Committee for a Responsible Federal Budget

My name is Marc Goldwein and I am the Senior Vice President and Senior Policy Director for the Committee for a Responsible Federal Budget. The Committee for a Responsible Federal Budget is a nonpartisan, non-profit organization committed to educating the public on issues with significant fiscal policy impact. We have significant experience analyzing the cost and effects of federal policy, including as it relates to higher education financing, that we hope will be helpful to the administration as they consider modifications to this rule.

Background

We are concerned by the proposed rule ED-2023-OPE-0123 to waive federal student debt and provide other forms of relief. The proposal is expensive, arbitrary, unfair, and creates perverse incentives. The rule also sets a dangerous and costly precedent under which the executive branch authorizes far more spending and borrowing than intended by Congress, in violation of Administrative PAYGO rules and likely in violation of the laws governing the student loan program.

We recommend a full withdrawal of this proposed rule, and that the President instead work with Congress to improve higher education affordability, fairness, and value.

We also believe the comment period for this rule to be unreasonably short given the complexity of the rule, the size and scope of the proposed changes, and the lack of available data. The rule is over 50,000 words long-longer than — The Great Gatsby — and is full of complex language and proposals. There has not been sufficient time for outside experts to study the rule and its implications. We thus respectfully request an extension of the comment period, following further important data runs.

Assuming the rule is finalized, we suggest the following changes to the proposed rule:

1. *Introduce an interest waiver cap of $5,000 into §30.81.*
2. *Reduce the interest waiver cap in §30.82 to $5,000.*
3. *Expand an income limit cap to the interest waiver cap in §30.82.*
4. *Withdraw the attempt to universally cancel old debt and consider a more fair and targeted approach to clearing older debt.*
5. *Forgive only older loans with an original principal of less than $60,000.*
6. *Create an income test on forgiving older loans.*

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7. Withdraw the rule to cancel debt for those who attended low-value programs and instead work with Congress to pass a comprehensive reform to deal with accountability and create a sustainable system that protects student borrowers and the government purse.
8. *Re-estimate costs for each rule including Federal Family Education Loans (FFEL), as opposed to having FFEL in a separate cost category.*
9. *Provide a comprehensive analysis of the cost of this rule in combination with current expected costs of the SAVE program, including interactions.*
10. *Run scenarios assuming different SAVE take-up rates to show various potential costs of the new rule.*

We also have the following data requests to demonstrate the effects of the rule:

- Provide data on the percentage of borrowers with interest that will be cancelled who are currently enrolled in an IDR plan.
- Estimate the number of borrowers who benefit from cancelling $5,000, $10,000, $15,000, or $20,000 in debt, along with the associated cost.
- Calculate the average income of borrowers who benefit from the interest forgiveness plan who would *not* have the interest forgiven in an IDR plan in existing law.
- Calculate the amount of forgiven interest volume that the Department estimates would have eventually been forgiven in IDR.
- Estimate the number of loans that are currently in repayment and give percentiles of when they are projected to be repaid.
- Provide data on the original balance of loans that entered repayment before 2000 that have not fully been repaid.
- Provide a breakdown of the type of repayment plan that borrowers are currently in that are receiving the benefit.
- Provide a breakdown of the percentage of borrowers with loans that entered repayment before 2000 and have never been in a 30-year consolidated repayment plan.
- Clarify whether the cost estimate includes foregone revenue from the expected taxation of interest that would have eventually been forgiven under IDR but will be tax free due to forgiveness happening before taxation on loan forgiveness resumes.

The remainder of this document discusses the above recommendations and suggestions in more detail. Thank you for your consideration.

Sincerely,

Marc Goldwein

Comments on §30.81 and §30.82: Interest Cancellation

Unfair and Incentivizes Bad Behavior

Blanket interest cancellation is the most expensive, wasteful, and unfair part of the proposed rule. By not differentiating between borrowers who accrued interest by enrolling in an IDR plan versus those who were not paying their loans, the Department has rewarded and incentivized borrowers to not pay back their loans. For example, in September 2023, after over three years of a payment pause with interest accrual, the Department restarted payments and had interest accrue. However, at the same time, the Biden administration announced future debt cancellation, and perhaps partially as a result, an elevated number of borrowers have not restarted payments. The proposed interest cancellation policy rewards borrowers who did *not* restart payments and allowed interest to accrue, while penalizing borrowers who immediately started repayment. Similarly, a borrower who is in year 9 of their ten-year standard repayment plan and has been dutifully paying their loan each month has no interest accrual, whereas a borrower who has spent their time in 6 years of forbearance and deferment, plus another year in delinquency and two years in default, will have at least $14,000 of interest. The proposal thus rewards those who skirted payments while punishing those who did not. While there may be extenuating circumstances for that borrower, the fact remains that IDR was and is intended to solve this issue, and by rewarding non-payment, the rule creates a dangerous precedent. It further incentivizes future borrowers to attempt to delay or forestall payments as much as possible, with the knowledge that a future administration will reward that behavior.

Regressive and redundant

Assuming this rule is implemented, we support the Department's creation of an income cap on interest forgiveness in §30.81 and encourage its application in §30.82 as well. However, the income cap is not enough to keep the plan from being regressive. The original intent of IDR was that payments may be low in a borrower's early years of repayment, and interest might thus accrue. However, for those who eventually go on to earn higher incomes thanks to their degree, they would be able to pay off the entire loan including the accrued interest, while those with lower incomes would see it forgiven. This made original IDR highly progressive. While the SAVE plan eliminated this progressive element, it at least ensured that interest forgiveness would only occur for those in active repayment that had sufficiently low incomes for interest to accrue due to a repayment formula based on income.

The proposed plan has none of the progressive features but all the downsides. For those who have high levels of accrued interest and low incomes, SAVE (or another IDR plan should SAVE be struck down in court) will forgive any accrued interest that will not be paid back when the loan is forgiven. The Department has also made it easier for borrowers to count standard payments towards IDR, making it unlikely someone who has been paying, but joined IDR late, will be stuck paying accrued interest. Interest forgiveness is thus redundant for those struggling borrowers.

While the plan is redundant for struggling borrowers who were making payments, it helps another group of people who *should* pay down the interest—those who earned low incomes at first (say a doctor in residency or a lawyer in a clerkship) who are now earning enough to pay down their interest. This tradeoff was the very mechanism that made early IDR plans relatively affordable from the government's perspective. The $20,000 limit does not adequately account for this problem because those in IDR most likely to have high accumulated interest are those with high initial loan balances, and we know that doctors and lawyers often have low earning years in their first year out of school. Since IDR will already forgive any accrued interest at the end of the forgiveness period, the only people this helps are those who make enough money that they would have ended up paying the loan. This makes the proposed rule extremely regressive compared to current law.

The uncapped forgiveness in IDR suffers from a similar and, in some ways, more significant problem that negates the original purpose and intent of IDR. A doctor with a debt of $250,000 four years out of residency will have accumulated over $60,000 in unpaid interest while enrolled in IDR. What possible justification is there for this person, who will soon earn hundreds of thousands of dollars a year as a surgeon, to receive $60,000 in interest forgiveness that would otherwise be paid back? Why is the administration so focused on making existing loan repayment programs less progressive?

Costly

We understand the Department's concern that "borrowers have reported that growing balances while in repayment can lead to negative psychological impacts on borrowers who are attempting to repay their debt but are unable to, including that they lose hope and motivation to repay their debt." We agree that this was an overlooked issue in IDR that might be worthy of changing through Congressional action. Many proposals have been made to address this problem that are cost neutral or even save money by changing the structure of the way interest accrues while also creating a more fair and progressive formula for repayment. However, as the Department states, the research has pointed to an issue of *growing* balances, not balances that have already grown, and this provision is attempting to reduce an existing balance. We do not think it is reasonable to spend over $70 billion without congressional input and without an attempt to counteract the costs somewhere else in the loan system, especially since this rule is targeting existing balances, not new interest accrual.

Likely Illegal

The Department holds in its NPRM rule that it can make sweeping changes because "section 432(a)(6) [of the Higher Education Act] provides that, 'in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.'"

The Supreme Court of the United States ruling in *Biden vs. Nebraska* on the "modify or waive" authority within the HEROES Act plainly contradicts the Department's interpretation of their authority in HEA. In *Biden vs. Nebraska*, the Secretary argued that the ability to "waive" debt in the HEROES statute granted even broader authority than its ability to "modify". The Supreme Court disagreed. The opinion states that "in essence, the Secretary has drafted a new section of the Education Act from scratch by "waiving" provisions root and branch and then filling the empty space with radically new text... the words 'waive or modify' do not mean 'completely rewrite'; and that our precedent— old and new—requires that Congress speak clearly before a Department Secretary can unilaterally alter large sections of the American economy."

As stated in our previous comment on SAVE, and now bolstered by the ruling in *Biden v. Nebraska*, we continue to believe that arbitrarily and universally waiving accrued interest is illegal, especially given the cost of the rule. There is no do doubt that $73 billion is a large cost with a significant effect on the American economy that would qualify as a "major question" under Supreme Court doctrine. As Justice Amy Coney Barrett writes in her concurring opinion in *Biden v. Nebraska*, "the doctrine serves as an interpretive tool reflecting 'common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency.'" We have two examples to suggest that Congress never interpreted that the Secretary had the authority in HEA to universally waive interest.

The first example relates to the Department's justification for waiving accrued interest, that "excessive interest accrual" occurs "when periods of non-payment, such as deferments, forbearances, delinquency, and default" occur. Yet interest is explicitly discussed in relation to these events in the HEA. For example, in 20 U.S. Code § 1087e(f)
on deferment, "periodic installments of principal need not be paid" but "shall accrue interest" if it is an unsubsidized Stafford loan, Parent Plus loan, or a consolidation loan. In 2017, Congress enacted a provision that specifies that interest does *not* accrue for those in active cancer treatment, which further suggests that Congress expects interest to accrue in deferment unless otherwise specified. It suggests that Congress did not believe that the Secretary has the authority to universally waive interest and certainly does not imply that it thought that interest accrual during deferment is "excessive." It is, in fact, the law.

The second example is that from 2006 to 2013 Congress repeatedly debated the appropriate amount of interest to charge students, finally settling on a formula based on the yield on a 10-year Treasury note. The above examples occur in the *same law* as the Department claims to have discovered this broad authority to universally cancel accrued interest. Given these facts, the common sense interpretation points to the fact that Congress did *not* believe the Secretary has broad-based authority to cancel interest accrual and cannot "completely rewrite" the statute.

Given the likelihood of this plan being struck down by the courts, it is irresponsible of the Department to propose and publicize the rule. For a Department so concerned about psychological damage, it did not seem to consider the psychological effect of frequently promising illegal loan cancellation only to let those borrowers down by the reality that the administration is overstepping the law. It will also further encourage borrowers to not pay down their loans in the hope of some future mythic forgiveness that the administration keeps promising and fails to deliver.

The Department argues that some agencies exercise waiver authority in "good conscience or the best interest of the United States, thereby implicating general principles of government debt collection." But interest accrual and debt collection are all written into HEA by Congress, clearly demonstrating Congress' intent to collect interest and recover debts. It's hard to imagine the Supreme Court believes that the Department of Education can overrule congressional intent based on an agency's understanding of what is in the best interest of the United States.

Recommended Changes to §30.81 and §30.82

While we continue to believe that the proposal to waive interest is redundant, regressive, and likely illegal, if the Department insists on the provision then we have several recommendations.

Recommendation 1: Introduce interest waiver cap of $5,000 into §30.81.

We support the Department for creating an income test, but it is not a sufficient way to limit the regressive nature of the proposal since there are going to be many professional degree borrowers with high debts who have accrued interest but are not *yet* earning high incomes. Furthermore, the psychological benefit of seeing any substantial reduction in balance may not vary significantly by amount. Whether a borrower's total balance reduces from $50,000 to $45,000, $40,000, or $30,000 might not have much of a psychological effect when the borrower is making $0 payments, especially given that their balance will no longer grow from here (due to SAVE) and they know they will see the remaining balance forgiven. Furthermore, unlike with debt cancellation, there will still be a balance to be repaid, limiting the psychological usefulness for those making low or $0 payments. At the same time, it would be a large windfall to the high-debt, future high-earning professional degree borrowers. As a result, we recommend applying the same interest forgiveness cap as found in §30.82, which we propose should be $5,000.

Recommendation 2: Reduce interest waiver cap in §30.82 to $5,000.

While we continue to believe that this proposal is redundant and illegal, if the Department insists on the provision, we recommend an interest forgiveness cap of $5,000. For a low debt borrower, which is the kind of borrower most likely to struggle and not be enrolled in IDR, this still offers substantial relief. A borrower with $10,000 in initial debt would take at least 7 years of no payments to accrue that much in unpaid interest. This, unfortunately, still would benefit higher debt, professional degree borrowers, but limits the windfall benefit that the Department is concerned about.

Recommendation 3: Expand income limit cap to interest waiver cap in §30.82.

In keeping with the Biden administration's stated goal of progressive benefits for student loan borrowers, the Department should institute an income cap like the one found in §30.81 in order to avoid windfall interest forgiveness to high earners.

Data Requests Related to §30.81 and §30.82

- Provide data on the percentage of borrowers with interest that will be cancelled who are currently enrolled in an IDR plan.
- Calculate the average income of borrowers who benefit from the interest forgiveness plan who would *not* have the interest forgiven in an IDR plan in existing law.
- Estimate the number of borrowers who benefit from cancelling $5,000, $10,000, $15,000, or $20,000 in debt.

Comments on §30.83: Waiving outstanding balances for old loans

Rule as conceived is regressive and illogical

While some older debt may be from borrowers who have frequently defaulted or otherwise struggled to repay their loan, it is likely that much older debt belongs to borrowers with professional degrees and thus are on a longer typical repayment plan, *as designed and encouraged* by the Department of Education. Especially when these loans were made, anyone with a debt balance of $60,000 or more was encouraged to consolidate and then automatically placed in a 30-year payment plan. In the Administration's justifications for this rule, it notes 25-year extended repayment and curiously omits the fact about consolidation loans. A doctor who took out $250,000 in loans in 1999 fully expected to still be paying off those loans in 2025, is likely now one of the highest earners in the country, and still owes $70,000. Arguing that this doctor should have the loan forgiven because she has been paying them for a long time is as illogical as arguing she should not have to pay the last 5 years of her 30-year mortgage on her house because it has been such a long time. The doctor benefited from the loan, and it is perfectly reasonable for her to pay the government back. This is an extremely regressive benefit and bizarrely rewards high debt borrowers who extended their loans on favorable terms. In typical consumer finance products, taking on a longer length forces a higher borrowing rate (this typically applies even to U.S. government debt), however in the student loan program, a borrower can extend the repayment period without increasing an interest rate. From a time-value-of-money perspective, allowing a borrower to extend the loan is already a massive benefit to high-debt borrowers, yet the Department is now treating these borrowers as a harmed group. There are ways the Department can modify this rule to account for this problem. This would decrease the cost of the rule and make it more progressive as seen in recommendation 5.

Rule is likely illegal

If our arguments about the illegality of cancelling interest hold, the case against cancelling entire debt loads under the waiver authority is even stronger by comparison. While there may be cases where the Secretary can waive a portion of a loan (for example, if a borrower can prove gross incompetence on the part of the lender), it seems very unlikely Congress ever intended or expected the Department to simply cancel old loans, otherwise Congress would have added a provision to eliminate debt after a certain period of time. In fact, IDR does have such a time limit, and the fact that Congress has never seriously considered retrospective cancellation of older loans on fairness grounds as it relates to IDR suggests that Congress does not think that would be a reasonable thing to do. The Department should also consider that the arbitrary date creates a cliff effect that may run afoul of Administrative Procedure Act rules related to arbitrarily benefiting some borrowers and not others.

Cost of the rule does not line up with Department's stated reasoning.
The Department states that "when loans persist [for a long period of time], they are unlikely to be paid in a reasonable period of time." However, the Department also states the proposal will cost $14 to $30 billion (when factoring in FFEL loans). If the loans were extremely difficult for the Department to be repaid, we would expect a very low cost to the plan. The fact that there is a substantial cost suggests that many of these loans are being repaid, and that cancelling at least a portion of these loans runs contrary to the Department's stated concern.

Rewrite the provision to be more targeted and thus eliminate the cliff effect
The Department specifically requested feedback on how to help borrowers with older loans that are over 15 years old, but not old enough to qualify for the cancellation provision. The Department specifically states it is concerned that the rule as written creates a "cliff" effect where a borrower who enters repayment only a few months after the time period cutoff in 2005 or 2000 owes the remainder of their loan, whereas someone who makes the cutoff gets their entire loan forgiven.

To avoid this "cliff" issue, our recommendation is to withdraw the proposal to automatically cancel long-held debt. The very real cliff problem that the Department identifies highlights the arbitrary and unfair nature of the proposal, and it is not clear the Department can successfully solve for this cliff issue without imposing significant new costs and/or bad incentives.

To the extent that the Department is concerned with old debt that needs to be cleared due to issues like servicer error or extenuating circumstances, the Department can consider an alternative rule that requires an application and review process where the Secretary can specifically target loans that were poorly serviced or are unlikely to be repaid. This has the advantage of being on much stronger legal footing in terms of the Secretary's authority, and far more likely to appropriately target borrowers whose debts should rightfully be cleared. We would be happy to engage with the Department to provide input on a narrower, more targeted approach to the issue of older student loan debt. In the meantime, the Department should abandon this blanket cancellation.

Recommendation 4: Withdraw the attempt to universally cancel old debt and consider a more fair and targeted approach to clearing older debt.

Recommendation 5: Forgive only older loans with an original principal of less than $60,000.
Waive outstanding balances for loans that entered repayment for initial borrowing balances below $60,000 only. Borrowers with higher debt levels should be expected to continue to pay back their loans.

Recommendation 6: Create an income test on forgiving older loans.
Additionally, or alternatively, the Secretary could only forgive older loans based on an income test, which would prevent some of the worst examples, such as doctors and lawyers having tens of thousands of dollars forgiven.

Data Requests Related to §30.83

- Estimate the number of loans that are currently in repayment and give percentiles of when they are projected to be repaid
- Provide data on the original balance of loans that entered repayment before 2000 that have not fully been repaid.
- Provide a breakdown of the type of repayment plan that borrowers are currently in.
- Provide a breakdown of the percentage of borrowers with loans that entered repayment before 2000 and have ever been in a 30-year consolidated repayment plan.

Comments on §30.86: **Cancellation of debt from low-value institutions**
Widespread debt cancellation for borrowers at low-value schools is redundant and illegal
While we are sympathetic to the desire to cancel debt for students who attended schools that offer low-value degrees, we believe that the Department is significantly overstepping its legal authority through this unilateral action. The loan system as conceived through Congress never intended to forgive all debts just because someone attended an institution whose median outcome is low. However, Congress was obviously concerned by this issue and enacted a series of IDR programs whose express purpose was to protect borrowers with low incomes, for whom college did not pay off, while ensuring that for people where the degree did pay off that those borrowers repaid their loans. In general, IDR sufficiently addresses the issue with low-value institutions. While the median borrower who attended a low-value school will likely have $0 payments in SAVE, it is reasonable to ask that a borrower who happened to benefit from that particular institution and earns a good-paying job pay back at least a portion of their loan.

To the extent that Congress wants to consider pairing targeted debt cancellation with more aggressive accountability measures, that is a proposal worthy of debate, especially in the context of a broader plan to reduce costs and improve quality and outcomes. However, there is no language in the HEA or historical congressional intent to suggest that the Department has the authority to cancel debt just because the educational outcomes are subpar. This proposal costs over $30 billion, has no payfor, and is likely illegal. By not working with Congress, the Department is adding a burden to taxpayers through poorly conceived debt cancellation.

Recommendation 7: Withdraw the rule to cancel debt for those who attended low-value schools and instead work with Congress to pass a comprehensive reform to deal with accountability and create a sustainable system that protects student borrowers and the government purse.

Cost Estimate

The Department's breakdown of costs hides the true cost of each rule by separating out FFEL-related costs. By having FFEL separate, we believe this substantially reduces the cost of the waiver of older loans in the portfolio, thus obscuring the true cost of the proposal. We further have concerns over how the Department is measuring the cost of this proposal with interactions with SAVE. Since the Department did not provide an updated SAVE estimate after cancellation was struck down, along with expected take-up rates, it will be difficult to fully understand the interaction effects unless the Department provides more data. Furthermore, since take-up rates in SAVE likely affect the overall cost of interest cancellation, multiple scenarios of take-up should be run to demonstrate the cost.

Recommendation 8: Re-estimate costs for each rule including FFEL loans, as opposed to having FFEL in a separate cost category.

Recommendation 9: Provide a comprehensive analysis of the cost of this rule in combination with current expected costs of the SAVE program, including interactions separated out.

Recommendation 10: Run scenarios assuming different SAVE take-up rates to show various potential costs of the new rule.

Conclusion

Thank you for the opportunity to submit comments. Due to the extremely short comment window, we were not able to complete all relevant analyses for such a major rule change, but we hope you will consider the analysis we were able to complete. We implore the Department to delay this rule and instead work with Congress on a comprehensive solution. Should the Department move forward with this rule, we have offered a number of suggestions that we believe would reduce the cost, regressivity, and perverse incentives that are in the current iteration of the proposed rule. Please feel free to reach out with any questions or clarifications.

Sincerely,
Marc

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