April 25, 2023

The Honorable Nasser Paydar, Assistant Secretary
Office of Postsecondary Education
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 Dr. Paydar:

We write on behalf of the diverse organizations set forth below and call on the U.S. Department of Education ("Department") to withdraw its 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 fails to provide the public with an accurate estimate of the proposed rule's enormous costs, which the Congressional Budget Office ("CBO") states may run nearly $100 billion *more* than the Department projected in its proposed regulations.

The administration fashions the IDR NPRM as a radical transformation of student loan repayment options meant to help borrowers. In reality, the Department's income-driven repayment ("IDR") plan is an abuse of executive authority, an egregious overreach that spends billions of dollars not appropriated by Congress.[1] The IDR NPRM also proposes an irresponsible and woefully unfair plan that shifts from borrowers to taxpayers the obligation to pay for massive amounts of current and future student loan debt in a way that experts have characterized as creating an unauthorized and untargeted grant program.[2] The proposed regulations project that the budget impact of the

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[1] The proposed IDR plan is far removed from the budget neutral approach taken by the Clinton administration concerning the Student Loan Reform Act of 1993, which included income-contingent repayment as a critical component. During a Senate committee hearing in 1993, then Deputy Secretary of Education Madeline Kunin touted the proposed legislative reform "as a wash" in terms of cost. She also indicated that one goal of the Act was "to save taxpayers substantial sums of money." Student Loan Reform Act of 1993: Hearing Before the Comm. on Labor and Human Resources, United States Senate, One Hundred Third Congress, First Session (Statement of Hon. Madeline Kunin). See also, page 6 at https://www.urban.org/sites/default/files/2022-04/Income-Driven%20Repayment%20of%20Student%20Loans.pdf.

[2] *See, e.g.*, https://www.brookings.edu/opinions/bidens-income-driven-repayment-plan-would-turn-student-loans-into-untargeted-grants/ ("Almost all undergraduate and graduate students will be eligible

administration's proposed IDR program is $137.9 billion. This projection is recklessly inaccurate because the Department failed to include the costs of the future take-up rate of IDR plans under its proposal,[3] which will inevitably be higher than current IDR enrollment given the perverse incentives for students to borrow more under the NPRM's lucrative repayment terms. This oversight is inexplicable given that a major goal of the administration's proposed IDR plan is to attract more borrowers to its income-driven repayment scheme.

On February 10, 2023, several signatories to this correspondence sent a letter requesting that the Department provide at least an additional 30 days for the public to comment on the IDR NPRM. The letter argued that the 30-day public comment period did not provide sufficient opportunity for the public to weigh the NPRM's implications and offer meaningful input as the Department develops final regulations.[4] That letter specifically cited the Department's projected cost of the IDR NPRM as "a compelling reason to extend the comment period," warning that the Department was significantly underestimating the proposal's costs and citing multiple independent analyses indicating that the costs of the proposal would be substantially higher than the Department's projection.[5] We contended that the Department owed it to taxpayers to conduct extensive modeling of the costs of the new IDR plan and that there was no persuasive reason not to give commenters more time to model such costs.[6]

The Department simply rejected the request by these organizations, ignoring the concern that the 30-day comment period gave the public negligible time to model the costs of the Department's IDR proposal and to offer meaningful input regarding the accuracy of the Department's $137.9 billion projection. Instead, the agency chose to rush the NPRM comment period, which closed after 30 days on February 10, 2023. The Department's expedited rulemaking has not served the public interest.

Recent developments have validated the concerns expressed in our February 10th letter. On March 13, responding to a request from Dr. Virginia Foxx, Chairwoman of the House Committee on

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for reduced payments and eventual forgiveness under the proposal, which makes it effectively untargeted."); https://freopp.org/bidens-income-based-repayment-expansion-could-prove-costlier-than-loan-forgiveness-2b7ada225d36 ("For many borrowers, payments will be so low that their debts can hardly be called 'loans' at all. 'Backdoor free college' might be a more apt description."); https://www.urban.org/sites/default/files/2023-01/Few%20College%20Students%20Will%20Repay%20Student%20Loans%20under%20the%20Biden%20Administrations%20Proposal.pdf at 8 ("The Biden plan will transform IDR from a safety net that supports borrowers with low incomes into a substantial subsidy for most undergraduate students who take on debt.").

[3] 88 Fed. Reg. 1894, 1919 (Jan. 11, 2023) (hereinafter "IDR NPRM").

[4] https://dfipolicy.org/wp-content/uploads/2023/02/IDR-NPRM-Extension-Request-02.10.2023-final.pdf at 1.

[5] *Id.* at 2.

[6] *Id.*

Education and the Workforce, and Senator Bill Cassidy, Ranking Member on the Senate Committee on Health, Education, Labor, and Pensions, the Congressional Budget Office ("CBO") estimated that the proposals contained in the IDR NPRM would raise the cost of the federal student loan program by approximately $230 billion over the next ten years—$92.1 billion more than the Department projected in its IDR NPRM and *a figure that roughly equals the amount spent on Pell Grants for the last ten years (2013-2022)*.[7] The CBO reached this estimate in part by approximating the cost of existing borrowers' switching to IDR plans under the Department's proposal—a critical step that the Department failed to take in its IDR NPRM.[8] Additionally, the CBO projected that this cost would rise considerably in 2023 by another $46 billion if the U.S. Supreme Court strikes down the Biden administration's separate student loan cancellation plan later this year[9]—another projected cost that the Department declined to include in its analysis.[10]

The Administrative Procedure Act ("APA") requires federal agencies to provide notice of proposed rules and solicit public comment[11] to give the American people a meaningful opportunity to have their voices heard in the rulemaking process and to improve the quality of that process by ensuring that agencies fully assess and explain the implications and potential impacts of their proposals before they become effective.

We maintain that the Department should have extended the notice-and-comment period by 30 days or longer to allow adequate time for policy experts and economists, like those at the CBO, to model the costs of the rule and assist the Department in understanding its expected impacts on borrowers, taxpayers, the economy, and tuition and other higher education costs. Instead, the Department is bent on pushing through the unprecedented and massively expensive proposals contained in its IDR NPRM at breakneck speed without thoroughly understanding their costs and other impacts. This failure to engage in a deliberative and informed rulemaking process does a disservice to the American people, who will bear the costs for many years of the regulatory changes made pursuant to the IDR NPRM.

The colossal divergence between the Department's and CBO's cost projections regarding the IDR NPRM raises serious concerns about the Department's compliance with the APA. The CBO's projections (and other independent analyses, including those cited in our February 10th letter)

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[7] https://www.cbo.gov/system/files/2023-03/58983-IDR.pdf at 1. See the "estimated program costs" line on p. 2 of this document: https://www.cbo.gov/system/files/2022-05/51304-2022-05-pellgrant.pdf

[8] *Id.* at 7 ("Most of the differences between CBO's and the department's estimated costs stem from the department's assumptions that there would be no increase in enrollment in the proposed IDR plan among current or future borrowers and no increase in borrowing among eligible students in the future.").

[9] *Id.* at 2.

[10] IDR NPRM at 1919 ("This estimate is based on the President's Budget for 2023 baseline as modified to account for the PSLF waiver, the IDR waiver, the payment pause extension to December 2022, and the August 2022 announcement that the Department will discharge up to $20,000 in Federal student loans for borrowers who make under $125,000 as an individual or $250,000 as a family.").

[11] 5 U.S.C. § 553(b)–(c).

clearly demonstrate that the Department *could have* projected the costs of borrowers switching to IDR plans under the Department's proposal and the impacts of the Supreme Court's overturning the Biden administration's student loan cancellation plans, but simply declined to do so. The Department's failure to provide adequate analyses of the costs of the IDR NPRM deprived interested members of the public of the opportunity to offer input on a more accurate estimate of the program's costs and its impacts on the budget, higher education, and the American economy. The desire to make a program more politically palatable by arbitrarily affixing a price tag almost 70 percent lower than its true cost is not a basis for reasoned rulemaking; it is antithetical to the intent of the rulemaking process.

Rather than issue a final rule based on a flawed IDR NPRM and notice-and-comment process, we urge the Department to withdraw the NPRM.

We appreciate your timely consideration of this request.

Sincerely,

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