



August 30, 2022

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin,

Thank you for your request to answer questions for the record regarding the Committee's hearing on student loans and bankruptcy reform. Below please find our answers. We look forward to working with you and other members of Congress on ways to make bankruptcy and other relief measures more accessible for student loan borrowers.

Questions from Senator Thom Tillis

- 1. My understanding is that the income driven repayment programs (IDR) have a number of issues. What are some easy steps Congress or the Department of Education can take to fill gaps in the IDR programs?**

We agree that there are steps that Congress and the Department of Education (ED) can take to improve existing IDR programs, which we have previously shared with Members of Congress and ED. We are encouraged to see that some of these proposals are being considered by ED in its current negotiated rulemaking on student loan programs. AccessLex Institute supports the following reforms:

- **Move to one IDR plan.** Keep the 10-year standard, graduated and extended plans for all borrowers, the five current IDR plans for *existing* eligible borrowers, and create a new IDR plan available to all existing Direct Loan borrowers who wish to enroll and the only income-driven option for *new* borrowers.
- **Borrowers that make more should pay more.** Base the percentage of discretionary income paid on the borrower's income. This would ensure that higher income borrowers who may not need as much help pay more.

- **Eliminate interest capitalization.** This process of adding unpaid interest that has accumulated on a loan to the outstanding principal balance causes debt balances to continue to grow over time making it harder for struggling borrowers to repay.
- **Include graduate borrowers.** Allow all borrowers to receive forgiveness after 20 years in repayment regardless of whether they borrowed for an undergraduate or graduate degree. This would ensure that graduate borrowers are treated fairly and not punished for pursuing advanced education.
- **Make loan forgiveness permanently tax-free.** Borrowers in IDR are likely the least able to afford a huge tax bill. While the *American Rescue Plan Act* makes debt forgiveness tax-free through 2025, Congress should make this permanent.
- **Eliminate the requirement of partial financial hardship.** Doing so would ensure that affordable repayment options are available to those who need it. This is a feature of the existing REPAYE plan.

2. What do you think about the concept of shortening the time for loan forgiveness under IDR for borrowers under a certain amount but extending it for borrowers with a graduate or professional degree?

This question raises two discrete issues: (1) shortening the time to loan forgiveness under IDR for borrowers that hold under a certain amount of student loan debt, and (2) extending the time to forgiveness for borrowers with a graduate or professional degree.

The first issue—shortening the time to forgiveness for low-balance borrowers—is an interesting proposal and one that has been offered by ED as part of its new IDR plan. We have not studied this issue in depth, but on its face, it seems it would be beneficial to borrowers with lower loan balances. Doing so would allow them to pay off their debts more quickly and, depending on how the plan is structured, would reduce the amount of accrued interest they would be required to pay.

Regarding the second issue, we do not believe that undergraduate and graduate borrowers should be subject to different payment lengths. This disparate treatment of graduate borrowers would further the troubling trend over the last decade of curtailing federal student loan and repayment benefits for this group. In recent years, graduate borrowers have been forced to endure the elimination of interest subsidies on student loans, take on higher interest rates than undergraduates, and accept a longer repayment term under REPAYE.

Graduate education provides benefits not only to the individual receiving the degree but, more importantly, to society as a whole. A more educated society tends to lead to an improved quality of life for all Americans through the services these individual members of society provide. Additionally, as a group, advanced degree holders have significantly lower unemployment rates than those with only a bachelor's degree or less,¹ thus strengthening

¹ U.S. Bureau of Labor Statistics, Education Pays, April 21, 2021, <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm>.

our economy. Making repayment more difficult, complex and expensive for these students seems to undermine the federal investment in higher education.

3. Should we require the DOE to automatically place borrowers in IDR programs or the lowest repayment option program instead of the standard repayment option?

Under existing IDR plans, as they are structured today, we do not believe the federal government should automatically enroll borrowers in an IDR plan. These plans are intended for borrowers who may have trouble making student loan payments under the Standard plan due to high debt, low income, or some other financial reason, and provide these borrowers with low monthly payments. But there are financial downsides to enrolling in an IDR plan for borrowers that are able to manage their monthly payments under the Standard plan, such as interest capitalization which causes loan balances to grow over time.

However, ED has put forth changes to the treatment of interest that could make defaulting borrowers into an IDR plan financially advantageous for more borrowers. First, ED has proposed eliminating non-statutory interest capitalization. Second, under the Biden-Harris Administration's newly proposed IDR plan, unpaid monthly interest would be covered by the government. With these two changes, we could reconsider our position on auto-enrolling borrowers in this new IDR plan.

4. What do you think about permanently providing zero interest loans to students? Would that make repayment easier and significantly reduce the number of defaults?

We believe that interest rates on federal student loans are too high. Whether or not it is feasible to set interest rates to zero given the cost to administer the federal loan programs, we believe they should be much lower.

As it is currently structured, the Direct Loan program is designed to generate a substantial profit to the federal government. This profit exists partly because the interest rates charged to students far exceed the rate at which the federal government can borrow money. To illustrate, the interest rates for the 2020-21 academic year were set at 4.30 percent and 5.30 percent for graduate students, at a time when the federal government could borrow for 30 years at a rate under 1.50 percent. These high interest rates contribute to ballooning student loan debts that borrowers are increasingly unable to pay. By significantly lowering interest rates, the federal government could help reduce costs for students while still generating sufficient revenues for the government to cover its programmatic costs, including the cost of capital, loan servicing, collection costs for defaulted loans and any losses due to defaults or other discharge of the debt.

Reducing or eliminating interest rates would allow borrowers to apply most or all of their monthly payments to the loan principal, thus allowing them to pay down their debt more quickly. Making repayment more affordable and manageable could also reduce the number

of defaults. According to a survey conducted by The Pew Charitable Trusts,² respondents who had defaulted on their student loans cited the following as reasons why their loans had defaulted: having other higher priority debt (72%), feeling overwhelmed (71%), and unaffordable payments (68%).

5. What steps should we take to reform the public service loan forgiveness program? Should we consider tightening the eligibility criteria but, in return, reducing the number of years needed for forgiveness?

There are a number of improvements that can be made to the Public Service Loan Forgiveness Program (PSLF). First, Congress should expand eligibility to Federal Family Education Loans and all loan repayment plans. The goal of the PSLF program has always been to incentivize people to enter into public service careers and borrowers should not be treated differently based on the type of loans they receive, or the type of repayment plan they enter.

Congress should also consider providing 50 percent forgiveness to borrowers after five years of public service and 100 percent after 10 years. While providing loan forgiveness after 10 years of public service is a generous policy, the length of time before forgiveness can be requested create issues. Specifically, borrowers may be unable to track down 10 years' worth of employment history or run into other logistical issues when attempting to confirm eligibility. Additionally, because of the high percentage of denials, borrowers may be reluctant to enter into a 10-year public service career out of fear of being denied loan forgiveness. Staggered forgiveness will allow borrowers to be partially rewarded after a shorter period in public service and help to lessen any issues that may arise from having to track 10 years' worth of qualifying information.

That said, there is no need to further tighten eligibility requirements for the PSLF program in exchange for this flexibility as the existing requirements are sufficiently stringent and keep the program narrowly tailored to encourage public service, as Congress intended.

In addition to the changes that Congress can make, ED is currently considering improvements to the PSLF program through the negotiated rulemaking process. We submitted [public comments](#) last month, which are summarized below.

- Count lump sum payments, payments made in multiple installments, payments made on a Direct Loan prior to consolidation, and certain periods of forbearances and deferments as qualifying payments
- Create a formal reconsideration process to allow borrowers to appeal a denied application

² The Pew Charitable Trusts, Government Hits Reset on Student Loan Defaults, But Many Could Experience Default Again, June 14, 2022, <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/06/14/government-hits-reset-on-student-loan-defaults-but-many-could-experience-default-again>.

- Use data matching to increase flexibility and efficiency in order to not require an application when feasible
- Eliminate the requirement to be employed by a qualifying employer at the time of forgiveness
- Provide forgiveness to otherwise eligible borrowers who engage in public service work through a contract with a qualifying employer

6. If we took all or some of these measures, would it significantly address the bulk or majority of concerns we are currently seeing in student loan debt and repayment?

The changes we propose above would go a long way in improving existing repayment programs and helping financially distressed borrowers but making bankruptcy protection more accessible is still needed.

Enrollment in an IDR plan is not a substitute for the fresh start afforded through bankruptcy and should not be relied on as such. First, borrowers with defaulted loans are not eligible for an IDR plan until their loans have been rehabilitated or consolidated into a Direct Consolidation Loan. Second, enrollment in an IDR plan should not foreclose a borrower's ability to pursue bankruptcy if needed. A bankruptcy judge will consider the specific circumstances of each individual case to decide whether discharge is appropriate. Finally, participation in an IDR plan can impose burdens on the borrower that are at odds with the fresh start goal of the Bankruptcy Code. For example, accrued interest and other charges can increase the amount of debt over the life of the loan. Additionally, at the end of the 20 to 25-year IDR payment term, a borrower could owe a significant amount of tax liability on the forgiven debt. In contrast, discharge of student loans in bankruptcy would give the borrower the opportunity to use his or her fresh start to improve their financial situation.

Therefore, in addition to the changes we propose to IDR plans and the PSLF program, we ask Congress to also consider changes to the treatment of student loans in bankruptcy.

While technically permitted by law, discharging one's student loans in bankruptcy is nearly impossible in practice. Changes made over the last 45 years to the Bankruptcy Code, coupled with the application of stale legal precedent, have resulted in unintended hurdles to the discharge of student loans in bankruptcy. AccessLex has long advocated for easing the dischargeability of student loans in bankruptcy. Under our [proposal](#), both federal and private student loans would be eligible for discharge without the need to demonstrate undue hardship after a 7-year waiting period. Loans in repayment less than seven years, as well as loans eligible for an IDR plan, would continue to be subject to the undue hardship requirement. We believe this proposal effectively balances the needs of struggling borrowers, the federal investment in higher education and responsible stewardship of taxpayer dollars.

Thank you for this opportunity to provide answers to these critical questions about how best to support federal student loan borrowers. If you have any questions or would like additional information, you can reach me at cchapman@accesslex.org. You can also contact Nancy Conneely, our Managing Director of Policy, at nconneely@accesslex.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris S", written in a cursive style.

Christopher P. Chapman
President and Chief Executive Officer