



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Issue Paper #10: Income-driven Repayment Plans
Session 2: November 1-5, 2021

§ 685.209 Income-driven repayment plans.

(a) **General.** Income-driven repayment (IDR) plans are plans that are intended to keep payments affordable to borrowers by basing payments on income and family size instead of loan debt and interest rate. There are 5 IDR plans:

- (1) The Income-Contingent Repayment (ICR) Plan;
- (2) The Income-Based Repayment (IBR) Plan;
- (3) The Pay As You Earn (PAYE) Repayment Plan;
- (4) The Revised Pay As You Earn (REPAYE) Repayment Plan; and
- (5) The Expanded Income-Contingent Repayment (EICR) Plan.

(b) **Definitions.**

(1) **Other definitions** TK

(2) **Partial Financial Hardship** means a circumstance in which the amount a borrower (and, as applicable, the borrower's spouse) would pay on the 10-year standard repayment plan on eligible loans for the purposes of proration is more than what the borrower would pay on the IBR or PAYE Plan as determined under subsection (e). To determine whether the borrower has a partial financial hardship, the Secretary uses the greater of the balances that were outstanding on the borrower's eligible loans at the time the borrower entered repayment on the loans or the balances on those loans that were outstanding at the time the borrower requested to enter the IBR or PAYE Plan and takes a spouse's income and loan debt into consideration consistent with subsection (d).

(3) **Eligible new borrower** means for the purpose of the PAYE Plan means an individual who -

- (A) Has no outstanding balance on a Direct Loan Program loan or a FFEL Program loan as of October 1, 2007, or who has no outstanding balance on such a loan on the date he or she receives a new loan after October 1, 2007; and
- (B) Receives a disbursement of a Direct Subsidized Loan, Direct Unsubsidized Loan, student Direct PLUS Loan, or a Direct Consolidation Loan on or after October 1, 2011.

(4) **New borrower** means for the purposes of the IBR Plan means an individual who has no outstanding balance on a Direct Loan Program or FFEL Program loan on July 1, 2014, or who has no outstanding balance on such a loan on the date he or she obtains a loan after July 1, 2014.

(5) **Eligible loans for the purposes of proration** means loans under subsection (d) as well as FFEL Stafford Loans, FFEL PLUS Loans made to graduate/professional students, and FFEL Consolidation Loans that did not repay a FFEL, or Direct PLUS Loan made to a parent borrower.

(6) **Discretionary income** means for the ICR plan, the difference between the applicable total income determined in accordance with subsections (e) and (l) and 100 percent of the applicable poverty guideline; for the IBR, PAYE, REPAYE, and EICR plans, it means the difference between the applicable total income and 150% of the applicable poverty guideline or \$0, whichever is greater.

Commented [A1]: For Negotiators: TK means "to come." It represents areas where we are interested in suggestions for thresholds or concepts and how one might choose to justify those numbers.

Commented [A2]: For Negotiators: While we believe that we have captured the essential definitions, we recognize that more may need to be added. Can negotiators think of any terms we should add?

(7) **Family size** means the number of individuals that is determined by summing:

(A) For all IDR plans, the borrower;

(B) For the ICR, IBR, and PAYE plans, the borrower's spouse

(C) For the REPAYE plan, the borrower's spouse, but only if the spouse's income is included in the calculation of the borrower's monthly payment amount under subsection (e);

(D) For all IDR plans, the borrower's children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower; and

(E) For all IDR plans, other individuals if, at the time the borrower certifies family size, the other individuals live with the borrower and receive more than half their support from the borrower and will continue to receive this support from the borrower for the year for which the borrower certifies family size.

(8) **Support** includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(9) **Poverty guideline** refers to the income categorized by State and family size in the poverty guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(c) **Borrower eligibility.**

(1) Borrowers are eligible for the ICR, REPAYE, and EICR plans if they have eligible loans;

(2) Borrowers are eligible for the IBR Plan if they have eligible loans and have a partial financial hardship when they initially enter the plan; and

(3) Borrowers are eligible for the PAYE Plan if they have eligible loans, are an eligible new borrower, and have a partial financial hardship when they initially enter the plan.

(d) **Loans eligible to be repaid under an IDR plan.**

(1) For ICR, IBR, PAYE, and REPAYE plans, eligible loans are Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans for graduate/professional borrowers, and, except for the ICR plan, Direct Consolidation Loans that did not repay a Direct or FFEL PLUS Loan for parents;

(2) For the ICR plan, eligible loans also include Direct Consolidation Loans that repaid a Direct or FFEL PLUS Loans for parents;

(3) For the EICR plan, eligible loans are TK.

(e) **Treatment of married borrowers.**

Commented [A3]: For negotiators: We are interested in feedback on the types of loans here and considerations of how loan type eligibility interacts with cost and potentially other design parameters.

Note: The statute is clear that FFEL loans are not eligible for ICR plans.

Income driven repayment proposed regulatory text session two 3

(1) Income. Unless a married borrower certifies that the borrower is separated from the borrower's spouse or unable to reasonably access the spouse's income, a spouse's income is included in the calculation of the borrower's monthly payment amount for the tax year of the income the Secretary uses to calculate the borrower's monthly payment under the following conditions:

(A) For the ICR Plan, if the borrower and spouse file a joint Federal income tax return or the borrower and spouse elect to repay their Direct Loans jointly under the ICR plan;

(B) For the IBR or PAYE plans, if the borrower and spouse file a joint Federal income tax return; and

(C) For the REPAYE plan, regardless of whether the borrower and spouse file a joint Federal income tax return.

Commented [A4]: For negotiators: We are interested in thoughts as to whether EICR should go under (B) or (C).

(2) Loan debt.

(A) For the IBR, PAYE, REPAYE, and EICR plans, the spouse's eligible loan debt for the purposes of adjusting the payment amount and to perform the calculation as described in subsection (g), is included in the calculation of the borrower's monthly payment amount if the spouse's income is included in the calculation of the borrower's monthly payment amount.

(B) For the ICR plan, the spouse's loans meeting the criteria of paragraph (d)(2) of this section are only included in the calculation of the borrower's monthly payment amount if the borrower elects to repay the borrower's eligible Federal student loans jointly under the ICR plan.

(f) **Setting payment amounts.**

Commented [A5]: For negotiators: This would eliminate existing rules in which we round payments that are \$5 or less to \$0 and those that are \$5 to \$10 to \$10.

(1) For the ICR Plan, payments are the lesser of:

(A) What the borrower would have paid under a repayment plan that is based on a 12-year repayment plan and that has fixed payments, based on the amount that borrower owed when the loan entered the ICR plan multiplied by a percentage based on income established by the Secretary in a Federal Register notice updated annually to account for inflation; or

(B) 20% of discretionary income, divided by 12.

Commented [A6]: For negotiators: This would replace IDR payment application rules, which currently prioritizes fees and collection costs (which we don't charge to borrowers in IDR) instead of interest.

(2) For those who are not new borrowers under the IBR Plan, payments are the lesser of:

(A) 15 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR Plan.

(3) For new borrowers under the IBR Plan and for all borrowers on the PAYE Plan, payments are the lesser of:

(A) 10 percent of discretionary income, divided by 12; or

(B) What the borrower would have paid on a 10-year standard repayment plan based on the loan balance and interest rate that were applicable to the loans at the time the borrower entered the IBR or PAYE plans.

(4) For the REPAYE Plan, payments are 10 percent of discretionary income, divided by 12.

(5) For the EICR Plan, payments are TK percent of discretionary income, divided by 12.

(6) For all IDR plans, a borrower's payment will be \$0 if the borrower's discretionary income is equal to or less than the applicable poverty guidelines.

(g) **Adjustments to monthly payment amounts.** Payments calculated under paragraph (f) are adjusted in the following circumstances:

(1) In cases where the spouse's loan debt is included in the borrower's monthly payment amount, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's eligible loans for the purposes of proration and dividing that by the couple's combined outstanding principal and interest balance on eligible loans for the purposes of proration.

(2) In cases where the borrower also has loans made under the FFEL Program, the borrower's payment is adjusted by taking the outstanding principal and interest balance of the borrower's loans eligible to be repaid under an IDR plan and dividing that by the borrower's outstanding principal and interest balance on eligible loans for the purposes of proration.

(h) **Interest subsidies.**

(1) For the ICR Plan, there are no interest subsidies;

(2) For the PAYE and REPAYE plans, there is an interest subsidy on Direct Subsidized Loans and Direct Subsidized Consolidation Loans that a borrower is eligible to receive during first 3 years of repayment under the PAYE and REPAYE plans, but only when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in such cases, the Secretary credits the borrower's account with an amount equal to the amount of interest not covered by the borrower's payment;

(3) For the IBR Plan, the 3-year period described in paragraph (2) is suspended for any month during which the borrower is not obligated to make a payment because they are in an economic hardship under § 685.204(g);

(4) For the REPAYE plan, following the 3-year period described in paragraph (2) for Direct Subsidized Loans and Direct Subsidized Consolidation Loans, and during all periods of repayment under the REPAYE Plan on all other loans eligible to be repaid under REPAYE, there is an interest subsidy when the amount of the payment attributable to the loans is less than the amount of interest accruing on such loans; in

Commented [A7]: For negotiators: Today, if the borrower leaves the REPAYE plan voluntarily or otherwise, if they try to get back into REPAYE, we calculate what the borrower's payment would have been in REPAYE for the time they weren't in repayment and then adjust the new REPAYE payment upwards where we found the borrower got a lower payment by leaving REPAYE. The total amount of the difference is amortized over the remainder of the REPAYE forgiveness clock.

Commented [A8]: For negotiators: We are interested in possible alternative ways to address payments. For example, should we consider a marginal approach in which amounts just over the \$0 payment threshold have a lower payment rate. We are open to suggestions on other ways to consider targeting, which could include concrete thresholds based on actual dollar earnings, not calculating it on a marginal basis, or other ideas.

We would also appreciate a sense of prioritization between: lower payment rates, higher income exemptions, interest benefits, and forgiveness timelines.

Commented [A9]: For negotiators: we would like feedback on whether this plan should be set as one percentage for all borrowers regardless of income, or a marginal approach that could result in a lower percentage for the lower incomes. The latter approach would look like the below:

TK percent of the portion of discretionary income that are greater than 150 percent of the applicable federal poverty guideline and less than or equal to TK percent of the applicable federal poverty guidelines, divided by 12, plus

TK percent of the portion of discretionary income that are greater than TK percent of the applicable federal poverty guidelines, divided by 12.

such cases, the Secretary credits the borrower's account with an amount equal to half of the amount of interest not covered by the borrower's payment; and

(5) For EICR, in cases where the borrower's monthly payment is scheduled to be \$0, TK percent of interest is not charged to the borrower.

(i) **Changing repayment plans.** Borrowers may change between IDR plans for which they are eligible or leave an IDR plan for another repayment plan for which they are eligible.

(j) **Interest capitalization.**

(1) For the ICR, REPAYE, and EICR plans, interest only capitalizes when it otherwise would under § 682.202(b).

(2) For the IBR or PAYE plans, interest capitalizes when the borrower's payment becomes the amount under paragraphs (f)(2)(B) and (f)(3)(b), except that when payments are set based on paragraph (f)(2)(A) and (f)(3)(A), interest capitalization rules under § 682.202(b) are suspended.

(3) For the IBR Plan, interest also capitalizes when the borrower's payments are set in accordance with subsection (f)(2)(b) or when the borrower leaves the IBR Plan.

(k) **Forgiveness.**

(1) For borrowers repaying under ICR, for borrowers repaying under the IBR plan who are not new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying at least one loan received for graduate or professional study, including a Direct Consolidation Loan that repaid one or more loans received for graduate or professional study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 300 monthly repayment obligations under paragraph (3);

(2) For borrowers repaying under PAYE, for borrowers repaying under the IBR plan who are new borrowers, and for borrowers repaying under the REPAYE and EICR plan who are repaying only loans received for undergraduate study, including a Direct Consolidation Loan that repaid only loans received for undergraduate study, the borrower receives forgiveness of the remaining balance of the borrower's loans after the borrower has satisfied 240 monthly repayment obligations under paragraph (3);

(3) For all IDR plans, the following can lead to the borrower satisfying a monthly repayment obligation:

(A) Making a payment under an IDR plan, including payments that are calculated to be \$0, regardless of whether the payment was satisfied early or late;

(B) Making a payment under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;

(C) Making a payment under a repayment plan with payments that are as least as much as they would have been under the 10-year standard repayment plan under § 685.208(b), regardless of whether the payment was satisfied early or late;

(D) Deferring or forbearing monthly payments for the following reasons:

Commented [A10]: For negotiators: This would eliminate the complexity around IBR today related to leaving IBR for standard and then only being able to leave for another plan if you make the payment or enter a reduced-payment forbearance of \$5 and paying that amount.

- (i) A cancer treatment deferment under 455(f)(3) of the Act;
- (ii) A Peace Corps service deferment under §682.210(k), as applicable to Direct Loan borrowers under §685.204(j);
- (iii) An economic hardship deferment under §685.204(g);
- (iv) A military service deferment under §685.204(h);
- (v) An administrative forbearance or mandatory administrative forbearance under § 685.205(b);
- (vi) A medical or dental internship or residency forbearance under § 685.205(a)(3);
- (vii) A national guard duty forbearance under § 685.205(a)(7); or
- (viii) A Department of Defense Student Loan Repayment forbearance under § 685.205(a)(9)

(l) **Procedures.**

- (1) To enter any IDR plan, and except as provided under TK, the borrower must complete an application on a form approved by the Secretary;
- (2) As part of the process of completing a Master Promissory Note or a Loan Consolidation Promissory Note, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act;
- (3) As part of the application for an IDR plan, and if the borrower has not already done so, the borrower must consent to the disclosure of applicable tax information under §§ 455(e)(8) and 493C(c)(2) of the Act;
- (4) The Secretary uses the borrower's consent under paragraphs (2) and (3) to obtain the borrower's income and family size from the Internal Revenue Service;
- (5) If the Secretary cannot obtain the borrower's income and family size from the Internal Revenue Service, the Secretary requires the borrower and spouse, as applicable, to provide documentation of applicable income and family size information;
- (6) After the Secretary obtains sufficient information from the borrower or otherwise to calculate the borrower's monthly payment amount, the Secretary calculates the borrower's payment and establishes the 12 monthly repayment obligations for which the borrower will be obligated to make a payment in that amount;
- (7) The Secretary then sends to the borrower a repayment disclosure outlining the borrower's payment amount, explains in general terms how the payment is calculated, informs the borrower of the procedures that will be followed under this subsection, and requests that the borrower contact the Secretary if the payment amount disclosed to the borrower is unaffordable to the borrower;
- (8) If the borrower contacts the Secretary and indicates the payment amount is not reflective of the borrower's income or family size, the Secretary allows the borrower to submit alternative documentation of income or family size not based on tax information to account for circumstances such

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as a decrease in income since filing a tax return, separation from a spouse following filing taxes jointly with that spouse, the birth or impending birth of a child, or other comparable circumstances;

(9) If the borrower provides alternative documentation under paragraph (8) or the Secretary must obtain documentation from the borrower or spouse under paragraph (5), the Secretary places the borrower's loans into an administrative forbearance under § 685.205(b)(9) to promptly process the borrower's application and information;

(10) On an annual basis the Secretary follows the procedures in paragraphs (4) through (9) once the borrower only has 3 monthly payments remaining under the 12-month period specified under paragraph (6).

(11) If the Secretary requires information from the borrower under paragraph (5) to recalculate the borrower's monthly repayment amount under paragraph (10), and the borrower does not provide the necessary documentation to the Secretary by the time the last payment is due under the 12-month period specified under paragraph (6), then:

(A) For the IBR and PAYE plans, the borrower's monthly payment amount is the amount under paragraph (f)(2)(B) or (f)(3)(B);

(B) For the ICR Plan, the borrower's monthly payment amount is the amount the borrower would have paid under a 10-year standard repayment plan based on the loan balance and interest rate that existed for the loan when the borrower entered ICR;

(C) For the REPAYE Plan, the borrower is removed from the REPAYE plan and placed into an alternative repayment plan under § 685.208(j) with fixed payments that are amortized over a period of time that is equal to the lesser of:

(i) 10 years; or

(ii) The remaining period of time that the borrower would have needed to repay loans under the REPAYE plan to receive forgiveness under subsection (j);

(D) For the EICR Plan TK.

(12) At any point during the 12-month period specified under paragraph (6), the borrower may request that the Secretary recalculate the borrower's payment earlier than would have otherwise been the case to account for a self-reported change in the borrower's circumstances; in such cases, the 12-month period specified under paragraph (6) is reset based on the borrower's new information.

(13) The Secretary tracks a borrower's progress towards eligibility for forgiveness under subsection (k) automatically and forgives loans that meet the criteria under subsection (k) without the need for an application or documentation from the borrower.

Commented [A12]: For negotiators: We would like feedback on what a borrower's payment should be if they do not recertify.