

February 10, 2023

The Honorable Dr. Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Notice of Proposed Rulemaking: Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program
FR Document: 2022–28605
Agency/Docket No.: ED–2023–OPE–0004

Dear Secretary Cardona:

We write on behalf of 11 diverse organizations to request additional time for the public to submit comments on the U.S. Department of Education’s (“Department”) Notice of Proposed Rulemaking entitled “Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program” (“IDR NPRM”), published on January 11, 2023.

The IDR NPRM proposes fundamental revisions to the repayment options available to student loan borrowers under the Department’s authority to create an income-driven repayment (“IDR”) plan, resulting in significant, enduring implications for taxpayers, current and future borrowers, and the Department. The 30-day period the Department has allotted for public comments does not provide sufficient opportunity for experts and members of the public who will face substantial impacts from the proposed rule to weigh fully its implications and offer meaningful input for the Department to consider as it develops its final regulations on this subject. The Department should offer at least an additional 30 days for the public to comment on the proposed rule and end the comment period no earlier than March 12, 2023.

The IDR NPRM completely reformulates the Department’s current IDR offerings, with far-reaching proposals to transform its regulations on discretionary income; payment amounts as a percentage of adjusted gross income; interest waivers; the impacts of deferments and forbearances on the timeline for the cancellation of remaining loan balances; treatment of spouses’ income for married borrowers; the timeline for loan cancellation; automatic enrollment in an income-contingent repayment plan; treatment of defaulted loans; application and annual recertification procedures; the consequences of failing to recertify one’s income and other information; and consolidation loans. The range and complexity of these interlocking proposals underscore the reasonableness of this request. Indeed, 60 days for the public to study and analyze the NPRM and to craft robust, meaningful, and impactful comments for the Department’s consideration is the minimum amount of time that the Department should provide.

The projected cost of the proposed rule alone provides a compelling reason to extend the comment period. The Department estimates that the budget impact of the proposed rule is \$137.9 billion, a massive sum but still an underestimate because the Department makes no attempt to consider the cost of borrowers currently enrolled in other repayment plans who will take up the program when it becomes available.¹ Independent analysis indicates that the costs of the proposed rule to taxpayers could exceed \$520 billion,² and this amount will jump even higher if the Supreme Court invalidates the President’s student loan cancellation scheme in *Nebraska v. Biden* and *Dep’t of Education v. Brown*,³ to be argued before the Court on February 28, 2023. The IDR NPRM also declines to provide estimates of the costs of its proposal in contributing to rising tuition and living expenses at postsecondary institutions and the inflationary impacts of the proposal on American consumers. As the Department’s proposed rule would benefit from extensive modeling of these costs and others that will necessarily result from the new IDR plan, we see no persuasive reason for the Department to limit its acceptance of such input to a mere 30 days following the publication of the proposed rule.

Allowing at least 60 days for public comment is standard practice under the governing authorities cited by the IDR NPRM. The “Invitation to Comment” section of the proposed rule seeks the public’s assistance “in complying with the specific requirements of Executive Orders 12866 and 13563”⁴ Executive Order 13563, “Improving Regulation and Regulatory Review,” states that “each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, *with a comment period that should generally be at least 60 days.*”⁵ Executive Order 12866, “Regulatory Planning and Review,” includes similar language: “[E]ach agency should afford the public a meaningful opportunity to comment on any proposed regulation, *which in most cases should include a comment period of not less than 60 days.*”⁶ The Department ought to observe the key orders that it cites.

Additional time for interested parties to submit comments is particularly appropriate in this case, where the Department has announced imminent plans for extensive rulemaking efforts on the following topics that impact higher education: accreditation and related issues; state authorization; return to Title IV; cash management; third-party servicers and related issues; deferments and forbearances; distance education; ability to benefit; gainful employment; factors of financial

¹ 88 Fed. Reg. 1894, 1920 (Jan. 11, 2023).

² <https://budgetmodel.wharton.upenn.edu/issues/2022/8/26/biden-student-loan-forgiveness>.

³ <https://www.forbes.com/sites/prestoncooper2/2023/01/11/bidens-quiet-student-loan-cancellation-income-driven-repayment-expansion/?sh=33afeadff4b0> (“[I]f the court strikes down the loan-cancellation scheme, as is likely, borrowers who would have received forgiveness will instead repay their loans through IDR. The cost of making IDR more generous will shoot up.”).

⁴ 88 Fed. Reg. 1894, 1895 (Jan. 11, 2023).

⁵ Executive Order 13563, Sec. 2(b) (emphasis added).

⁶ Executive Order 12866, Sec. 6(a) (emphasis added).

responsibility; standards of administrative capability; and certification procedures. In light of this expansive regulatory agenda, it is only reasonable for the Department to allow at least 60 days for the public to provide comments on its IDR NPRM.

We appreciate your timely consideration of this request, which we are happy to discuss with you.

Sincerely,

Robert S. Eitel
President and Co-Founder
Defense of Freedom Institute for Policy Studies

Beth Akers
Senior Fellow
American Enterprise Institute

Michael Brickman
Adjunct Fellow
American Enterprise Institute

Lindsey M. Burke, Ph.D
Director, Center for Education Policy
The Heritage Foundation

Preston Cooper
Senior Fellow
FREOPP

James Copland
Legal Scholar; Author, *The Unelected*

Brent Gardner
Chief Government Affairs Officer
Americans for Prosperity

Marc Goldwein
Senior Vice President and Senior Policy Director
Committee for a Responsible Federal Budget

Phil Kerpen
President
American Commitment

Meg Kilgannon
Senior Fellow for Education Studies
Family Research Council

Adam Kissel
Former Deputy Assistant Secretary
Office of Postsecondary Education, Higher Education Programs
U.S. Department of Education

Pete Sepp
President
National Taxpayers Union

Steven Taylor
Founder and Principal
ED2WORK®

David C. Tryon
Director of Litigation
The Buckeye Institute

David Williams
President
Taxpayers Protection Alliance

cc: Richard Blasen
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
Email: richard.blasen@ed.gov