

To: RISE Negotiated Rulemaking Committee

From: Tamar Hoffman and Ashley Naporlee, Negotiators on behalf of Legal Aid, Civil Rights, and Consumer Rights Advocates

Date: November 5, 2025

Re: **Application of payments in excess of a single months' payment for borrowers repaying under RAP**

Issue: During the negotiated rulemaking on November 4, 2025, the Department of Education proposed new regulatory language for 685.209 that provides that payments made by borrowers repaying under RAP that exceed the monthly payment—which are operationally determined to be forward payments unless borrowers specifically request otherwise—are not eligible for the interest subsidy and principal matching features of RAP, which avoids negative amortization of the loan *and* ensures that the total loan balance is reduced for each month paid under the plan. The Department also proposed new language in 685.219 that excludes forward payments made by borrowers repaying under RAP from being “qualifying payments” under PSLF. These changes have the effect of punishing diligent borrowers who (1) seek to make advance payments when they are able to, or (2) have all or a portion of their student loans paid in annual lump sums on their behalf by their employers, such as AmeriCorps and some military employers. Notably, the borrowers who will be most impacted are low-income borrowers whose monthly RAP payments would not cover the entire interest portion of their payment or otherwise cause their student loan balance to be reduced by \$50 per month. Low-income borrowers are also likely to make their payments intermittently when they have the scarce resources to do so, such as when they get their annual tax refund, and low-income borrowers depend on the principal and interest subsidies to ensure that they can make progress in paying down their loans.

What We Are Proposing: When borrowers repaying under RAP make a payment that exceeds their monthly payment due, the payment should be applied using the following waterfall:

- First to the monthly payment due under RAP.
- Second, the remainder should default to forward payments under RAP for the remainder of the term until the borrower is next required to recertify within the 12-month period. Borrowers can specifically designate that their payment in excess of the monthly payment be applied as an extra payment to their balance rather than as forward payments and that their due dates not advance, but the default rule will be that the payments are forward payments until the next recertification deadline.
- Third, forward payments made until the next recertification deadline are not late payments, and thus will be treated as on time payments and thus eligible for the interest subsidy, principal match, and will be qualifying payments for both RAP and PSLF. This will ensure that the total loan balance is not negatively amortized/doesn't increase and is reduced by the lesser of the amount of the monthly payment or \$50 for each forward payment month using the interest subsidy and principal matching features of RAP. The forward payments made until the next recertification deadline will count as qualifying payments towards loan forgiveness or discharge pursuant to 685.209 and 685.219.

- Fourth, any additional remainder beyond that needed to cover forward payments until the next recertification deadline, including any additional payments made, after the forward payments until the next recertification deadline, will apply toward the remaining balance and will not further advance due dates.

We are happy to work with the Department to draft regulatory language that reflects this proposal, but had not done so yet to avoid a versioning issue with the Department's latest drafts since some of the applicable language was marked as (TK) as opposed to assigned to a specific subsection.