

November 4, 2014

Wendy Macias
U.S. Department of Education
1990 K St. NW, Room 8017
Washington, DC 20006

Re: Negotiated Rulemaking Committee; Public Hearings (Docket ID: ED-2014-OPE-0124)

Dear. Ms. Macias:

Consumers Union, the policy and advocacy arm of *Consumer Reports*®,¹ appreciates the opportunity to comment on the Department's plans to engage in further negotiated rulemaking to expand access to the Pay As You Earn (PAYE) repayment plan for federal student loans, which caps monthly payments at 10% of annual discretionary income over a 20-year repayment period. We appreciate the Department's willingness to hear suggestions for how to best expand PAYE access, as well as other potential topics for consideration during negotiated rulemaking.

- We urge the Department to use this rulemaking opportunity to improve access to PAYE in a number of ways discussed below, so that more borrowers have meaningful access to affordable and flexible options for managing their loans.
- To improve borrowers' experiences during repayment, we also recommend improvements to loan servicing and collections, to ensure that private companies in contract with the Department are not subjecting borrowers to abusive practices that can steer them toward default and keep them there.
- Furthermore, we encourage the Department to redouble its efforts to prevent evasion of laws meant to protect students and taxpayers from shoddy career education programs, and to ensure that defrauded students have meaningful access to relief.
- Finally, we urge the Department to complete its important work on updated rules for cash management, which were debated at the negotiated rulemaking committee convened earlier this year.

Education is a crucial step on a person's path toward self-development and well-being – but it is becoming ever more expensive.² Meanwhile, families' dollars aren't going as far as they did even a decade ago, making it even harder to keep up with rising tuition without taking out a loan.³ As a result, more and more households in the U.S. must borrow to pay for higher

¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

² The National Center for Education Statistics estimates that just in the academic years between 2000–01 and 2010–11, prices for undergraduate tuition, room, and board at public institutions rose 42 percent, and prices at private not-for-profit institutions rose 31 percent, after adjustment for inflation. See Nat'l Ctr. for Educ. Statistics, *Fast Facts, Tuition Costs of Colleges and Universities*, <http://nces.ed.gov/fastfacts/display.asp?id=76>.

³ College Board, *Trends in Higher Education, Trends in College Pricing, Changes in Family Income Over Time*, <http://trends.collegeboard.org/college-pricing/figures-tables/changes-family-income-over-time> (last visited June 3, 2013).

education - according to recent data, seven in ten college students today graduate with student loan debts averaging about \$30,000.⁴

Figuring out how to pay for college at the outset is tough enough; but a whole other headache comes when students leave school and have to navigate the student loan repayment process. Despite the fact that borrowers with federal student loans have a legal right to access a range of different repayment options, many borrowers are overwhelmed by the complexity of the system. Many of the income-driven plans appear similar but have different eligibility requirements, adding to further confusion.

For these reasons, we support the Department's efforts to expand access to the Pay As You Earn (PAYE) program, and urge a focus on streamlining enrollment procedures and removing barriers to enrolling. The Department has both the authority and the responsibility to ensure that borrowers have meaningful choices for managing their loans.⁵ In writing rules to expand access to PAYE, the Department should:

- Enable all student borrowers with federal loans to enroll in PAYE, regardless of when they took out their loans. This will simplify the administration of the program, and remove much complexity in the process that confuses borrowers as to what their options are after they leave school.⁶
- Give borrowers the choice to enroll in PAYE and pay 10% of their discretionary income, regardless of income level. This would mean eliminating the current "partial financial hardship" requirement prior to enrolling, to ensure that borrowers whose incomes or household sizes fluctuate over the years are enrolled in a repayment plan that adjusts to their circumstances. It would also mean removing the standard repayment cap, which currently prevents borrowers from paying more if payments calculated at 10% of discretionary income would exceed the monthly payments calculated under the 10-year standard plan. Removing the standard repayment cap would enable borrowers to stay in an income-based plan as their incomes rise and also pay down their loans faster once they are earning more.
- Limit the amount of interest that can be capitalized to the balance of a borrower repaying under PAYE. Borrowers with lower incomes who are dutifully making payments under the PAYE plan should not be additionally burdened just because they can only afford to make interest-only payments under the 10% cap.
- Ensure that borrowers who consolidate their existing loans get credit for any previous payments made while enrolled in PAYE or other income-driven plans, as well as those making payments toward public service loan forgiveness (PSLF). This is especially important for borrowers who may have already made years' worth of qualifying payments and would be unfairly set back to square one simply for having consolidated their existing loans.
- Keep the 20-year maximum repayment period for borrowers enrolled in PAYE. Borrowers shouldn't be burdened for more than a generation with loan payments that add barriers to financial security, such as saving for retirement or a rainy day.

⁴ THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2012 1 (2013), available at <http://projectonstudentdebt.org/files/pub/classof2012.pdf>.

⁵ See 20 U.S.C. § 1087e(d) (2012 & Supp. II) ("The Secretary shall offer a borrower... variety of repayment plans" for Direct Loans) (emphasis added); see also 20 U.S.C. § 1082(a) (giving Secretary broad authority to set standards for servicing of outstanding loans originated under the FFEL program).

⁶ We recognize that parent borrowers with PLUS loans are exempted by statute from access to PAYE. 20 U.S.C. §§ 1087e(d)(1)(E), 1098e(b)(1), 1098e(e).

We also urge the Department to strengthen standards for servicers and debt collectors.

Borrowers continue to experience frustration dealing with the private companies contracted with the Department to administer loans once borrowers are repaying them. Borrowers have reported frustration at receiving inconsistent information and having trouble processing paperwork, among other things.⁷ A new Consumer Financial Protection Bureau (CFPB) report on its supervision program identifies many common problems with student loan servicing. For example, CFPB examiners have found that servicers often apply partial payments pro rata across all of a borrower's loans – thereby unfairly maximizing late fees.⁸ Furthermore, the Department of Justice's recent action against Sallie Mae for illegal servicing practices, including overcharging servicemembers⁹ with federal loans, has only added to the growing scrutiny.¹⁰ For these reasons, we urge the Department to write strong rules of the road for student loan servicers:

- Require the use of a clear, single point of contact for borrowers to direct their questions, file paperwork and resolve problems. The CFPB's online complaint portal would serve as a useful template.¹¹ Servicers should also be required to respond to queries within a reasonable amount of time – for example, companies must respond to consumer complaints forwarded from the CFPB within 15 days.¹²
- Require targeted disclosure of alternative repayment options to borrowers who start to fall behind on payments. Borrowers need information about all of their options, including income-driven plans, to make informed decisions during key moments of financial stress.
- Require fairer application of payments, to prevent maximization of interest charges and fees. Servicers should be prohibited from applying payments in a manner that maximizes late fees. Borrowers should also have their prepayments applied in a manner that pays down their principal balances faster.
- Allow student loan borrowers to switch servicers at any time. At present, borrowers cannot select their servicers unless they are consolidating their loans (and have not previously undergone a consolidation). Student loan borrowers deserve the right to vote with their feet and seek the servicer that provides the best service.
- In addition, work with the CFPB – which oversees larger student loan servicers – to ensure that student loan servicers do not subject borrowers to practices that the CFPB identifies as unfair, deceptive or abusive.¹³

The abuses of private collection agencies (PCAs) handling defaulted loans are also well-documented.¹⁴ The Department should build upon recent efforts to improve collections by

⁷ See, e.g., CONSUMERS UNION, DEGREES OF DEBT: STORIES FROM STUDENT LOAN BORROWERS HIGHLIGHT URGENT NEED FOR REFORM 9-10 (2013), available at http://consumersunion.org/wp-content/uploads/2013/11/Degrees-of-Debt_2013.pdf (featuring sample stories expressing typical complaints about federal and private loan servicers).

⁸ CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS 15 (2014), available at http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf.

⁹ See Allie Grasgreen & Nirvi Shah, Sallie Mae agrees to \$97M settlement over servicemembers' student loans interest rates, POLITICO, May 13, 2014, available at <http://www.politico.com/story/2014/05/sallie-mae-military-student-loan-interest-rates-106638.html>.

¹⁰ See Letter from Hon. Claire McCaskill et al. to Hon. Arne Duncan (July 8, 2014), available at http://www.huffingtonpost.com/2014/07/09/senators-student-loans-letter_n_5569115.html.

¹¹ See Consumer Fin. Protection Bureau, Submit a Complaint, <http://www.consumerfinance.gov/complaint/>.

¹² *Id.*

¹³ The CFPB has authority under the Dodd-Frank Act to declare practices related to financial services illegal if they are unfair, deceptive or abusive. 12 U.S.C. § 5531 (2012 & Supp. II).

focusing compensation toward actions that help borrowers rehabilitate their loans, as well as clarifying minimum standards for disclosing information and processing borrower requests. We also encourage the Department to explore the feasibility of reducing or even eliminating the outsourcing of these important functions to private companies, as the IRS recently did for tax collections.¹⁵

In addition, we urge the Department to take additional steps to rein in low-performing career education programs, and ensure that defrauded students can obtain relief.

Schools need to be held accountable when their programs are doing little more than saddling students with taxpayer-financed debts that they cannot afford to repay. In recent years, some career colleges have engaged in tactics such as steering students into loan forbearances and deferments, as well as consolidating higher- and lower-performing campuses, to mask their students' widespread inability to repay their loans just long enough to keep them out of default for the purpose of calculating CDRs.¹⁶ The overuse of forbearances, in particular, has enabled many for-profit career colleges to evade gainful employment requirements for Title IV funds eligibility, as both Senate research¹⁷ and the Department's own investigations¹⁸ have revealed.

The Department should update its regulations to clarify the circumstances under which a forbearance is "for the benefit of the student borrower"¹⁹ compared with alternatives such as income-driven repayment plans, and take steps to prevent evasion of gainful employment requirements more broadly. The Department should also prevent the use of campus consolidation to similarly evade the 90-10 rule,²⁰ which requires for-profit colleges to obtain at least 10 percent of their revenue from non-Title IV funding sources.

Furthermore, the Department should take steps to ensure that students subjected to fraud can obtain relief in a range of circumstances that constitute "false certification" on the part of the school.²¹ For example, in recent years several state attorneys general have sued for-profit career colleges for aggressively marketing career education programs that fail to meet the necessary accreditation requirements for students to obtain licensure or get any job in their field of study.²² In addition, many schools have falsely certified students' academic progress despite

¹⁴ See, e.g., NAT'L CONSUMER LAW CTR., POUNDING STUDENT LOAN BORROWERS: THE HEAVY COST OF THE GOVERNMENT'S PARTNERSHIP WITH DEBT COLLECTION AGENCIES 11-14 (2014), available at <http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/report-sl-debt-collectors.pdf>.

¹⁵ Press Release, Internal Revenue Serv., IRS Conducts Extensive Review, Decides Not to Renew Private Debt Collection Contracts: IRS Employees More Flexible, More Cost Effective (Mar. 5, 2009), available at <http://www.irs.gov/uac/IRS-Conducts-Extensive-Review,-Decides-Not-to-Renew-Private-Debt-Collection-Contracts>.

¹⁶ S. COMM. ON HEALTH, EDUCATION, LABOR & PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, S. REP. NO. 112-37, pt. 1, at 174-85.

¹⁷ See S. RPT. 112-37, pt. 1, at 176-79.

¹⁸ Letter from Sec. Arne Duncan to Senator Tom Harkin, Chair, Senate Health, Education, Labor & Pensions Committee 3 (Feb. 27, 2013), available at http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2013/10/Duncan_to_senate_cdr_20130217.pdf.

¹⁹ See 20 U.S.C. § 1078(c)(3)(B) (2012 & Supp. II).

²⁰ See S. RPT. 112-37, pt. 1, at 159-74. These longstanding abuses are well-documented in the Senate report.

²¹ See 20 U.S.C. § 1087(c) (2012 & Supp. II) (authorizing loan discharge if an institution closes before a student can complete course of study, or if a student's eligibility to borrow was "falsely certified" by the institution); 20 U.S.C. § 1091(a)(2) (requiring students to make satisfactory academic progress, as defined in subsection (c), in order retain eligibility for federal loans).

²² See, e.g., Attorney General Suthers Announces Consumer Protection Settlement with Argosy University (Dec. 5, 2013), available at http://www.coloradoattorneygeneral.gov/press/news/2013/12/05/attorney_general_suthers_announces_consumer_pr

their students' subpar performance in class.²³ The Department should clarify and expand its false certification regulations to ensure that students don't bear the burden of repaying loans that never should have translated into revenue for the school in the first place.

Finally, we urge the Department to finish its important work on new cash management rules. At the spring 2014 negotiated rulemaking sessions, the Department made substantial progress toward drafting a proposal that would (1) ensure students have clear and neutral choices for receiving financial aid disbursements, as well as (2) set important minimum standards for sponsored accounts that would protect students' interests. However, no proposed rules have been published as of the date of this writing. We are prepared to work with the Department as appropriate to ensure that strong rules are implemented as soon as possible.

We thank the Department for considering these comments, and look forward to working with the Department in the future on these important issues.

Sincerely,



Suzanne Martindale
Staff Attorney

[tection settlement argosy unive](http://www.illinoisattorneygeneral.gov/pressroom/2012_01/20120118.html) (Colorado); Press Release, Madigan Sues National For-Profit College (Jan. 18, 2012), available at http://www.illinoisattorneygeneral.gov/pressroom/2012_01/20120118.html (Illinois); Dennis Domrzalski, *AG's Office Sues ITT Educational Services*, ALBUQUERQUE BUSINESS FIRST, Feb. 27, 2014, available at <http://www.bizjournals.com/albuquerque/news/2014/02/27/ags-office-sues-itt-educational.html> (New Mexico).

²³ See, e.g., Ashlee Kieler, *Corinthian Colleges Employee: "We Work for the Biggest Scam Company in the World,"* CONSUMERIST, July 24, 2014, <http://consumerist.com/2014/07/24/corinthian-colleges-employee-we-work-for-the-biggest-scam-company-in-the-world/> (current and former instructors ordered to ensure courses are impossible to fail); Kelly Field, *Faculty at For-Profits Allege Constant Pressure to Keep Students Enrolled*, CHRON. OF HIGHER ED., May 8, 2011, available at <http://chronicle.com/article/Pawns-in-the-For-Profit/127424/> (former Kaplan instructors describe pressure to retain students at all costs).