

To: RISE Rulemaking Committee

From: Tamar Hoffman, Ashley Naporlee (representing legal aid, civil rights, and consumer rights)

Date: October 10, 2025

Memo: Proposal to Remove References to “Applicable Amount” in 34 CFR 685.209 for Accuracy and Consistency with OBBB

The Department of Education proposed adding a definition for “applicable amount” into the Direct Loan regulations at 34 CFR 685.209(b)(1) and replacing references to “partial financial hardship” with references to the “applicable amount” in three places where the IBR eligibility is defined: 34 CFR 685.209(b)(5), (c)(3)(i) and (c)(4)(iii).¹ These appear to be the only references to “applicable amounts” in the proposed Direct Loan regulations.²

The Department’s proposed definition for “applicable amount” in 34 CFR 685.209(b)(1) reads:

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(1) **Applicable amount**, under the IBR and PAYE plans, means 15 percent of the result obtained by calculating on at least an annual basis, the amount of the borrower’s adjusted gross income, and the borrower’s spouse’s adjusted gross income if married filing jointly, that exceeds 150 percent of the poverty guideline. For new borrowers, as defined in this section, repaying under IBR or PAYE, 10 percent will be substituted for 15 percent in the calculation.

We propose striking this paragraph defining “applicable amount” entirely, and striking the references to “applicable amount” elsewhere in the Direct Loan regulations (namely at 34 CFR 685.209(b)(5), (c)(3)(i) and (c)(4)(iii)). We suspect that this proposed definition of “applicable amount” was inserted by the Department of Education with the intention of removing the partial financial hardship eligibility requirement for IBR, as required by OBBB, while retaining certain elements of IBR that relate to the partial financial hardship concept, such as the cap on payments at the 10-year standard amount when borrowers no longer have a partial financial hardship and that interest capitalizes when the borrower no longer has a partial financial hardship. However, the proposed definition both (1) confuses the payment calculation percentage under PAYE—which is always 10% and never 15%, (2) could be read to reinstate the partial financial hardship requirement for IBR eligibility or to eliminate the standard payment cap in IBR, in violation of the HEA, and (3) is unnecessary because it is rarely used and can be entirely omitted without interfering with the continued clear definition of how IBR and PAYE payments are calculating or with the continued relevance of the payment cap and IBR interest capitalization trigger, consistent with the HEA.

¹ These citations are based on the Department of Education’s last circulated draft of 34 CFR 685.209, which was circulated to negotiators on Friday, October 3, 2025 at 9:06AM via email.

² The proposed FFEL regulations separately define and reference the term in other contexts and are not addressed in this memo.

As such, we propose the following edits to 34 CFR 685.209 for accuracy and clarity:

- Strike proposed 34 CFR 685.209(b)(1) entirely.
- Strike “the applicable amount” from the proposed changes to the definition of “eligible loan” in 34 CFR 685.209(b)(5) and edit as follows:

(5) Eligible loan, for purposes of determining partial financial hardship status the applicable amount and for adjusting the monthly payment amount in accordance with paragraph (g) of this section means—

- Modify 34 CFR 685.209(c)(3)(i) to strike the inserting of “the applicable amount” and to read as follows:

(c) Borrower eligibility for IDR plans.

. . .

(3)

(i) Except as provided in paragraph (c) (3) (ii) of this section, any Direct Loan borrower may repay under the IBR plan if the borrower has loans eligible for repayment under the plan ~~and has a partial financial hardship~~ elects to have their aggregate monthly payment amount recalculated to not exceed the applicable amount when the borrower initially enters the plan.

(Note that calculation of the IBR payment amount is addressed under subsection (f) with clarity, such that it need not be addressed under subsection (c).)

- Strike 34 CFR 685.209(c)(4)(iii). Note that calculation of the payment amount is addressed under subsection (f) with clarity, such that it need not be addressed under subsection (c).

(4) Through June 30, 2028, Aa borrower may repay under the PAYE plan only if the borrower—

(i) Has loans eligible for repayment under the plan;

(ii) Is a new borrower;

~~(iii) Has a partial financial hardship~~ Elects to have their aggregate monthly payment amount recalculated to not exceed the applicable amount when the borrower initially enters the plan; ~~and~~

(Note that calculation of the PAYE payment amount is addressed under subsection (f) with clarity, such that it need not be addressed under subsection (c).)