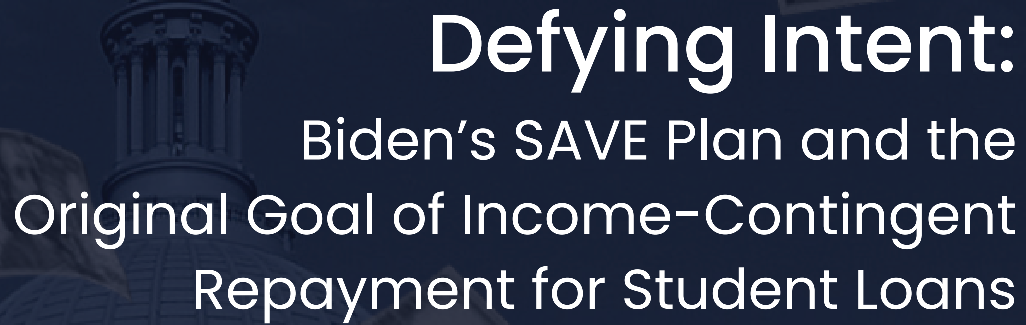

Defying Intent:

Biden's SAVE Plan and the Original Goal of Income-Contingent Repayment for Student Loans

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Key Points

In its regulations establishing a new income-driven student loan repayment plan called SAVE, the Biden administration has claimed legal authority far outside what Congress intended when it enacted the law. Lawmakers believed the authority would be used to create only limited income-driven repayment plans, not a sweeping loan forgiveness plan like SAVE. Specifically:

- The SAVE plan uses legislative authority that Congress intended to have minimal budgetary impact, but the Biden administration estimates that its SAVE plan will cost at least $156 billion over 10 years, while others estimate the cost will be closer to $500 billion.[1]
- Loan forgiveness is a central feature of SAVE, with large numbers of undergraduate borrowers expected to have balances cancelled after 10 to 20 years of repayment, including months when their payments were $0. Lawmakers did not originally intend for loan forgiveness to be a major benefit of income-driven plans and intended borrowers to repay for 20 or 25 years before having debt cancelled.
- SAVE provides "zero-dollar payments" for incomes that reach well into the middle-class, and it allows minimal payments (equaling 5% of "discretionary income") well into the upper-middle-class. The original law upon which Biden bases his claimed legal authority for SAVE was intended to provide a safety net only to low-income students. For other borrowers, it intended much higher monthly payments.

Congress intended income-driven repayment to be a flexible repayment option for borrowers with a last-resort loan forgiveness option that imposed negligible costs on taxpayers. The Biden administration's SAVE plan runs roughshod over those intentions, and it may not survive pending legal challenges as a result.

Introduction

The Biden administration began implementing a new income-driven repayment (IDR) plan for federal student loans in 2023 called Saving on a Valuable Education (SAVE). The SAVE plan is the latest version of a long string of IDR plans but is by far the most generous for borrowers and costly to taxpayers. The plan became only partially available in 2023 but will become fully available in 2024. Some borrowers have already received the plan's loan forgiveness benefits, however, because the Biden administration made key provisions retroactive.

All IDR plans, including SAVE, allow borrowers to make payments on their loans that are set to a share of their incomes rather than their balance or interest rate. Borrowers also qualify for cancellation of remaining balances after meeting certain repayment periods. Prior plans operate mainly as safety nets, especially for undergraduate borrowers. They provide flexibility in repayment amounts but require borrowers to pay for longer than the standard 10 years. Loan forgiveness occurs only after 20 or 25 years of monthly payments.

In contrast, loan forgiveness is a central feature of the SAVE plan, especially for undergraduate borrowers, because it requires much lower payments than other plans and earlier loan forgiveness. It also waives all unpaid interest monthly, unlike other plans. Several sources estimate that most undergraduate borrowers are likely to have at least some debt forgiven if they use SAVE.[2]

Due to these benefits, the Congressional Budget Office (CBO) estimates that the SAVE plan will increase the cost of the loan program by $15 billion a year, making it one of the costliest changes to the loan program ever.[3] Due to implementation of the SAVE plan and other Biden administration changes that interact with it, the student loan program is projected to cost nearly $42 billion in 2025, up from $12 billion in 2020.[4] These effects are no accident. The Biden administration has highlighted loan forgiveness benefits as a key feature of SAVE.[5]

The SAVE plan has prompted legal challenges both from Congress and from states that argue the administration lacks the legal authority to create such a costly plan that forgives so much debt. Republicans in the House and Senate sought to use Congressional Review Act procedures in 2023 to overturn the SAVE plan, although that effort failed to win approval by slim margins.[6] In separate cases led by Kansas and Missouri, several states challenged the constitutionality of the plan in federal court. [7] Those cases are pending.

This report informs the legal challenges to SAVE by examining the original intent of Congress when it created the authority that the Biden administration used to implement SAVE.

The SAVE Plan: Description and Background

During the 2020 campaign, President Biden proposed to change the terms of the IDR program for federal student loans. Several IDR plans existed at the time of the president's proposal and have been widely available to borrowers since 2009, although more-limited

versions have been available since the mid-1990s. About half of all outstanding federal student loans were enrolled in IDR before the president's proposed plan would become available.[8]

The administration's stated goals for this new IDR plan were to reduce required payments, make college debt burdens more manageable for low- and middle-income borrowers, and encourage more borrowers to enroll. The changes were also designed to ensure typical community-college borrowers were "debt-free within 10 years" and that borrowers earning less than a $15 hourly minimum wage would not need to make payments on their student loans.[9]

The administration did not pursue its IDR plan by seeking legislation in Congress, although Congress has enacted and modified IDR plans in the past. Instead, the administration initiated a rulemaking process in May 2021 to create the new plan using authority under the 1993 Omnibus Budget Reconciliation Act (OBRA).[10] This authority has been used four times prior to the Biden administration's actions (twice in the 1990s under the Clinton administration and twice in the 2010s under the Obama administration).

The Biden administration finalized the terms of its new IDR plan (SAVE) in July 2023, and it made some of its benefits available to borrowers that year with full benefits starting July 1, 2024.[11] SAVE is more generous than past IDR plans partly because payments are set at a smaller share of discretionary income (5% for undergraduates versus 10% to 20% on other plans) and more of a borrower's income is exempt from the payment calculation (225% of federal poverty guidelines versus 100% to 150% for other plans). All unpaid interest each month is also immediately eliminated, which is a new benefit compared with prior plans. Loan forgiveness occurs as early as 10 years for borrowers with original balances below $12,000 and increases by one year for each additional $1,000 in original debt. Under other IDR plans, loan forgiveness occurs at 20 or 25 years regardless of the amount borrowed. See Figure 1 for a full comparison of plans and terms.

Figure 1

	Income-Contingent Repayment	REPAYE	Income-Based Repayment and PAYE	SAVE
Income exemption	100% of poverty guideline ($15,060 for an individual)	150% of poverty guideline ($22,590 for an individual)	150% of poverty guideline ($22,590 for an individual)	225% of poverty guideline ($33,885 for an individual)
Assessment rate	Depends on initial debt level but cannot exceed 20%	10%	10%	5% of income for undergraduate debt/10% for graduate debt/weighted rate based on combined balance
Time to forgiveness	25 years	20 years for undergraduates/25 years for graduates	20 years	10 years if borrowed $12,000 or less, plus 1 year for each additional $1,000, up to 20 years for undergraduates/25 years for graduate borrowers
Interest subsidy	Unpaid interest forgiven only at 25-year point/balance can increase	Half of unpaid interest eliminated monthly/balance can increase	Unpaid interest forgiven only at 20-year point/balance can increase	Unpaid interest eliminated monthly/balance cannot increase
Loans eligible	Undergraduate/graduate	Undergraduate/graduate	Undergraduate/graduate	Undergraduate/graduate

A comparison of monthly payments helps illustrate the magnitude of these changes. Under the SAVE plan, a single borrower with a $50,000 annual income will pay $67 per month on his loan. Under prior IDR plans, his payment would be $228, $342, or $582, depending on the plan.

In addition to lower monthly payments, all undergraduate borrowers will have lower total payments under SAVE because SAVE waives all unpaid interest each month and loan forgiveness occurs earlier. For example, an Urban Institute analysis estimates that the typical associate degree recipient with federal loans would repay only 69% of their original loan balance if they use SAVE, compared with 111% under the most generous IDR plan that predates SAVE.[12] Borrowers with undergraduate certificates will typically repay just 35% of their original balances compared with at least 103% under the prior IDR options.[13]

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Those estimates are for typical federal student loan borrowers. Borrowers who use IDR, however, tend to have lower incomes and higher debts resulting in even lower repayment rates. According to the most recent Department of Education estimates of borrowers who will use SAVE, every $100 of debt repaid in the plan will cost taxpayers $59, triple the cost of a loan repaid in any of the other IDR plans prior to Biden administration policies.[14]

Congressional Intent and the 1993 IDR Authority

The IDR authority in the 1993 OBRA, under which SAVE was created, is vague and open-ended. That is because it was enacted as part of a sweeping reform of the student loan program in 1993 that moved the program from a bank-based guaranteed lending system to today's Direct Loan program. Direct loans and IDR were linked together as a policy reform because an IDR program was considered unworkable under the guaranteed loan approach (lenders would view the loans as risky and unprofitable).

Moving to direct loans made IDR possible, and so the IDR authority was added to the broader law enacting direct loans. But it was not Congress's main focus at the time. Creating the Direct Loan program was a far more important, complicated, and controversial task. Policymakers did not have the time or energy to sort out the details of a new IDR plan amidst these other larger reforms.[15] The solution was to put the IDR authority in law, but leave the details to the Secretary of Education.

Congressman Bill Goodling (R-PA), the ranking member on the House Education Committee

when the 1993 OBRA was enacted, described this dynamic in a retrospective article on the direct loan reforms.

> *Phasing out the old [guaranteed loan] program while at the same time developing a new [Direct Loan] program, balancing the desire for simplicity with the necessity for appropriate safeguards of federal funds, and the complexity of developing a workable income-contingent plan required a tremendous amount of consideration. These issues, which required the consultation and agreement of the Department of Education, the Department of Treasury, and the Office of Management and Budget, could not be fully explored and resolved in the short time frame that the reconciliation process afforded. Therefore, the Clinton Administration's proposals left many issues unresolved and granted broad discretion to the Secretary of Education to develop the program specifics. The Administration's plan was largely silent on one of the President's primary objectives, income-contingent direct lending.*[16]

The broad and open-ended nature of the IDR authority reflects this view. It allows the Secretary of Education to create IDR plans and specify when loans are forgiven and how much borrowers must pay monthly. It appears to give the secretary discretion to establish IDR payments at any share of a borrower's income that he wishes and to forgive remaining balances as early as he wishes – though repayment may not exceed 25 years. The relevant sections of the statute state:

> *[Borrowers may repay through] an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years…*
>
> *… Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.*

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There is little in the statute itself to limit or guide the secretary in how an IDR plan should be constructed or what Congress intended when it enacted the authority in 1993. A hyper-literal interpretation of this statute would not only allow for a plan like SAVE but also one in which borrowers pay just 1% of their income for 1 year and then have their outstanding debts forgiven.

The lack of details and parameters in the statute raises an important question with respect to the SAVE plan. Did Congress and the Clinton administration believe in 1993 that they were establishing the authority for the secretary to create the SAVE plan or an even more costly and generous plan?

> **The SAVE plan is far more generous and costly than what lawmakers and the Clinton administration envisioned the secretary would create when the 1993 OBRA was enacted.**

The simple answer is no. The SAVE plan is far more generous and costly than what lawmakers and the Clinton administration envisioned the secretary would create when the 1993 OBRA was enacted.

Despite the flexibility the 1993 OBRA granted to the secretary to design an IDR plan, Congress did not create the IDR authority in a vacuum. Lawmakers and the Clinton administration had a general sense of what the terms of the program should be, how generous the program should be for borrowers, and what it should cost taxpayers. These views and beliefs about IDR at the time reveal that the SAVE program is far outside the type of IDR plan lawmakers expected the secretary to create with the new authority. There are three themes that appear routinely in a review of the history of the IDR authority that support this conclusion.

1. Lawmakers assumed that the IDR plan the secretary would create would entail minimal or no budget costs. They expected few borrowers to have debt forgiven under the plan and that costs would be mostly offset by some borrowers paying for longer or avoiding default.

2. Lawmakers assumed that the secretary would set loan forgiveness at 20 or 25 years, but not earlier as SAVE does. Moreover, loan forgiveness was clearly an afterthought in the original debates about the authority and was not considered a valuable benefit for borrowers.

3. Lawmakers believed that appropriate monthly payments in an IDR plan should be much higher than those in the SAVE plan, requiring borrowers to pay more each month, increasing the odds they would fully repay before reaching the 25-year loan forgiveness point.

These three themes are each discussed in separate sections below.

The IDR Authority Was to Have Minimal Budget Costs

As stated earlier, the annual cost of the entire student loan program has increased from about $12 billion in 2020 to $42 billion in 2025.[17] IDR programs account for the entire cost of the federal loan program, and the SAVE program accounts for the vast majority of the recent runup in costs.[18]

Those figures are in stark contrast to what Congress and the Clinton administration believed the budget impact of IDR would be when they first gave the secretary authority to create such plans in 1993. All evidence suggests that they believed IDR would have a negligible cost, if any.

Loan Forgiveness Was Not a Central Feature of the IDR Authority

Loan forgiveness is the principal source of costs in the IDR program and the main subsidy students receive through the program. In the early 1990s, lawmakers and the Clinton administration clearly did not see loan forgiveness as a major feature of IDR like it is in SAVE. Discussions around the time that the IDR authority was enacted do not even mention loan forgiveness as a feature or benefit of IDR. Instead, supporters viewed the primary benefit of IDR as "flexibility" in repayment, and that it would also allow borrowers to pursue lower-earning careers in public service.

> "In the early 1990s, lawmakers and the Clinton administration clearly did not see loan forgiveness as a major feature of IDR like it is in SAVE."

This is illustrated well in a 1993 press release from the Clinton administration that proposed creating an IDR plan. The language is typical of the advocacy for IDR at the time. It repeatedly promotes IDR as a way to provide flexibility in repayment but does not mention that IDR would provide loan forgiveness.

> *The Administration's Student Aid Reform Act will provide all borrowers with flexible repayment options, including EXCEL Accounts, which allow borrowers to repay loans as a percentage of their incomes…*
>
> *…Providing a range of flexible repayment plans will allow students to enter lower-paying community service jobs without worrying about their debt burden and will reduce default rates [because borrowers can afford their payments] …*
>
> *…This income contingent repayment plan, together with other flexible repayment options, will give borrowers the opportunity to choose lower-paying service jobs regardless of the level of debt incurred while in school. This new plan will also help to*

reduce student loan defaults. Borrowers will have the opportunity to choose from a range of flexible repayment options to best fit their financial situation.[19]

The lack of loan forgiveness in discussions about IDR is one clue that the administration and IDR supporters believed it would have minimal budget costs. Discussions about the budget savings arising from the switch to direct lending provide additional evidence to the point.

Direct Loan Budget Savings Were Not Allocated to Fund IDR

As noted earlier, the IDR authority was created as part of a larger reform that moved the federal loan program to a direct lending system. The principal motivation for that reform was to generate budget savings, and the discussions about how those savings should be re-allocated suggest lawmakers believed IDR was not a costly new benefit.

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Budget agencies put the savings from the move to direct lending at about $2 billion a year at the time (about $4 to $5 billion in today's dollars).[20] Lawmakers and other IDR proponents wanted the savings to be spent on benefits for students, and discussions at the time indicated support for several options, but not IDR. None of the listed options in any of the discussions include the new IDR authority or a related loan forgiveness provision.

The options included reducing interest rates and origination fees charged to borrowers and in some cases funding larger Pell Grants or creating a tax deduction for student loan interest payments.[21] This indicates that lawmakers did not believe the IDR authority required any new spending or budget offsets.

In testimony before the Senate education committee, Deputy Secretary of Education Madeleine Kunin stated that under the Clinton administration's proposal:

> *…the general cost savings from direct lending will be passed on to borrowers in the form of reduced interest rates on their loans. The bill reported out by the House Education and Labor Committee, and supported by the President, includes additional savings for students in terms of reduced origination and insurance fees.*[22]

Nowhere in Deputy Secretary Kunin's testimony did she mention passing any of those savings on to borrowers by creating a generous IDR plan with large loan forgiveness benefits. She did not understand IDR to be a benefit that produces savings for students. This is surely because the Clinton administration did not view the option as generating a budget

cost, implying that the plan the secretary would eventually create would not have a budget cost.

Senator Edward Kennedy (D-MA), the chairman of the Senate education committee and a proponent of IDR, also wanted the savings from direct loans to be used on benefits for students. He too lists lower interest rates and fees, and does not mention IDR or its loan forgiveness benefits. In the same hearing where Deputy Secretary Kunin testified, Senator Kennedy stated in his opening remarks that there are only two ways the direct loan savings will be spent on students:

> *A direct loan system will produce important benefits. First, it will save substantial amounts over the current program—$2 billion a year when finally implemented—and enable us to pass these savings on to students. The savings to students are generated in two ways—by reducing the interest rates and origination fee they pay on their college loans.*[23]

The press release from the Clinton White House announcing the president's proposed IDR plan also states that savings from direct loans would be spent on lower interest rates and fees. Although IDR is part of that proposal, it is not mentioned as one of the benefits that would also require budget savings to finance. That is another indication the administration did not believe IDR would deliver large loan forgiveness benefits to borrowers. The 1993 press release states:

> *Part of the substantial savings achieved from lowering the cost of capital and eliminating profits will be used to reduce the interest rate for student borrowers, when the plan is fully implemented...*[24]

> *...these changes will streamline the system, reduce interest rates for students, and save taxpayers billions of dollars.*[25]

Policymakers Assumed IDR Costs Were a Wash or Self-Financing

In some cases, policymakers stated explicitly that they believed the IDR authority would have no budget costs,

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or that it should be designed to have no net budget impact. When Deputy Secretary Kunin was asked directly in a 1993 Senate hearing on the administration's direct loan and IDR proposal what the IDR provision would cost, she responded that while there would be loan forgiveness at around the 25-year point, the cost of forgiven loans would be offset by borrowers paying more in interest over an extended repayment term and because the more flexible repayment option would reduce costly defaults. In other words, IDR would not impose a new cost on taxpayers or the government.

> *As to what the cost of that would be, we see it as a wash. You would have some increased costs, obviously, in stretching out the loan and servicing that loan and all the administrative needs that go with that, but you would also have some savings in that you would eventually get paid, and even if you get paid $10 a week, it's better than getting paid nothing. So that is an advantage. And two, there would be interest charged on that, so it isn't like you are getting a free ride. The hard part is when do you cut it off. Do you say you are going to go to your grave owing your student loan after 40 years. So, there is a provision in the bill that says the Secretary will make some designation as to when you call it quits and you are forgiven. One possibility is around 25 years or so.*[26]

The Clinton administration adhered to the budget-neutral goal after the IDR authority was enacted in 1993 when it designed the repayment parameters for borrowers. According to a 1995 Congressional Research Service report:

> *The Administration sought to make the [IDR] plan as attractive as possible to borrowers to fulfill the President's campaign promise to make it easier for students to pay off loans and therefore pushed to keep the percentage of income assessed and the monthly payment amounts as low as possible. At the same time, an important consideration for the Administration was attempting to keep the proposed plan essentially cost neutral, i.e., not increase the subsidy rate over that without an income-contingent repayment option.*[27]

The idea that IDR was supposed to be budget neutral, or a "wash" as Kunin put it, is evident in other IDR proposals and discussions at the time. In the years leading up to the 1993 enactment of the IDR authority, several lawmakers had introduced different versions of the concept in legislation in the House and Senate. Some of these predecessor bills explicitly state the program must be "self-financing."

The idea that IDR was supposed to be budget neutral is evident in other IDR proposals and discussions at the time.

For example, Representative George Miller (D-CA) and Senator Bill Bradley (D-NJ) jointly sponsored the Self-Reliance Scholarship Act of 1991 that would have created a Direct Loan program and an IDR plan as the sole repayment option.[28] The proposal would have set up a revolving fund in the U.S. Treasury that would

issue loans and receive borrower payments. The bill gives the secretary some discretion in designing the exact repayment parameters but then stipulates that the trust fund must be self-financing. The disbursement and repayment amounts were intended to net out. Senator Bradley emphasized this requirement in a 1992 hearing before the House education committee.[29]

> Lawmakers believed IDR could be offered to borrowers at virtually no budget cost, which is how they likely believed it would be designed once the Secretary of Education was given the authority to set IDR's terms. The Biden administration has used that authority instead to enact a major loan forgiveness benefit that brings the annual cost of the loan program to nearly $42 billion.

It is clear that lawmakers did not intend for IDR to be used as a costly loan forgiveness program like SAVE. They believed it could be offered to borrowers at virtually no budget cost, which is how they likely believed it would be designed once the Secretary of Education was given the authority to set IDR's terms. The Biden administration has used that authority instead to enact a major loan forgiveness benefit that brings the annual cost of the loan program to nearly $42 billion.

Loan Forgiveness Was to Occur at 20 to 25 Years of Repayment

Until the Biden administration implemented SAVE, prior IDR plans had set loan forgiveness at 20 or 25 years no matter how much debt borrowers originally held. Under SAVE, however, forgiveness is linked to the amount students borrow and can occur as early as 10 years.

The 1993 IDR authorization specifies only a maximum repayment period of 25 years after which loans must be forgiven, and there is no minimum amount of time to which the secretary must adhere. Even though the IDR authority only sets a maximum repayment period, not a minimum, original discussions of the policy suggest that lawmakers believed that loan forgiveness should occur only after an extended period of repayment. The 20- and 25-year points are most frequently cited across a range of documents and proposed legislation.

A 1991 bill sponsored by Senator Edward Kennedy (D-MA) that would have created a Direct Loan program with IDR states that borrowers must repay "until such loan has been repaid or for 25 years after the borrower ceases to be enrolled in an institution of higher education on at least a half-time basis, whichever occurs first."[30] It sets the loan forgiveness point at 25 years exactly. Another proposal sponsored by Congressman Tom Petri (R-WI) from 1991 and 1993 also sets the loan forgiveness term at exactly 25 years.[31] That was also the time period the Clinton administration suggested in testimony before the Senate that was referenced earlier.[32]

There is some evidence that the 25-year loan forgiveness point was contested within the Department of Education when the Clinton administration was developing its IDR proposal. The disagreement was not, however, whether it should be earlier than 25 years, but whether 25 years was too early and whether 45 years was more appropriate to capture borrowers' peak earning years.[33] In other words, 25 years of payments was considered extremely generous and beneficial to borrowers.

When the Senate began drafting its version of the 1993 IDR authority, some consensus emerged around setting a 20-year time limit for repayment so that there would be some predetermined limit in the program. As a result, the Senate-passed version of the bill included a 20-year maximum, which some observers believed was a significant benefit, calling it "progressive" and "radical."[34] The House-passed version had no predetermined limit, leaving such a decision entirely up to the secretary. The conference agreement included a compromise at a 25-year maximum.

Another indication that 25 years was the intended loan forgiveness period occurred when the Clinton administration drafted the initial terms of an IDR plan after the 1993 authority was enacted. When the Department of Education solicited public comments on the proposal, which included a 25-year forgiveness term, several commenters noted that the exact wording of the statute allowed for earlier loan forgiveness and argued that some professions should qualify for earlier loan forgiveness. In response, Secretary of Education Richard Riley stated:

> *The Secretary is reluctant to shorten the 25-year loan forgiveness period for some borrowers because this approach would require the Secretary to determine which occupations and/or borrowers are most suited for this special consideration. The Secretary believes that each borrower is responsible for his or her own debt, and that the 25-year maximum repayment period generally encompasses the time period during which borrowers are most likely to experience widely fluctuating incomes. Although the statute permits contracting the 25-year forgiveness period, the Secretary believes that his interpretation of the statutory 25-year forgiveness rule is consistent with Congressional intent.*[35]

Secretary Riley's comment suggests that Congress intended for loan forgiveness to occur no earlier than 25 years, even though he acknowledges the statute allows for a shorter period. Secretary Riley's view is clearly consistent with other legislative proposals and discussions about loan forgiveness in IDR around the time it was enacted. Leading proponents of the 1993 IDR authority acknowledged that there should be some long-term maximum period after which loans would be forgiven, and there was consensus that that cutoff should be around 20 or 25 years.

Monthly Payments Were Intended to Be Much Higher Than Those in SAVE

The IDR proposals that lawmakers put forth in the early 1990s were also far less generous than the Biden SAVE plan in what they required borrowers to pay each month. These legislative proposals are another indication that when lawmakers deferred to the Secretary of Education to set IDR's monthly payment formula, there was some consensus around what terms were reasonable and appropriate.

Like the IDR authority that was ultimately enacted, these early legislative proposals deferred to the secretary to design some parameters of the plans, but they were more specific than the 1993 authority regarding how payments should be calculated. They differ slightly, but the consensus was that payments should be around 5% to 7% of total income (early proposals did not typically include an exemption like contemporary IDR plans) for most borrowers but that low-income or low-debt borrowers should repay at least 3% of their incomes.

Recall that the SAVE plan exempts 225% of the poverty guidelines from borrowers' income ($33,885 for a single individual) and then assesses a 5% rate to calculate monthly payments. A borrower in a one-person household earning $50,000 pays 1.6% of his total income under that formula. A borrower earning $100,000 pays 3.3% of his total income. A borrower earning $150,000 pays just under 4% of his total income.

Contrast those rates with the early 1990s proposals. Under proposed legislation by Senator Edward Kennedy (D-MA) in 1992 that was co-sponsored by the leading IDR proponents at the time (Senators Bradley [D-NJ], Simon [D-IL], and Durenberger [R-MN]), the secretary was to set payments at 7% of borrowers' total income, but borrowers with moderate or low debts (determined by the secretary) would pay lower rates of 5% or 3%, respectively. Not only are those higher than under SAVE, but the Kennedy proposal also specified that loan forgiveness would not occur until the borrower had paid for 25 years.[36]

The joint House-Senate bill sponsored by Representative George Miller and Senator Bradley, the Self-Reliance Scholarship Act of 1991, specified that payments should be 5% of a borrower's total income.[37] But low-income borrowers, those earning approximately $41,000 or less in today's dollars, would pay

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on a portion of their income, reducing the 5% rate to an effective rate around 3% of total income.[38] But even with those reductions, the lowest rates under the proposal were still above the rates in SAVE for lower income borrowers. Borrowers with moderate or high incomes under the Miller-Bradley bill (those with over approximately $93,000 incomes in today's dollars) paid higher effective rates than the specified 5%. A borrower earning $100,000 in today's dollars would have paid 7.5% of his total income toward his loan. That is more than double what the SAVE plan requires for that level of income. See Figure 2 for a comparison.

Other leading proponents of IDR in the early 1990s, Congressman Petri (R-WI) and Senator Dave Durenberger (R-MN), put forth the most detailed and specific IDR payment formula in their Income Dependent Education Assistance Act of 1991.[39] Payments in this plan were also generally higher than those required under SAVE, unless borrowers had low debts and high incomes and were likely to fully repay the loan anyway.

Payments under the Petri-Durenberger plan were a maximum of 20 percent of taxable income over the federal income tax standard deduction and personal exemption. But borrowers with lower incomes and debts paid less than the 20 percent according to a complicated sliding-scale "progressivity factor" specified in the bill. Those earning $30,000 with $30,000 in initial debt would pay about 6% of total income. The same borrower earning $50,000 would pay 4.3% of total income. The amount is lower than for a borrower with less income because the payment is based partly on the borrower's debt.[40] The Petri-Durenberger bill set a loan forgiveness point at exactly 25 years of payments.

Figure 2

Annual Payments as Share of Total Income for Different IDR Plans

Income	SAVE	Bradley-Miller	Petri[1]	Clinton[1]	Kennedy[2]
$15,000	0.0%	3.3%	2.3%	0.0%	7.0% (3%-5% if low debt)
$30,000	0.0%	3.3%	6.3%	7.4%	7.0% (3%-5% if low debt)
$50,000	1.6%	5.0%	4.3%	5.3%	7.0% (3%-5% if low debt)
$75,000	2.7%	5.0%	4.0%	4.4%	7.0% (3%-5% if low debt)
$100,000	3.3%	7.5%	3.3%	3.7%	7.0% (3%-5% if low debt)
$150,000	3.9%	7.5%	2.2%	2.8%	7.0% (3%-5% if low debt)

Note: Payments are for a single-person household in 2024. The Kennedy plan is S. 2255, 102nd Congress. The Bradley-Miller plan is S. 1562 and H.R. 3050, 102nd Congress. The Petri-Durenberger plan is S. 1645 and H.R. 2336, 102nd Congress. The Clinton plan is the final Income-Contingent Repayment plan implemented in 1996; it remains available today. Repayment terms have been updated for inflation and all amounts are in 2024 dollars.

1. The Petri and Clinton plans set payments relative to initial loan balance in addition to income. Therefore, for the same level of debt, payments decline as a share of income as income increases even though the borrower's nominal payment increases with income. These figures are based on a $30,000 loan at 5% interest.

2. The Secretary of Education would determine the low and moderate debt levels that qualified for the 3%-5% rate.

Source: Author's calculation.

The IDR plan that the Clinton administration implemented using the new authority under the 1993 OBRA provides another example of how policymakers believed payments should be higher than those under SAVE.

The Clinton administration actually developed two IDR plans. The first one was available for only a few years, after which the administration modified and replaced it with a new plan. The first plan set payments between 4% and 15% of a borrower's total income according to a sliding scale based on the borrower's debt.[41] The replacement plan, which is still available as the Income-Contingent Repayment plan, requires payments of 20% of a borrower's income above the poverty guideline, but there are additional formula elements that reduce the payment rate for low-income and/or low-debt borrowers similar to the Petri-Durenberger plan.[42]

In summary, none of the payment amounts proposed by lawmakers when the IDR authority was enacted were as low as those under the SAVE plan. There was a general consensus that reasonable payment rates should be at least twice as high as those under the Biden administration's SAVE plan, unless borrowers had very low incomes, low debts, or both.

Conclusion

In the 1990s, Congress and President Clinton recognized the value in providing borrowers with an IDR plan to repay their federal student loans. But devising the details was not a priority and was considered too complicated to conduct simultaneously with the creation of a politically contentious Direct Loan program. In response, Congress left the task of creating an IDR plan to the Secretary of Education. Even so, lawmakers still indicated through various channels the parameters they believed would be reasonable for the secretary to use in designing an IDR plan, even if they were not specified in the statute. The Biden administration's SAVE plan bears no resemblance to those expectations.

Enrollment in SAVE has been growing rapidly since it became available last year. Nearly eight million borrowers are currently enrolled, and that number could increase once the full terms of the plan become available later this year.[43] The Biden administration has already provided loan forgiveness to borrowers enrolled in the plan by making their past payments retroactively eligible to count toward the forgiveness period.[44] Despite these developments, the state lawsuits led by Kansas and Missouri against the SAVE plan have yet to be decided.

Courts may ultimately rule that the SAVE plan exceeds the authority provided to the Secretary of Education in the 1993 law or violates some other rule or procedure.

Whatever the outcomes in those cases, it is clear the SAVE plan is an enormous violation of the spirit of the law Congress thought it had passed. One can only conclude that had the SAVE plan been written directly into the 1993 legislation instead of vague authority granted to the Secretary of Education, it never would have passed Congress.

About the Author

Jason Delisle is a public policy expert in Washington, DC. His work focuses on higher education finance and regulation. Delisle started his career on Capitol Hill, first in the office of former U.S. Representative Thomas Petri (R-WI) and then as an analyst for the U.S. Senate Committee on the Budget. He has also been a project director at New America and a resident fellow at the American Enterprise Institute.

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Endnotes

1 https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/biden-income-driven-repayment-budget-update; https://www.federalregister.gov/documents/2023/07/10/2023-13112/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program-and-the-federal

2 https://www.brookings.edu/articles/bidens-income-driven-repayment-plan-would-turn-student-loans-into-untargeted-grants/; https://www.urban.org/sites/default/files/2023-01/Few%20College%20Students%20Will%20Repay%20Student%20Loans%20under%20the%20Biden%20Administrations%20Proposal.pdf

3 https://www.cbo.gov/system/files/2023-03/58983-IDR.pdf

4 https://www2.ed.gov/about/overview/budget/budget25/25pbapt.pdf (See page 6, line 1, New Loan Subsidies); https://www2.ed.gov/about/overview/budget/budget21/summary/21summary.pdf (See page 76, "Federal Direct Student Loans Program Account (HEA IV-D), 1. New loan subsidies")

5 https://twitter.com/WhiteHouseCEA/status/1773004929428226347

6 https://www.nasfaa.org/news-item/31569/GOP_Introduces_Resolution_to_End_New_SAVE_Student_Loan_Repayment_Plan#:~:text=GOP%20Introduces%20Resolution%20to%20End%20New%20SAVE%20Student%20Loan%20Repayment%20Plan,-By%20Maria%20Carrasco&text=Congressional%20Republicans%20on%20Tuesday%20introduced,Valuable%20Education%20(SAVE)%20plan.; https://www.congress.gov/bill/118th-congress/senate-joint resolution/43?q=%7B%22search%22%3A%22cassidy%22%7D&s=9&r=9

7 https://ag.ks.gov/docs/default-source/documents/1747fd3fa045c6d769d9bff0400a29f96.pdf; https://ago.mo.gov/wp-content/uploads/2024-4-8-Final-Complaint-Missouri-v.-Biden-002.pdf

8 https://www.cbo.gov/system/files/2023-03/58983-IDR.pdf

9 https://www.whitehouse.gov/briefing-room/statementsreleaes/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/

10 https://www.federalregister.gov/documents/2021/05/26/2021-11120/negotiated-rulemaking-committee-public-hearings. The authority to design and implement IDR plans was provided in the Omnibus Budget Reconciliation Act of 1993.

11 https://www.federalregister.gov/documents/2023/07/10/2023-13112/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program-and-the-federal

12 https://www.urban.org/research/publication/save-plan-student-loan-repayment

13 https://www.urban.org/research/publication/save-plan-student-loan-repayment

14 Author's calculation using subsidy and loan volume rates reported in the appendix to the president's budget request to Congress for FY2025 and prior years. https://www.whitehouse.gov/wp-content/uploads/2024/03/edu_fy2025.pdf

15 Steven Waldman, *The Bill: How Legislation Really Becomes Law: A Case Study of the National Service Bill* (New York: Penguin Books, 1995): 158, 221. This theme appears several times in Steven Waldman's book on the creation of a national service program under the Clinton administration entitled *The Bill*. Waldman notes during the drafting of the House and Senate versions of the direct lending bill, "The one thing as interesting as the debate on direct lending was the total lack of debate on pay-as-you-can [IDR] loans." During the House-Senate conference negotiation on the bill, Waldman again notes, "There had still been no discussion of pay-as-you-can [IDR] loans."

16 https://files.eric.ed.gov/fulltext/ED369990.pdf

17 https://www2.ed.gov/about/overview/budget/budget25/25pbapt.pdf; https://www2.ed.gov/about/overview/budget/budget25/25pbapt.pdf (See page 6, line 1, New Loan Subsidies); https://www2.ed.gov/about/overview/budget/budget21/summary/21summary.pdf (See page 76, "Federal Direct Student Loans Program Account (HEA IV-D), 1. New loan subsidies")

18 https://www.whitehouse.gov/wp-content/uploads/2024/03/edu_fy2025.pdf

19 https://clintonwhitehouse6.archives.gov/1993/04/1993-04-30-student-loan-reform-act-of.html

20 https://files.eric.ed.gov/fulltext/ED363187.pdf

21 https://files.eric.ed.gov/fulltext/ED345620.pdf

22 https://files.eric.ed.gov/fulltext/ED363187.pdf

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25 https://clintonwhitehouse6.archives.gov/1993/04/1993-04-30-student-loan-reform-act-of.html

26 https://files.eric.ed.gov/fulltext/ED363187.pdf

27 https://files.eric.ed.gov/fulltext/ED378875.pdf

28 https://www.congress.gov/bill/102nd-congress/house-bill/3050/text?s=1&r=4&q=%7B%22search%22%3A%22income-contingent%22%7D

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30 https://www.congress.gov/bill/102nd-congress/senate-bill/2255/text?s=5&r=7&q=%7B%22search%22%3A%22income-contingent%22%7D

31 https://www.congress.gov/bill/103rd-congress/house-bill/2073/text?s=5&r=1&q=%7B%22search%22%3A%22income+dependent+education+assistance%22%7D

32 https://files.eric.ed.gov/fulltext/ED363187.pdf

33 Waldman, *The Bill*, 157.

34 Waldman, *The Bill*, 157–58.

35 https://www.govinfo.gov/content/pkg/FR-1994-12-01/html/94-29260.htm

36 https://www.congress.gov/bill/102nd-congress/house-bill/2336?q=%7B%22search%22%3A%22income+dependent+education+assistance+act%22%7D&s=4&r=2; https://www.congress.gov/bill/102nd-congress/senate-bill/2255/text?s=5&r=7&q=%7B%22search%22%3A%22income-contingent%22%7D

37 https://www.congress.gov/bill/102nd-congress/house-bill/3050/text?s=1&r=4&q=%7B%22search%22%3A%22income-contingent%22%7D

38 See income information at https://nces.ed.gov/programs/coe/indicator/cba/annual-earnings.

39 https://www.congress.gov/bill/102nd-congress/house-bill/2336?s=3&r=87; https://www.congress.gov/bill/102nd-congress/senate-bill/1645/text?s=1&r=3&q=%7B%22search%22%3A%22Income+dependent+education+assistance%22%7D

40 Payments are calculated first as the amount required to fully repay the loan in fixed payments over 12 years, and then that amount is adjusted upward or downward based on the borrower's income. A borrower with a $30,000 loan at 5% interest would pay $3,330 annually under a 12-year amortization schedule. Lower income borrowers pay a fraction of that amount, but higher income borrowers pay the full amount or more, ultimately repaying the loan in full. Even though higher income borrowers are paying a smaller share of their incomes, their nominal payments are higher, and they will not have remaining debt when they reach the 25-year loan forgiveness point.

41 The formula established a very gradual increase in the payment rate relative to borrowers debts. A borrower with $1,000 in debt (1994 dollars) would have paid 4% of their total income; a borrower with $10,000 in debt would have paid 5.8% of their income; a borrower with $31,000 in debt would have paid 10% of their total income. The formula also limited payments to 20% of income above the federal poverty level, whichever was lower. https://www.govinfo.gov/content/pkg/FR-1994-12-01/html/94-29260.htm. See also for a discussion https://files.eric.ed.gov/fulltext/ED378875.pdf.

42 For the most recent description of the formula, see https://www.federalregister.gov/documents/2024/04/05/2024-07263/annual-updates-to-the-income-contingent-repayment-icr-plan-formula-for-2024-william-d-ford-federal. For the original discussion of why the Clinton administration changed its original formula to the current Income-Contingent Repayment plan, see https://fsapartners.ed.gov/knowledge-center/library/federal-registers/1998-06-29/secretary-education-proposes-amend-provisions-income-contingent-repayment-plan-under-william-d-ford-federal-direct-loan-direct-loan-program-regulations-secretary-amending-these-provisions-provide.

43 https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLPortfoliobyRepaymentPlan.xls

44 https://www.npr.org/2024/01/12/1224265472/student-loan-forgiveness-save-plan

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