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Feb. 10, 2023

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Re: Docket Number ED-2023-OPE-0004

Dear Secretary Cardona,

The National Conference of State Legislatures appreciates the opportunity to comment on the Jan. 11, 2023, Federal Register Notice of Proposed Rulemaking, "Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program." The rule, as drafted, could have significant implications for financing and governing higher education, which are primarily the domain of the states. Amending the terms of the REPAYE program as proposed would likely result in a heavily subsidized and expensive income-driven loan repayment program. This could substantially evolve the federal government's role in college affordability, which could alter many aspects of the state-federal relationship in higher education.

As we outline in greater detail, this amended income-driven repayment program could challenge the primacy of the Pell Grant as the federal government's primary strategy for college affordability and lead to the increased federalization of our higher education system. Heavily subsidized loan repayment could incentivize increased borrowing, which could place upward pressure on college costs and mitigate or discourage state spending on higher education. A more expensive loan program would also add to pressures to increase the federal role in the governance of higher education, particularly on issues of institutional accountability, which are historically and presently a matter of state policy. Finally, there is concern that accomplishing a reform of this magnitude before the end of the student loan pause may encumber the implementation of FAFSA simplification for the 2024-2025 award year, which states asked for and are eager to see completed on time.

Given the potentially transformative nature of the rule, NCSL requests for an extended comment period to ensure meaningful and timely input by state and local elected officials, as required by Executive Order 13132. This would allow legislatures to engage in meaningful discussions on how the federal government can best support states in achieving an affordable and high-quality system of higher education for all.

Indeed, we affirm the Department's statements from previous rulemaking that "a collaborative approach where Federal and State officials work together to achieve shared objectives will likely produce a sum that is greater than its individual parts" and further agree that "out of this cooperation may come a broader understanding of how these mutual efforts can advance the central goal of facilitating affordable access to higher education for students in every part of the country."[1]

[1] https://www.federalregister.gov/documents/2021/08/12/2021-17021/federal-preemption-and-joint-federal-state-regulation-and-oversight-of-the-department-of-educations

The State and Federal Role in the Federal Student Loan Program

Before the start of the student loan pause in March 2020, millions of borrowers were struggling to repay their student loans. As federal student loan debt has surpassed $1.6 trillion with another $1 trillion estimated to be lent over the next decade, addressing loan repayment challenges deserves much federal attention. Indeed, management issues within the loan program itself, both in its design and implementation, are partly to blame for widespread repayment issues. NCSL has urged the federal government to make every effort to improve the federal student loan program so borrowers are able to successfully repay their loans and take advantage of federal loan forgiveness programs.

While states acknowledge that managing the loan program is largely a federal responsibility, student debt is a national concern and one that states have increasingly been expected to respond to by their constituents. States themselves have recently passed legislation to provide additional support and consumer protections to borrowers where gaps have emerged in federal management.[2] States are also increasingly addressing student debt directly through their own relief or forgiveness programs. Some of these state actions have created areas of overlapping state and federal authority and raised new questions about the state-federal relationship in higher education. NCSL appreciates this Department's stance to engage in "cooperative federalism" on joint federal-state regulation and oversight of the federal student loan program and federal loan servicers.

We also appreciate this Department's diligence in addressing repayment and servicing issues. A student loan program that more effectively serves borrowers and enables successful repayment would reduce regulatory and legislative burdens on states and, more importantly, reduce the debilitating effects of unrepayable student debt.

Implications for State-Federal Financing of Higher Education

As we review the proposed rule and contemplate its implications, we are left wondering whether the proposed amendments to the REPAYE program, which are purportedly designed to address repayment issues, may have broader impacts on our national financing of higher education and the state-federal relationship in higher education.

States have the primary authority and responsibility for governing and financing institutions of higher education. Historically, the federal government has played a supplementary role to states by providing need-based grant aid and research funding. Over the past three decades, the federal role in student lending has evolved considerably and the Department of Education now disburses the vast majority of student loans. Federal student loans are an important tool in financing higher education by providing access to credit without regard to a student's income or credit history. It can also serve as a safety net for borrowers who struggle to repay their loans. By and large, however, the federal loan program was not designed to serve as a significant public subsidy for higher education as borrowers were expected to repay their loans.

As we understand it, the cumulative impact of the proposed changes to the REPAYE program could significantly increase federal subsidies for student loan repayment and have the effect of turning federal student loans into time-delayed grants for many borrowers. Recent analysis by the Urban Institute estimates that 69% of certificate and associate's degree recipients and 49% of bachelor's degree recipients would pay no more than half of their loans before reaching forgiveness.[3] Urban also estimates that the additional loan forgiveness for typical Pell Grant recipients through the amended REPAYE program will be larger than the total Pell Grants they receive while in college.

If these estimates prove accurate, federal subsidies on student loans enrolled in the proposed REPAYE plan could challenge the primacy of the Pell Grant as the federal government's strategy for making college more affordable. States continue to support the Pell Grant program as the primary federal strategy for ensuring access and affordability for students with the greatest financial need. States believe that adequate federal funding for the Pell Grant program helps reduce dependency on student loans. Unlike student loans, Pell is a transparent tool for affordability that defrays

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[2] https://www.ncsl.org/news/details/states-address-challenges-created-by-student-loan-debt

[3] https://www.urban.org/research/publication/few-college-students-will-repay-student-loans-under-biden-administrations

upfront costs and promotes access for students who might feel college is out of reach. Many states use Pell as a foundation on which to build tuition-free or college promise programs with additional state investment.

Even as the federal government does not face the same fiscal constraints as states, states are mindful that increasing the cost of the student loan program could make it less likely that Congress increases support for the Pell Grant. The Department estimates that the proposed changes would add an additional cost of $138 billion over 10 years. However, these estimates assume the president's one-time debt relief plan is enacted. The estimates also assume that student borrowing will not increase and that borrowers in non-IDR plans will not enroll in the new REPAYE plan. These may be tenuous assumptions and likely underestimate the full cost of the changes. Third-party estimates suggest the ultimate price tag could be much higher and could range in the hundreds of billions of dollars.[4]

This proposal could also have broader implications for how students and families finance their higher education. Given the generosity of the proposed plan, it may often make financial sense to borrow first before paying out of pocket, even for students and families who could otherwise afford to pay. Even as borrowers face lifetime limits, students are permitted to borrow up to the cost of attendance. Many are conscious not to borrow beyond what they need. However, with the expectation that they will pay back far less than they borrowed, borrowers may consider borrowing as much as they can. Indeed, analysis from the Urban Institute suggests that a typical community college student would repay the same amount under the proposed plan regardless of whether they borrowed $4,000, $8,000, or $12,000. While many borrowers, especially first-time college-goers from low-income backgrounds, may be reluctant to take on loans, financially savvy, affluent students and families, especially those who choose to attend expensive institutions, could be well-positioned to take advantage of this rule.

Increasing incentives to borrow runs the risk of putting upward pressure on college costs, which could blunt the effects of state investments in higher education. Over the past decades, college costs have consistently outpaced state and federal support. Fortunately, net tuition prices have decreased or stabilized for most institution types over the past few years as states have collectively increased spending on higher education.[5]

While states and institutions have tools to manage tuition levels, competitive pressures for institutions to raise revenue could be stoked by lowering the cost of borrowing. Perhaps of greater concern are living costs, which make up a significant portion of a student's cost of attendance and continue to rise even as tuition growth has slowed. States and institutions have less effective tools for managing housing and food costs. Lower borrowing costs could ultimately place upward pressure on all aspects of a student's cost of attendance. Finally, it is also worth considering whether a more generous loan program could perversely discourage or even displace state investment in higher education.

Implications for State-Federal Governing of Higher Education

Beyond issues of higher education finance, this proposal could expand the nexus where state and federal authority overlap and come into conflict. The rise in the role of student loans in our national financing of higher education has increased federal pressure to hold institutions and programs accountable for student outcomes and loan repayment rates. Significantly increasing the generosity of the loan program would further increase pressure for federal action. Indeed, this proposed rule was accompanied by a Request For Information to establish and publish a list of the programs at all types of colleges and universities that provide the least financial value to students.

State legislators strongly urge the federal government to defer to the states' leadership in ensuring the quality of postsecondary education and to facilitate state efforts to emphasize accountability. Ensuring that institutions provide a high-quality education that enables students to repay their debt is an important priority, but federal policy may not be well-equipped to successfully achieve this over a 50-state landscape. To start, assessing institutional and program-level quality and value is an inherently complicated proposition. Perhaps even more complicated is how policy can best address low-quality institutions and degrees. The question of whether institutions with poor student outcomes need additional support and resources or should face accountability measures has no easy answer. States are well aware of

[4] https://budgetmodel.wharton.upenn.edu/issues/2023/1/30/budgetary-cost-of-proposed-income-driven-repayment

[5] https://research.collegeboard.org/media/pdf/trends-in-college-pricing-student-aid-2022.pdf; https://sheeo.org/grapevine-fy-2023/

the challenges of accountability policy through their experience of the state-federal relationship in elementary and secondary education.

This proposed rule could set the federal government on a path to increasing its role in the governing of institutions. States welcome a conversation with Congress and the administration on institutional support and accountability, but believe policies on affordability and accountability should be considered together as a complementary package rather than implemented ad hoc.

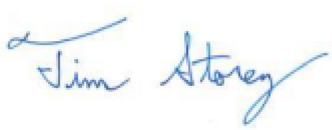
Implications for FAFSA Simplification and Other Student Loan Initiatives

As discussed earlier, states have increasingly passed legislation to fill in gaps where the federal government has fallen short in its management of the student loan program. Indeed, the Department has acknowledged that its "budget is not unlimited and maintaining effective oversight of student loan servicers that deal with tens of millions of borrower accounts is a mammoth task."[6]

We recognize that Federal Student Aid is undertaking an ambitious agenda, including implementing FAFSA simplification, bringing the student loan program out of its three-year pause, rehabilitating borrowers in default into successful repayment status, and attempting to rectify issues within existing loan forgiveness programs. Each of these initiatives is significant on its own and requires considerable effort and attention from Federal Student Aid. We are concerned that adding this significant proposed rule to the agenda could slow or delay the implementation of the FAFSA changes. State legislatures are anxious to see improvements to the FAFSA implemented on time for the 2024-2025 award year. If any of these reforms are poorly implemented, states may once again be expected by borrowers to address challenges.

NCSL looks forward to engaging with the Department to ensure an affordable and high-quality system of higher education. If you have any questions, please do not hesitate to contact NCSL staff Austin Reid at 202-340-6628, or austin.reid@ncsl.org.

Sincerely,



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[6] https://www.federalregister.gov/documents/2021/08/12/2021-17021/federal-preemption-and-joint-federal-state-regulation-and-oversight-of-the-department-of-educations