinations for Loan Discharges.** The proposed regulations streamline the burdensome and byzantine process of discharging federal student loans for borrowers who become permanently disabled. Under the proposed rules, borrowers would be able to submit just one application to the Department of Education rather than having to submit separate discharge applications to each of their lenders.

To further streamline this process, we strongly urge the Department to accept certain Social Security Administration (SSA) determinations of disability as presumptive proof for Department of Education discharges. The Department already accepts disability determinations from the Department of Veteran Affairs (VA),[6] and the Higher Education Act statutory definition of disability is substantially similar to the Social Security definition.[7] Accepting at least some SSA determinations of disability would prevent those borrowers from having to go through the entire application process twice and reduce the administrative burden on the Department and lenders.

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[5] 34 CFR 682.215(b)(4) and 34 CFR 685.221(b)(3).
[6] See http://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/disability-discharge.
[7] 20 CFR 404.1505 and 20 USC 1087.

Thank you for considering our views. We believe these four changes would significantly improve the federal student loan program, and we applaud the Administration for taking important steps to ensure access to fair and affordable federal loan repayment options.

Sincerely,

American Association of State Colleges and Universities
American Association of University Women
American Federation of Teachers
Americans for Financial Reform
American Medical Student Association
Campus Progress Action
Consumer Action
Consumers Union
The Education Trust
Hispanic Association of Colleges and Universities
The Institute for College Access & Success and its Project on Student Debt
The Leadership Conference on Civil and Human Rights
National Council of La Raza
National Direct Student Loan Coalition
National Education Association
U.S. PIRG