ConsumersUnion
POLICY & ACTION FROM CONSUMER REPORTS

August 10, 2015

Secretary Arne Duncan
c/o Wendy Macias
U.S. Department of Education
1990 K St. NW, Room 8017
Washington, DC 20006

Re: Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program [Docket ID ED-2014-OPE-0161]

Dear Secretary Duncan:

Consumers Union, the policy and advocacy arm of Consumer Reports,[1] appreciates the opportunity to comment in response to the Department's notice of proposed rulemaking to expand access to affordable repayment plans for Direct Loan borrowers, among other things. We support the proposed rule, and offer additional suggestions for next steps that the Department should take to ensure that every person with a federal education loan can successfully manage their loans while in repayment.

Introduction

In the U.S., our leaders have orchestrated a vast shift in how we all pay for higher education. Over the past few decades, federal and state policymakers have moved away from direct investment in schools and students, and have instead chosen to grow a large debt-financing system that puts the economic burden on the backs of students and their families to pay for the cost of education. In the last ten years in particular, more and more families have been forced to borrow money from the federal government and other financial institutions in order to access college. As a result, the vast majority of students who attend college – whether or not they graduate – are now leaving school with loans averaging almost $29,000.[2]

Despite the fact that students who take out federal education loans have a legal right to access a range of different repayment options and other benefits after they leave school, many are simply overwhelmed by the complexity of the system. Many of the repayment plans appear similar but have different eligibility requirements, adding to further confusion. Some of the newer income-driven repayment (IDR) plans, such as income-based repayment (IBR) and Pay As Your Earn (PAYE), are only available to those who recently took out Direct loans. Former students who have older Direct or Federal Family Education Loan program (FFEL) loans may be struggling to stay current on repayment plans that do not take their income into account, rendering them in danger of default.

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[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.
[2] THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2013 1 (2014), *available at* http://projectonstudentdebt.org/files/pub/classof2013.pdf.

To start addressing these issues and bring relief to millions of people with federal loans, the Obama Administration issued a memorandum on June 9, 2014 directing the Department to expand access to the PAYE plan so that all people with Direct loans could cap their monthly payments at 10% of their discretionary income regardless of when they took out the loans.[3] To implement the change, the Department held public hearings and convened a negotiated rulemaking committee to develop draft regulations.[4] Consumers Union served on the committee to represent the interests of consumer advocacy organizations.[5]

The committee achieved consensus on the proposed rule here, which would create a new income-contingent plan called Revised Pay As You Earn (REPAYE), as well as make changes to other aspects of the federal education loan system that we support. In particular, we are pleased that the consensus proposal would require FFEL servicers follow clear procedures to identify servicemembers eligible for interest rate reductions pursuant to the Servicemembers Civil Relief Act (SCRA). We also support the proposed treatment of lump sum payments made through various Department of Defense programs, to ensure they count as qualifying payments for Public Service Loan Forgiveness (PSLF).

In addition, we support the proposed expansion of circumstances under which a school with a very low participation rate index (PRI) can challenge or appeal a draft or official cohort default rate (CDR). This proposed change is crucial in particular for community colleges, where the vast majority of students do not leave school with debt. At schools with a very low PRI, the CDR may not be representative of the typical outcomes for former students of that school. We urge the Department to implement this change as soon as possible.

Our comments below focus on REPAYE in more detail, and recommend additional next steps for the Department as it implements this new program.

REPAYE

As a general matter, we are very pleased that the Department's proposal provides access to REPAYE for all Direct Loan borrowers (and FFEL borrowers who consolidate), regardless of when they took out their loans. Such broad access fulfills the Obama Administration's goals and provides crucial flexibility to people struggling to repay older loans. We are also pleased that the proposal:

- Eliminates the partial financial hardship (PFH) requirement to enroll in REPAYE. Borrowers should be able to enroll in REPAYE regardless of their debt-to-income ratio and have the security of knowing that their payments will fluctuate with their income. Those who earn less pay less, and those who earn more pay more; this is a more equitable result.
- Removes the standard repayment cap. This goes hand in hand with removing the PFH requirement, and enables higher-income borrowers to always pay 10% of their discretionary income even if such an amount is higher than it would be on the standard

[3] Memorandum, Presidential Memorandum – Federal Student Loan Repayments (Jun 9, 2014), *available at* https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments.

[4] Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings – William D. Ford Federal Direct Loan Program, 79 Fed. Reg. 75771 (Dec. 19, 2014).

[5] Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 39608, 39611 (proposed July 9, 2015).

10-year repayment plan. Borrowers who can pay down their loan balances faster should be allowed to do so.

- Limits interest charges for borrowers who can only afford to make interest-only payments. We support the proposed limit on interest charges at 50% of the remaining accrued interest while loans are in periods of negative amortization. This will help prevent ballooning balances for those who have high debt-to-income ratios.
- Protects married borrowers filing separately from unfairly high payments. The vast majority of married borrowers file joint taxes due to the monetary advantage it provides under our tax system. Those who file separately are likely to be estranged from their spouses or otherwise unable to access their income. In extreme cases, these filers may be survivors of domestic violence. We believe the Department has struck the right balance by allowing these borrowers to self-certify that they are separated from their spouses or otherwise unable to reasonably access their income information, and therefore should have their monthly payments calculated based solely on their own income – but without counting the spouse in their household size.
- Does not create a tiered structure for repayment periods based on the outstanding loan balance upon entering REPAYE. The compromise approach developed during negotiated rulemaking would produce less arbitrary outcomes, as discussed below.

Maximum repayment periods. We agree with the Department that it is important to target the benefits of REPAYE to the most vulnerable borrowers. To that end, we appreciate that the Department was willing to ensure that all borrowers with only undergraduate loans would pay for no more than 20 years under REPAYE.

The Department's first draft proposal during negotiated rulemaking would have extended repayment periods from 20 to 25 years for borrowers who had more than $57,500 in debt upon enrollment in REPAYE. At the negotiating table, the Department's stated rationale for this tiered structure was that those with higher debt balances were likely to have attended more years of school, and thus more likely to have higher incomes. As a result, the Department reasoned, these borrowers should pay over a longer period of time.

The proposal to create a tiered structure for maximum repayment was a topic of intense discussion during negotiated rulemaking. Some negotiators pointed out that a cap based on the balance at enrollment in REPAYE would unfairly burden undergraduate students who had to borrow the maximum current limit of $57,500 to pay for college, since interest would accrue and put their outstanding balances over that amount by the time they left school and entered repayment. Several negotiators felt that everyone enrolled in REPAYE should be asked to pay back their loans for no more than 20 years, given the long-term economic impact of having such debts. Others suggested an alternative approach of establishing a 20-year repayment period for all undergraduate students, and a 25-year repayment period for all graduate students. However, some negotiators felt this was unfair to students, because they would expect to repay their undergraduate loans over 20 years and might get caught off guard by discovering that their enrollment in graduate school suddenly triggers an extra five years of repayment – regardless of whether they borrowed any graduate loans.

The consensus proposal ensures that a student with only undergraduate loans will repay for a maximum of 20 years, while those who take on any graduate loans will repay all their loans over a maximum of 25 years. This compromise protects undergraduates, regardless of how much they borrowed, and especially protects those students who leave school without completing their undergraduate education. Students who leave college with debt and no degree are the most vulnerable to economic stress, and this proposal rightly ensures that they will not be burdened with an additional five years of repayment.

Nonetheless, we continue to believe that all borrowers, including those who take out graduate loans, deserve access to income-driven repayment plans that enable them to cancel any outstanding loan balances after 20 years. Given the number of crucial professions that require graduate study, such as teaching, social work, law and medicine – and the lack of guarantees that employees in such professions will either be high-earners or qualify for PSLF – a potential 25-year repayment period for these students could have a substantial impact on their financial health.

Interest capitalization. We also encourage the Department to consider whether additional cost controls for borrowers in REPAYE are feasible, such as removing interest capitalization. This would especially benefit those in REPAYE who have low incomes for many years during repayment and must make interest-only payments until their incomes rise.

Next Steps for the Department

The creation of a new repayment plan adds another layer to an already-complex system for federal loan repayment and servicing. In order to expand affordable options to everyone with federal loans, we urge the Department to take several additional steps to ensure that borrowers receive the information they need to understand their rights and enroll in plans that meet their needs. We also urge the Department to expedite its crucial interagency work with the Treasury Department and the Consumer Financial Protection Bureau (CFPB) to improve the performance of loan servicers in contract with the Department to administer these programs.

Testing communications with borrowers; pilot program. At the negotiating table, some negotiators discussed their personal experiences with annual IDR recertification. They mentioned confusing or vague communications from their servicers that did not clearly specify the deadlines for submitting updated income information in order to have their payments calculated as a percentage of their discretionary income. In response to this feedback, the Department announced its plans to conduct a pilot program with sample test messages to determine how best to brand and present important communications related to IDR recertification. We urge the Department to make their findings public and move forward as soon as possible to implement changes based on those findings.

Making it easier to recertify on an income-driven repayment plan. As the Department moves forward to implement the final rule, we hope that it will make more progress toward eliminating the paperwork burdens and processing delays that can cause borrowers to miss their recertification deadlines. We urge the Department and the IRS to implement a multi-year consent option as soon as possible, so that borrowers can have their income tax information sent automatically to their servicers each year. This would streamline the IDR recertification process and ease the burden on borrowers to submit additional paperwork each year. During the negotiated rulemaking process, the Department presented data showing that approximately 57% of all borrowers enrolled in IDR plans fail to recertify on time – but most ultimately do so within six months of their missed deadline.[6] We believe that better communications to

[6] U.S. Dep't of Educ., Sample Data on IDR Recertification Rates For ED-Held Loans, http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf (presented at Session 2).

borrowers about recertification deadlines, combined with the IRS multi-year consent option, will dramatically improve on-time recertification rates under IDR plans.

Giving consolidators credit for "time served." The consensus proposal does not address issues that arise for those who consolidate their loans and wish to take advantage of different IDR plans or seek to qualify for PSLF. Under current regulations, payments that borrowers make pre-consolidation do not count toward the relevant maximum repayment period or toward PSLF for the consolidation loan. With the creation of REPAYE, people holding older FFEL loans may wish to convert their loans into Direct Consolidation loans in order to be eligible to enroll in REPAYE, for example. We believe that any pre-consolidation payments a person has made on a previous IDR plan should count as qualifying payments toward maximum repayment under IDR plans, as well as PSLF.

Ensuring that public service employees receive clearer information about their potential eligibility for Public Service Loan Forgiveness (PSLF). According to the CFPB, approximately 1 in 4 employees in the U.S. is eligible for PSLF.[7] Unfortunately, many public service employees still don't know it exists, or how to meet the requirements over time to obtain the benefits of the program. We urge the Department to consider incorporating PSLF information into IDR application forms and related materials – for example, a brief description of how public service employees can qualify for PSLF, with a box for the applicant to check in order to request follow-up communications.

Improving the Federal Education Loan Servicing System. On March 10, 2015, the Obama Administration issued a Presidential Memorandum calling for a "student aid bill of rights" to be achieved through regulatory and legislative reforms. To that end, the Department has been charged with improving several aspects of the federal education loan servicing system, such as developing a single portal for all borrower queries, a robust complaints system, and a central database for tracking loan performance and other crucial data.[8] The Department must develop its plans in consultation with the CFPB, as well as the Treasury Department. We urge the Department to collaborate efficiently with Treasury and the CFPB, to ensure that servicers are properly executing their duties to borrowers.

We also encourage the Department to stay in close contact with the CFPB as it collects more information about education loan servicing practices. The CFPB recently published a request for information about common problems with servicing and suggestions for reform; it received over 30,000 public comments.[9] The CFPB can play an important role in helping the Department identify key areas for improvement of the servicing system as it conducts further supervision activities.

Conclusion

Students and families are struggling to pay for college, and the financial burdens they face from education debt pose serious long-term threats to their well-being. Those who have already borrowed loans must have broad and meaningful access to repayment plans that meet their

[7] Consumer Fin. Protection Bureau, What is Public Service Loan Forgiveness?, http://www.consumerfinance.gov/askcfpb/641/what-public-service-loan-forgiveness.html.

[8] Presidential Memorandum – Student Aid Bill of Rights (Mar. 10, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/03/10/presidential-memorandum-student-aid-bill-rights.

[9] Request for Information Regarding Student Loan Servicing, 80 Fed. Reg. 29302 (May 21, 2015).

needs. We appreciate the Department's hard work to develop this proposal, and look forward to further opportunities for collaboration.

Sincerely,

Suzanne Martindale
Staff Attorney