

To: Negotiators  
From: Devon Graves, Melvina Johnson, Suzanne Martindale, Toby Merrill,  
Jessi Morales, Johnson Tyler  
Date: April 8, 2015  
Re: Parent PLUS Borrower Eligibility for PAYE/REPAYE

The above-named negotiators and alternates, including negotiators who represent students, legal aid organizations and their clients, and consumer organizations, submit this memorandum for the consideration of the entire committee, including both federal and non-federal negotiators. We are concerned that, as we seek to design a “model plan” that could be carried forward as the single income-driven repayment plan, the hardships and limited relief available to Parent PLUS borrowers have received little attention.

Parent PLUS loans are not limited to amounts that borrowers may reasonably be expected to be able to repay. Some parents who have been deemed to have low, or even zero Estimated Family Contribution expectations as calculated by the FAFSA, are subsequently lent much more money than they can afford to repay. As a result, Parent Plus borrowers have among the most oppressive debt burdens of any age group. For parents of two or three children who attend four-year colleges, it is easy to amass loan debt well over \$100,000, especially when some school award letters do not clearly delineate between “free” grant and scholarship awards from loan awards. Our clients’ Parent PLUS loans cause severe financial hardship with nowhere near these six figure totals and often lead to eviction, foreclosure, and garnishment of social security benefits. These hardships are as real and as deleterious as those faced by student borrowers, and we should not deny them relief because they have been given loans they cannot afford in an effort to provide their children access to higher education.

### **Parent PLUS Borrowers Need Access to Income-Driven Repayment Plans**

The Department knowingly provides PLUS loans to parent borrowers who cannot afford them, saddling low-income families with debt they cannot repay. Although PLUS loans are the only type of federal educational loan to require any evaluation of the borrower’s credit, the data the Department recently provided shows that almost 100,000 Parent PLUS borrowers were unable to make payments for nine or more months within their first three years of repayment<sup>1</sup> during the period for which the Department provided data.<sup>2</sup>

Unlike other federal educational loans, Parent PLUS loans have no borrowing limits, and the Department does not evaluate applicants’ ability to repay before granting access to nearly unlimited credit. To make matters worse, the Department recently enacted changes to the PLUS Loan program that relaxed the minimal lending restrictions that had been in place, extending the program to even more parents who are already

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<sup>1</sup> See *PLUS Borrowers 3-Year Cohort Default Rate*, available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/pii2-plusborrowers-cdr.xls>.

<sup>2</sup> See *id.*

experiencing documented financial difficulties when they apply.<sup>3</sup> No evidence suggests that borrowers granted Parent PLUS loans pursuant to these new regulations will be able to repay them without hardship.<sup>4</sup> Indeed, the Department's analysis suggests the opposite.<sup>5</sup> If the policy decision is to ensure access by relaxing the credit standards for this loan program, we have an obligation to ensure that policies are also in place to provide relief to these same borrowers when they struggle to repay this debt burden.

The legal aid clients who seek help with Parent PLUS loan debt are often facing dire situations. These PLUS loans have higher interest rates than other types of student loans, lack Department-imposed limits on amounts borrowed, and can rarely be discharged in bankruptcy.

Like other federal student loans, defaulted Parent PLUS loans can be collected through garnishment of wages, tax refunds, earned income tax credits, and social security benefits without any action in court. When they should start to think about how they might be able to provide for retirement, borrowers with defaulted Parent PLUS loans instead must cope with housing instability and wage or benefit garnishment, even as they are often still providing for the child whose education the loans funded. Over 150,000 recipients of social security experienced garnishment of their benefits because of outstanding student loan debt.

If the Department is not willing to consider Parent PLUS borrowers' ability to repay their loans, it must provide over-indebted parents at least the same type of relief currently available to others who are unable to repay student loans. Parent PLUS loans are not currently eligible for PAYE, IBR or ICR.<sup>6</sup> The only way for over-indebted parent borrowers to obtain any relief is by consolidating into a Direct Consolidation Loan, which can be repaid in ICR with payments of 20% of AGI that exceeds 100% of the federal poverty guidelines for 25 years.<sup>7</sup> As a result, low-income Parent PLUS borrowers who seek assistance from legal aid have much larger debts, and fewer options for averting or resolving defaults.

### **Authority**

The Department has the statutory authority to include Direct Consolidation Loans that repaid Parent PLUS loans in REPAYE (or any plan based on this committee's

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<sup>3</sup> See Direct Loan Program Proposed Rules, 79 Fed. Reg. 46640 (Aug. 8, 2014).

<sup>4</sup> See *id.* at 46645 ("The Department . . . does not have data to determine if borrowers who would have been considered to have an adverse credit history in the absence of the proposed regulations have a greater incidence of default or repayment difficulty."). The Department announced in October 2014 that, for the first time, it will begin collecting and, where appropriate, publishing information about the performance of PLUS loans, including default rate information based on credit history characteristics of PLUS loan borrowers and individual institutional default rates.

<sup>5</sup> *Id.* (noting that, "if a subsidy rate were available for this subgroup of PLUS borrowers, it would likely differ from the overall PLUS subsidy rate").

<sup>6</sup> See 34 C.F.R. § 685.209(a)(1)(ii); 20 U.S.C. § 1087e; 20 U.S.C. § 1098e.

<sup>7</sup> See *Income-Driven Repayment*, Federal Student Aid, <https://studentaid.ed.gov/about/announcements/interest-rate> (last visited Oct. 27, 2014).

work).<sup>8</sup> Indeed, it has exercised this authority to include Direct Consolidation Loans that repaid parent PLUS loans in the Income Contingent Repayment Plan (ICR).<sup>9</sup>

### **Proposed Language**

Because it has authority to do so, and because many Parent PLUS borrowers are facing the severe consequences of student loan default due to their unaffordable debt burdens, the Department should provide access to REPAYE to Parent PLUS borrowers. It can do so by making the following changes to the proposed language:

- **685.208(a)(2)(iv)(D):** The income-contingent repayment plans in accordance with paragraphs (k)(2) or (k)(3) of this section.
- **685.208(c)(ii):** Eligible loan means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, ~~or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower.~~

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<sup>8</sup> See 20 U.S.C. § 1087e.

<sup>9</sup> 34 C.F.R. 685.208(a)(2)(iv)(D) (“A Direct Consolidation Loan that did not repay a parent Direct PLUS Loan or a parent Federal PLUS Loan may be repaid under . . . [t]he income-contingent repayment plans in accordance with paragraph (k) of this section”).