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The Principles & Incomplete History of Income-Driven Repayment

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STUDENT BORROWER PROTECTION CENTER

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Executive Summary

- Federal student loans impose a substantial financial burden on borrowers. In response, since 1992, policymakers have introduced a variety of repayment plans that set federal borrowers' monthly student loan bills at an amount determined by their income, not by their loan balance. This menu of payment plans is collectively referred to as income-driven repayment (IDR).

- The stated original goals of IDR that have guided its subsequent development include the following:

    - Making student loan payments affordable for all;

    - Preventing student loan debt from becoming a lifetime burden through loan forgiveness after a pre-set number of years in IDR; and

    - Providing a lifeline to prevent delinquency and default, especially for the borrowers who are most likely to struggle in repayment.

- IDR has generally become more generous and available to a wider array of borrowers over time. However, the protection continues not to fully live up to its ideals. Instead, aspects of IDR's current design allow federal student loans to remain unaffordable and onerous for many, all while delinquency and default remain prevalent. These shortcomings are especially problematic for Black, Latino, and low-income borrowers, who are less likely to successfully access IDR and who remain worryingly likely overall to face ruinous outcomes as student loan borrowers—something IDR was meant to eliminate.

- The stark divergence between IDR's aspirations and its outcomes as a consumer protection is laid bare in the data. Even with IDR being broadly available, only slightly more than half of federal student loan borrowers in repayment were current on their loans by the eve of the COVID-19 pandemic. Moreover, during the last year before the pandemic, a federal student loan borrower defaulted every 26 seconds, something that should be nearly impossible given the availability of $0 payments under IDR. Further, more than half of borrowers with incomes below $20,000—nearly all of whom could secure a $0 payment—and almost a third of Black borrowers report falling behind on their federal student loans without accessing IDR. Finally, while millions of borrowers have been in repayment on federal student loans for two decades or more, the point at which IDR is meant to begin offering forgiveness, only 32 borrowers to date have secured this relief.

- The history and contemporary reality of IDR make clear that while Congress and subsequent administrations have taken steps to make IDR more beneficial to borrowers, policymakers have still not succeeded. Key questions remain surrounding IDR's current success as well as its limits as a catch-all solution to the student debt crisis. Substantial administrative action by policymakers is badly needed to ensure that borrowers can benefit from IDR as intended.

Introduction

Federal student loans impose a substantial and often insurmountable financial burden on borrowers.[1] In response, since 1992, policymakers have introduced a variety of repayment plans that set federal borrowers' monthly student loan bills at an amount determined by their income, not by their loan balance.[2] Payments under these plans are designed to be affordable, including offering a zero-dollar monthly "payment" for borrowers with especially low incomes.[3] Further, each of these income-based options offers loan forgiveness after 20 to 25 years of repayment.[4]

The goals of income-driven repayment:

- **Making student loan payments affordable for all;**
- **Preventing student loan debt from becoming a lifetime burden through loan forgiveness after a pre-set number of years in IDR; and**
- **Providing a lifeline to prevent delinquency and default, especially for the borrowers who are most likely to struggle in repayment.**

This menu of payment plans is collectively referred to as income-driven repayment (IDR).[5] The following paper outlines the history of IDR and its development over time, identifying the key goals that underlie the protection. As discussed below, those goals include the following:

The history and the goals of IDR are worth outlining precisely because they are necessary to fully understand the contemporary design of IDR and the extent to which it may be meeting—or failing to meet—policymakers' stated goals. For example, as it pertains to default, research shows that IDR is extremely effective in improving the short-term repayment outcomes and financial situation of borrowers who can access and persist in it.[6] In particular, scholars have found that borrowers who enroll and remain in IDR have more success keeping up with their loan payments,[7] pay down their non-student loan debts more quickly,[8] and enjoy improved access to other forms of credit.[9] This appears to indicate that IDR may be living up to its aspirations.

However, research also shows that IDR has so far failed in other ways to fully live up to its promise and potential as a borrower protection. For example, even with IDR being broadly available for federal student loan borrowers, rates of delinquency and default have continued to skyrocket across the federal student loan portfolio over the last decade.[10] By the eve of the COVID-19 pandemic, only slightly more than half of borrowers who were in repayment on federal student loans were current.[11] The remaining half were in deferment, forbearance, or default, or were otherwise not in active repayment.[12] Indeed, in the last academic year before COVID hit, a borrower defaulted on a federal student loan every 26 seconds—something that should be impossible given the availability of $0 payments under IDR.[13]

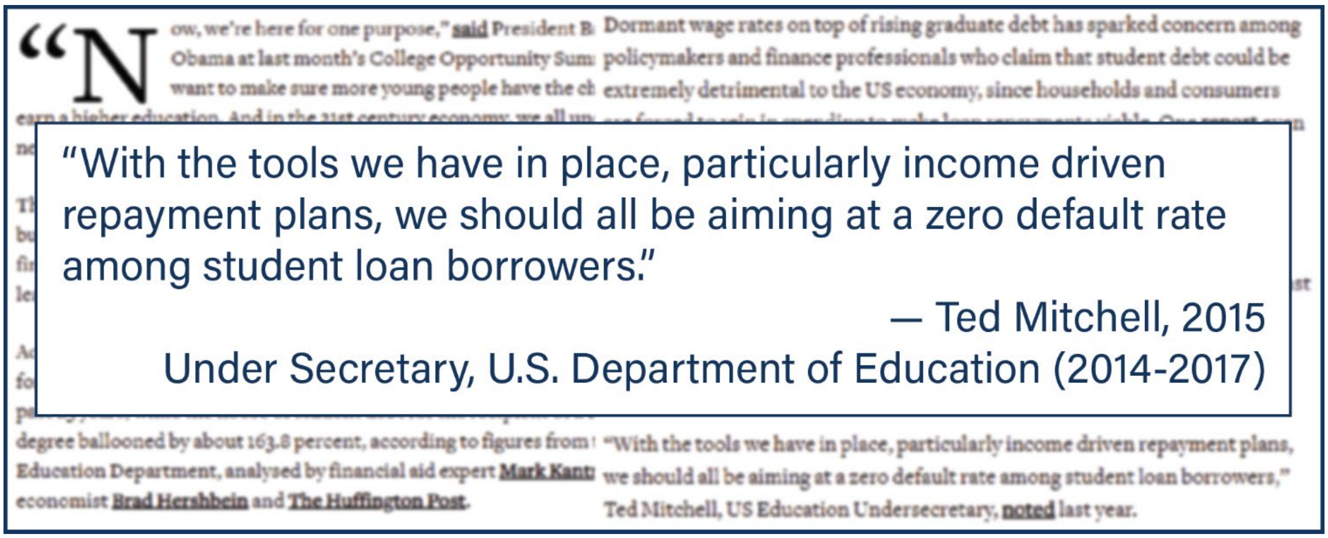
By the eve of the COVID-19 pandemic, only slightly more than half of borrowers who were in repayment on federal student loans were current.

Further, research indicates that many of the borrowers who need IDR the most are not accessing and persisting in it,[14] that many borrowers struggle even when enrolled on IDR,[15] and that virtually no borrowers have achieved promised forgiveness through IDR.[16]

While as many as four-in-five Black borrowers may benefit from the monthly payment protections offered by IDR, SBPC analysis indicates that slightly less than half are enrolled, and that a substantial proportion of Black borrowers are falling behind in repayment as a result.[17] Similarly, while nearly all borrowers with annual incomes below $20,000 could secure a $0 monthly payment through IDR, more than half of borrowers in that income range report having fallen behind on their student loans without accessing the protection.[18]

Worse, aside from questions about whether IDR is truly affordable, borrowers who are able to enter IDR often find that continuing to enjoy its benefits proves to be a challenge. Evidence indicates that borrowers struggle to stay on track with annual re-enrollment requirements, with more than half of borrowers not recertifying their income on time,[19] something that is often attributable to servicer error.[20] Additional research shows that borrowers who do not successfully re-enroll in IDR struggle, with more than a third of these borrowers ending up in a deferment or forbearance or becoming delinquent on their loans.[21] These breakdowns lead borrowers to seek protection through hardship-related forbearance or deferment in lieu of continued access to IDR, which can cause payments to balloon and compound existing financial distress.[22]

Finally, the assurance of loan forgiveness through IDR has proven illusory, with recent investigations showing that just 32 federal student loan borrowers out of millions with undergraduate debts that are more than two decades old—the general threshold at which such debts are intended to be forgiven through IDR—have had their loans absolved.[23] This breakdown was foreshadowed by well-publicized failures related to the Public Service Loan Forgiveness program,[24] which requires borrowers to be in IDR as a qualification for loan discharge[25] but which has failed to deliver earned relief for hundreds of thousands of borrowers nationwide due to breakdowns that include ongoing obstacles to IDR enrollment and persistence.[26]



The various shortcomings of IDR have in part to do with the well-documented, widespread breakdowns and malfeasance that have plagued the protections' implementation by the Department of Education and the student loan industry.[27] But, as this document outlines, they also reflect the particular path that IDR has taken as it has developed over time and the specific policy choices regarding the protections structure and design that policymakers made along the way. This is particularly relevant with regard to the protection's evolving view of loan affordability, access, and the present-day value of putative future forgiveness.

This issue brief outlines many of these design choices, retracing the history of IDR, the principles that underlie it, and the evolution of the protection's implementation. In doing so, it offers a glimpse into how a sequence of legislators and policymakers have attempted to address areas where they perceived previous repayment options as falling short, and how the promise of IDR nevertheless still currently diverges from its reality.

The History and Goals of Income-Driven Repayment

1992: Income Contingent Repayment Debuts as the First IDR Plan

The federal student loan program was created in 1965 in an effort to promote the accessibility and affordability of higher education.[28] The program arose from a years-long debate regarding whether America's higher education system should be principally debt-based or grant-based,[29] with advocates for the former view claiming in part that imposing at least some cost on students would help them develop personal financial responsibility.[30]

Over time, however, it became clear to lawmakers that the cost of student loan debt was presenting a growing and increasingly problematic burden for borrowers.[31] By 1988, presidential hopeful Michael Dukakis was promoting a plan for an income-based federal student loan repayment program that would aim to be more affordable to borrowers.[32] Congress acted in 1992 with the creation of the first opportunity for borrowers to have their student loan payments be determined as a percent of their income, not based on the amortization schedule of their outstanding loan balance.[33] Titled Income-Contingent Repayment (ICR), this plan was authorized in statute[34] and the specific parameters set through subsequent rulemaking,[35] limiting borrowers' payments to no more than 20 percent of their discretionary income—a measure defined in the associated regulations as the borrower's gross income less the poverty guideline for borrowers based on their location and family size[36]—and to offer loan forgiveness after 25 years of repayment.[37] ICR gained support in the Clinton White House as part of a broader push for pathways toward public service, including as an aspect of a later-reduced plan for a new national service program.[38] This was in part because ICR stood to be a more budgetarily palatable alternative to expanding Pell Grants or turning them into a mandatory spending program, which Congressional leaders had pursued,[39] even though Pell Grants are generally thought of as more robustly aiding those most likely to face difficulty in repayment.[40]

Notably, the statute enacting ICR was drafted in an open-ended manner, allowing for much of the detail underlying ICR to be set through regulation and enabling the statute to be used as the basis for many subsequent IDR plans.

ICR was heralded at its passage by Republicans[41] and Democrats[42] alike as a way to reduce student loan borrower defaults,[43] boost college affordability,[44] and even help borrowers pursue lower-wage careers in public service.[45] In turn, the passage of ICR laid the following bedrock goals enumerated above that have characterized all subsequent IDR options:

- Making student loan payments affordable for all;
- Preventing student loan debt from becoming a lifetime burden through loan forgiveness after a pre-set number of years in IDR; and
- Providing a lifeline to prevent delinquency and default, especially for the borrowers who are most likely to struggle in repayment.

2007: Income Based Repayment Expands Access and Affordability

ICR alone proved insufficient to solve the problem of burdensome student debt, as student debt balances continued to climb[46] and hardship for student loan borrowers continued to grow even after its passage due in part to the substantial proportion (20 percent) of disposable income that ICR demanded from borrowers.[47] For borrowers already in default, ICR remained unavailable, all while 1996 amendments to the Debt Collection Improvement Act—implemented in part to offset the cost of ICR—expanded the government's tools to collect past-due debt to include such harsh methods as administrative wage garnishment.[48] Moreover, ICR was available only to borrowers who had taken on loans through the Direct Loan (DL) program,[49] wherein the Department of Education acts as a lender to students.[50] Most loans at the time that ICR was introduced were made through the Federal Family Education Loan (FFEL) program,[51] where the federal government offered loan guarantees and interest subsidies to third party student loan companies but was not itself a creditor.[52]

To address borrowers' ongoing hardship, lawmakers introduced a new income-centered plan titled Income Based Repayment (IBR) in 2007.[53] IBR set student loan borrowers' monthly payments at 15 percent of discretionary income (lower than the 20 percent maximum under ICR regulations), defined discretionary income as the borrower's gross income minus 150 percent of the poverty guidance relevant for the borrower (a higher threshold than the 100 percent used for ICR, implying lower monthly payments and more protected income), and retained ICR's offer of loan forgiveness after 25 years of repayment.[54] Like ICR, IBR was explicitly intended to promote or otherwise make more accessible careers in public service,[55] and it would be unavailable to borrowers in default.[56] Unlike ICR, IBR would be available to borrowers with FFEL program loans[57] and would offer subsidies for unpaid interest that borrowers might accrue during their first three years of repayment.[58] Finally, IBR established as a prerequisite for eligibility that borrowers demonstrate a "partial financial hardship," generally meaning that borrowers could enroll in IBR only if the plan would offer them a lower payment than the one available under the standard 10-year plan.[59] IBR's creation drew substantial praise.[60]

2010: New Income Based Repayment Furthers IDR's Generosity

IDR's expansion continued into the 2010s. Feeling that even the introduction of IBR was not enough to alleviate the burden of student debt, the Obama administration announced plans for an "expanded IBR program" in early 2010.[61] This New Income Based Repayment (IBR2) plan became law through the Student Aid and Fiscal Responsibility Act in 2010[62] and implementing regulations were finalized in 2013.[63] IBR2 would offer borrowers monthly payments at 10 percent of discretionary income (to the old IBR's 15 percent) and loan forgiveness after 20 years (to the old IBR's 25 years).[64] IBR2 kept the same discretionary income formula, partial financial hardship requirement, and interest subsidies of the original IBR plan, making it much more generous on net than its predecessor.[65] But as defined in its implementing regulations, IBR2 would be available only to borrowers who took on their first loan on or after July 1, 2014.[66]

2011: Pay As You Earn Expands IDR's Reach

With the stated goal of extending the protections of IBR2 to borrowers who took on a loan before July 1, 2014,[67] the Obama administration initiated a rulemaking in 2011 under the existing ICR statute to create a new IDR plan titled "Pay As You Earn" (PAYE).[68] PAYE's terms closely mirrored IBR2's, including setting payments at 10 percent of discretionary income, offering forgiveness after 20 years, subsidizing unpaid interest for the borrower's first three years of repayment, and requiring that borrowers show a partial financial hardship.[69] Unlike IBR2, though, PAYE was designed to be available only to borrowers who both did not have an outstanding balance as of October 1, 2007 and who also received their first loan on or after October 1, 2011.[70] In addition, PAYE would limit the amount of unpaid interest that can capitalize on the borrower's loan to 10 percent of its original balance, meaning that any additional unpaid interest would accrue but not compound.[71]

2014: Revised Pay as you Earn Completes the Contemporary IDR Landscape

Looking to expand further on PAYE's level of protection and availability, President Obama signed a directive in June 2014 instructing the Secretary of Education to "propose regulations that will allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income."[72] This directive led ED to turn once again to the ICR statute, resulting in the creation through rulemaking of a final IDR plan dubbed "Revised Pay As You Earn" (REPAYE) in 2015.[73] Like PAYE, REPAYE set payments at 10 percent of discretionary income, offered forgiveness for loans used for undergraduate education after 20 years of repayment, and defined discretionary income at 150 percent of federal poverty guidance.[74] On top of that, REPAYE would be available to all Direct Loan borrowers regardless of hardship status, increased the duration of the repayment period required for loan forgiveness to 25 years for borrowers with any loans used for graduate education, and offered subsidies for only half of the unpaid interest on unsubsidized loans (thought it would offer the subsidy indefinitely, and not just for the first three years of repayment), among other smaller changes.[75]

The IDR landscape has been generally unchanged since the introduction of REPAYE. During the COVID-19 pandemic, all borrowers in IDR with federal student loans held by the government have been eligible to count time spent under the emergency-related suspension of payments as progress toward forgiveness.

After almost 30 years of efforts to expand the generosity and availability of the protection, IDR currently consists of the repayment plans enumerated in the following table.

Table: the Contemporary IDR Landscape[76]

PLAN	YEAR AVAILABLE	MONTHLY PAYMENT	DISCRETIONARY INCOME IS CALCULATED BASED ON...	LOAN FORGIVENESS AFTER...
Income-contingent repayment (ICR)	1995	The lesser of: — 20 percent of discretionary income, *or* — The amount owed on a repayment plan with a fixed payment over the course of 12 years multiplied by an income percentage factor based on the borrower's AGI and tax filing status	100 percent of the poverty guideline for the borrower's family size and state of residence	25 years of repayment
Income-Based Repayment (IBR)	2009	The lesser of : — 15 percent of discretionary income, *or* — The amount owed under the 10-year Standard Repayment Plan	150 percent of the poverty guideline for the borrower's family size and state of residence	20 years of repayment
Pay As You Earn (PAYE)	2012	The lesser of : — 10 percent of discretionary income, *or* — The amount owed under the 10-year Standard Repayment Plan	150 percent of the poverty guideline for the borrower's family size and state of residence	20 years of repayment
New Income-Based Repayment (IBR2)	2014	The lesser of : — 10 percent of discretionary income, *or* — The amount owed under the 10-year Standard Repayment Plan	150 percent of the poverty guideline for the borrower's family size and state of residence	25 years of repayment
Revised Pay As You Earn (REPAYE)	2015	10 percent of discretionary income	150 percent of the poverty guideline for the borrower's family size and state of residence	20 years of repayment, 25 if any loans were for graduate or professional study

Analysis

The growth of IDR since its introduction in 1992 has tended to involve the protection becoming broader-reaching and more generous. The threshold for protected income has risen from 100 percent of the poverty guideline in ICR to 150 percent of the poverty guideline in subsequent IDR plans, the proportion of discretionary income that borrowers are obligated to pay has fallen from 20 to 10 percent from ICR to REPAYE, and more borrowers are entitled to IDR now than ever before.

IDR's arc over time can be interpreted as reflecting successive policymakers' desire to have IDR more completely live up to its goal of making federal student loans affordable to the point of making default nearly impossible, time-limited, and accessible even for those who would otherwise be more likely to struggle in repayment. As mentioned at the outset, the default-preventative aspects of IDR amount to a partial realization of this goal.

Even with IDR's increased scope in mind, it is clear that the protection continues not to fully live up to its ideals.

However, even with IDR's increased scope in mind, it is clear that the protection continues not to fully live up to its ideals. Instead, as discussed above, federal student loans remain unaffordable and onerous for many, all while delinquency and default remain as prevalent as ever outside of the temporary protections instantiated in response to the COVID pandemic. This is especially true for Black, Latino, and low-income borrowers, who are less likely to successfully access IDR and remain worryingly likely overall to face ruinous outcomes as student loan borrowers—something IDR was meant to eliminate.

The contrast between IDR's growing generosity and the poor outcomes borrowers continue to experience in the federal student loan market points to shortcomings both with IDR's implementation and limits of IDR as a catch-all solution to the student debt crisis. In particular, several key questions surrounding IDR's success remain unanswered:

- Are payments under IDR truly affordable for those who can access the protection?
- Is IDR designed or administered in ways that disadvantage low-income borrowers and borrowers of color when it comes to enrolling and navigating servicer bureaucracy?

- Does the availability of monthly income-based payments meaningfully offset the other myriad negative consequences that flow from simply having a large (and often growing) outstanding loan balance?
- Does the choice of 20 to 25 years as thresholds for loan forgiveness remain at all appropriate or reasonable?
- Does income protection actually amount to household financial protection in the first place?
- Has IDR successfully promoted access to public service careers, both on its own and through Public Service Loan Forgiveness?
- Does requiring borrowers to remain in limbo for decades to access debt cancellation—especially given public reporting around how few borrowers in IDR have secured it[77]—pose its own massive toll on borrowers? In particular, what credit reporting consequences does having a large and/or growing debt-to-income ratio while being enrolled in IDR have on borrowers, and how do those effects ripple across borrowers' financial and personal lives?

The history and contemporary reality of IDR make clear that while Congress and subsequent administrations have taken steps to answer these questions in ways that are beneficial to borrowers, policymakers have still not succeeded.

Conclusion

Since 1992, Congress has attempted to alleviate the burden of federal student loan debt by offering income-driven plans that tie borrowers' payments to their income and promise forgiveness after a set period of time. Over time, these options have tended to become more generous, lowering the proportion of discretionary income they take and generally shortening the time before loan forgiveness. This trend has offered federal student loan borrowers some limited relief. However, the full promise of IDR remains unfulfilled. As discussed above, borrowers who need IDR the most are currently the least likely to access it relative to their level of need, borrowers who access IDR continue to struggle, and vanishingly few borrowers have secured loan forgiveness through the protection. For IDR to truly live up to its ideals, its history will have to continue into a new chapter.

Endnotes

[1] *Student Loan Borrowing By State/Area,* Fed. Reserve Bank of N.Y., https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/student-loan-by-state.xlsx (last accessed Sept. 9, 2021) (finding that the average student loan balance is $35,530.16); Fed. Reserve Bank of N.Y., *2018 Student Loan Update* (2018), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_2018.xlsx (finding that roughly one-in-five borrowers owes at least $50,000); Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit: 2020Q2* (Aug. 2020), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/hhd_c_report_2020q2.xlsx (finding that student loan delinquency before the coronavirus crisis was 21 percent higher than the rate of mortgage delinquency at the peak of the Great Recession); Ben Kaufman, *New Data Show Student Loan Defaults Spiked in 2019 - A Warning to Industry and DeVos Amid Economic Fallout*, Student Borrower Prot. Ctr. (Mar. 13, 2020), https://protectborrowers.org/every-26-seconds/ (finding that a borrower defaulted on a federal student loan every 26 seconds in 2019).

[2] *See* Cong. Res. Serv. and Flores, *infra* note 76.

[3] *Income-Driven Repayment Plans*, Fed. Student Aid, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last accessed Sept. 9, 2021) ("If your income is low enough, your payment could be as low as $0 per month.").

[4] *Id.*

[5] *Id.*

[6] *See generally*, Consumer Fin. Prot. Bureau Off. of Rsch., *Data Point: Borrower Experiences on Income-Driven Repayment* (Nov. 2019), https://files.consumerfinance.gov/f/documents/cfpb_data-point_borrower-experiences-on-IDR.pdf.

[7] Daniel Herbst, *Liquidity and Insurance in Student Loan Contracts: The Effects of Income-Driven Repayment on Default and Consumption* (Apr. 27, 2018), http://conference.iza.org/conference_files/Education_2018/herbst_d26912.pdf.

[8] *Id.*

[9] Holger M. Muller and Constantine Yannelis, *Students in Distress: Labor Market Shocks, Student Loan Default, and Federal Insurance Programs*, Nat'l Bureau of Econ. Rsrch., Working Paper Series (Mar. 2017), https://www.nber.org/papers/w23284.

[10] *Direct Loan Portfolio by Delinquency Status*, Fed. Student Aid, U.S. Dep't of Educ. (Mar. 31, 2021), https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls; *Direct Loans Entering Default*, Fed. Student Aid, U.S. Dep't of Educ. (Mar. 31, 2021), https://studentaid.gov/sites/default/files/DLEnteringDefaults.xls.

[11] *See Direct Loan Portfolio by Loan Status*, Fed. Student Aid, U.S. Dep't of Educ. (Mar. 31, 2021), https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls.

[12] *Id.*

[13] *See* Kaufman, *supra* note 1.

[14] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, Student Borrower Prot. Ctr. (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/.

[15] *See* U.S. Dep't of Educ., *Sample Data on IDR Recertification Rates for ED-Held Loans* (2015), https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf.

[16] Nat'l Consumer L. Ctr. and Student Borrower Prot. Ctr., *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt* (Mar. 2021), https://www.nclc.org/uncategorized/issue-brief-education-departments-decades-old-debt-trap-how-the-mismanagement-of-income-driven-repayment-locked-millions-in-debt.html.

[17] *See* Kaufman, *supra* note 14.

[18] *Id.*

[19] *See* U.S. Dep't of Educ., *supra* note 15.

[20] Consumer Fin. Prot. Bureau, *Midyear Update on Student Loan Complaints* (Aug. 2016), https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

[21] Consumer Fin. Prot. Bureau, *supra* note 6.

[22] *See* U.S. Dep't of Educ. (2015), *supra* note 15.

[23] *See* Nat'l Consumer L. Ctr. and Student Borrower Prot. Ctr., *supra* note 16.

[24] *See generally*, *Public Service Loan Forgiveness*, Student Borrower Prot. Ctr., https://protectborrowers.org/public-service-loan-forgiveness-2/.

[25] Fed. Student Aid, *supra* note 3.

[26] *See, e.g.*, *Keeping the Promise of Public Service Loan Forgiveness*, Student Borrower Prot. Ctr. (Dec. 19, 2018), https://protectborrowers.org/wp-content/uploads/2020/01/SBPC-AFT-PSLF-Investigation.pdf.

[27] Press Release, Consumer Fin. Prot. Bureau, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment* (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-Nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment; U.S. Dep't of Educ., Off. of the Inspector Gen., *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs* (Jan. 31, 2018), https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf; R.I. Office of the Postsecondary Commissioner, *Working Group on Student Loan Borrower Protections, Protecting Rhode Island's Student Loan Borrowers* (Feb. 2019), https://www.riopc.edu/static/photos/2019/03/07/Student_Loan_Borrower_Protections_Feb_2019.pdf; Letter from Sen. E. Warren to J. F. Remondi, Chief Executive Officer, Navient Corporation (Mar. 29, 2021), https://www.warren.senate.gov/imo/media/doc/2021.03.29%20Letter%20to%20Remondi%20re%20invite%20to%20Banking%20Hearing.pdf.

[28] *See, e.g.*, Lyndon B. Johnson, *Remarks at Southwest Texas State College Upon Signing the Higher Education Act of 1965*, in Public Papers of the Presidents of the United States 1103, 1003 (1965) ("So to thousands of young people education will be available. And it is a truism that education is no longer a luxury. Education in this day and age is a necessity. Where a family cannot afford that necessity: . . . We can provide loans, free of interest and free of any payment schedule until after you graduate, to worthy, deserving, capable students."); 111 Cong. Rec. 21911 (1965), https://www.govinfo.gov/content/pkg/GPO-CRECB-1965-pt16/pdf/GPO-CRECB-1965-pt16-6.pdf (wherein Rep. Bernard F. Grabowski comments that the Higher Education Act creates "a system of Federal, State, and private programs of low-interest insured loans to students in institutions of higher education. . . . It is clear that the aim of these provisions for various types of student assistance under the Higher Education Act of 1965 is to help all American youth who have the intelligence and ability for college where they belong-and where they can acquire the educated talent which our country needs."); 111 Cong. Rec. 22708 (1965) (statement of Sen. McGovern), https://www.congress.gov/89/crecb/1965/09/02/GPO-CRECB-1965-pt17-3-1.pdf ("I am particularly pleased that this legislation provides for low-interest insured loans and undergraduate scholarship. I have long believed that such programs are essential to provide thousands of needy and deserving students with the opportunity to obtain the higher education they so earnestly desire.").

[29] *See generally*, Lawrence E. Gladieux, *Federal Student Aid Policy: A History and an Assessment* (Oct. 1995), https://www2.ed.gov/offices/OPE/PPI/FinPostSecEd/gladieux.html.

[30] *See, e.g.*, 111 Cong. Rec. 21942 (1965) (statement of Rep. Skubitz), https://www.govinfo.gov/content/pkg/GPO-CRECB-1965-pt16/pdf/GPO-CRECB-1965-pt16-6.pdf ("I want to help those who want to help themselves. In my opinion, we do a student an injustice by making outright gifts. If we are to extend a helping hand, let us make it possible for our boys and girls to retain their self-respect—their pride. Let us develop in our youth a feeling of responsibility. In life, there are no handouts except on welfare.").

[31] 138 Cong. Rec. 16998 (1992) (statement of Sen. Simon), https://www.congress.gov/102/crecb/1992/06/30/GPO-CRECB-1992-pt12-4-1.pdf ("First many youth and adults decide against going to college, because they are afraid they might fail, and they won't be able to pay off their loans. With an income-related program, that fear is reduced. During a period of unemployment or low wages, the required payments are reduced automatically. Second, too many students don't do what they want to do with their lives, because of the loan payments they need to make. This might be a scientist who wants to be a high school teacher, but works for industry instead. Or a doctor who enters a high-paying specialty instead of working in an inner-city health clinic. Debt burdens skew these career decisions. Finally, large debt burdens postpone dreams. I know a couple in southern Illinois who are paying more than $800 a month in student loan payments. They would like to buy a home, but they simply can't afford to. Income-contingent payments would help to make their debt more manageable. Income-contingent payments and IRS collection also help us to address the default problem. A large part of the current problem is that people go through a low income period, they default, then they never pick up where they left off. By reducing the required payment depending on income, borrowers can go in and out of the system without trying to figure out who owns their loans."); *see also* H.R. Rep. No. 110-210, *infra* note 46.

[32] *See., e.g.*, Robin Toner, *Dukakis Proposing College Loans To Be Repaid Over Job Lifetime*, N.Y. Times (Sep. 8, 1988), https://www.nytimes.com/1988/09/08/us/dukakis-proposing-college-loans-to-be-repaid-over-job-lifetime.html.

[33] Higher Education Amendments of 1992, Pub. L. 102-325*; see generally,* Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 (which also created the "graduated" and "extended" repayment plans. Because these are not income-based plans, they will not be discussed here.)

[34] Higher Education Amendments of 1992, Pub. L. 102-325; *see*, Evelyn Brody, *Paying Back Your Country Through Income-Contingent Student Loans*, 31 San Diego L. Rev. 449, 501 n.197 (1994), https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1197&context=sdlr (Note that ICR was first authorized as part of the Higher Education Amendments of 1992 as part of a pilot of the Direct Loan program, then made permanent by the superseding Omnibus Budget Reconciliation Act of 1993).

[35] 34 C.F.R.§ 685 (2013).

[36] *Id.* at § 685.209 (noting that ICR sets borrowers' payments at the lesser of 20 percent of discretionary income and the amount the borrower would pay under a standard 12-year repayment sequence multiplied by an income percentage factor); *see* Cong. Res. Serv. and Flores, *infra* note 76.

[37] 34 C.F.R. § 685.209 (2013).

[38] *See*, *e.g.*, Mark Pitsch, *Clinton Launches Sales Campaign For Service Plan*, Education Week (Mar. 10, 1993), https://www.edweek.org/education/clinton-launches-sales-campaign-for-service-plan/1993/03.

[39] Gladieux, *supra* note 29.

[40] *#DoublePell for College Affordability*, National College Attainment Network, https://www.ncan.org/page/Pell (last accessed Sept. 9, 2021).

[41] 138 Cong. Rec. 17002 (1992) (statement of Sen. Durenberger) ("The most important principle in the legislation I introduced is that student loan payments should be tied to post-college income--easing cash-flow burdens on students and dramatically reducing current levels of student loan defaults.").

[42] 138 Cong. Rec. 18278 (1992) (statement of Rep. Gejdenson) https://www.govinfo.gov/content/pkg/GPO-CRECB-1992-pt13/pdf/GPO-CRECB-1992-pt13-3.pdf, ("Since 35 percent of the schools involved in the pilot program will offer students an income-contingent repayment schedule, borrowers will find that their loan payments are more reasonable. This progressive system guarantees that borrowers at all income levels will not pay more per month than they can afford. It also means that college graduates taking lower paying jobs in teaching or social services can make smaller loan payments at lower interest rates for a longer time than someone who takes a high-paying job.")

[43] Durenberger, *supra* note 41.

[44] 138 Cong. Rec. 16972 (1992) (statement of Sen. Bradley), https://webarchive.loc.gov/congressional-record/20160304194432/http://thomas.loc.gov/cgi-bin/query/C?r102:./temp/~r102bxLlyR, ("Universal access and income-contingent repayment harness the value of a college education to get past the hurdle of paying for it").

[45] Staff of S. Comm. on the Budget, 103d Cong., Reconciliation Submissions of the Instructed Committee Pursuant to the Concurrent Resolution on the Budget (H.R. Con. Res. 64) 453 (Comm. Print 1993) (reprinting report by Senate Committee on Labor and Human Resources to accompany Title XII of the Budget Reconciliation Act) (Senator Kennedy noting that ICR would "provide borrowers with a variety of repayment plans, including an income-contingent repayment plan, so that borrowers['] . . . obligations do not foreclose community service-oriented career choices.").

[46] H.R. Rep. No. 110-210, at 44 (2007), https://www.congress.gov/congressional-report/110th-congress/house-report/210/1 ("According to the Project on Student Debt, 'over the past decade, debt levels for graduating seniors with student loans more than doubled from $9,250 to $19,200 a 108% increase (58% after accounting for inflation).'").

[47] 153 Cong. Rec. H10269 (daily ed. Sept. 7, 2007) (statement of Rep. Van Hollen), https://www.congress.gov/crec/2007/09/07/CREC-2007-09-07-pt1-PgH10259-3.pdf ("We're going to institute income-based loan repayment, so graduates don't have to choose between paying their rent and paying off their loans.")

[48] *About the Debt Collection Improvement Act*, Dep't of the Treasury (Aug. 29, 2019), https://fiscal.treasury.gov/dms/about/about-dcia.html.

[49] § 685.209, *supra* note 35 ("The income-contingent repayment (ICR) plan is an income-contingent repayment plan under which a borrower's monthly payment amount is generally based on the total amount of the borrower's Direct Loans, family size, and AGI.").

[50] *See generally*, *Loans*, Fed. Student Aid, https://studentaid.gov/understand-aid/types/loans (last accessed Sept. 9, 2021).

[51] *See, e.g.*, Congressional Budget Office, *Costs and Policy Options for Federal Student Loan Programs* (Mar. 2010), https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/03-25-studentloans.pdf#page=17.

[52] *Id.* at vii ("In the guaranteed loan program, loans are administered by financial institutions—such as Sallie Mae, commercial banks, and nonprofit agencies—that act as FFEL lenders.").

[53] College Cost Reduction and Access Act, Pub. L. 110-84 (2007).

[54] 20 U.S.C. § 1098(e) (2009); 34 C.F.R.§ 682.215; *see generally*, Higher Education Amendments of 1988, Pub. L. 105-244; Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152 (Note that Congress also enacted an additional income-based plan, called Income Sensitive Repayment (ISR) in 1998. However, this plan is available only to borrowers with older loans originated under the FFEL program, which was discontinued in 2010. Because new FFEL originations ended in 2010, and because it was generally small in the scope of borrowers it reached, ISR will not be discussed here).

[55] H.R. Rep. No. 110-210, at 44 (2007) (stating that IBR "serve[s] to expand rather than restrict educational and economic opportunities for graduates who would otherwise be unable to afford to work as teachers or social workers."); 153 Cong. Rec. 19735 (2007) (statement of Sen. Feingold) (explaining that IBR "will help those graduating students in Wisconsin and around the country who want to pursue careers in public service.").

[56] College Cost Reduction and Access Act, *supra* note 53.

[57] 34 C.F.R.§ 682.215.

[58] *Id.*

[59] *Partial Financial Hardship*, Fed. Student Aid, https://studentaid.gov/help-center/answers/topic/glossary/article/partial-financial-hardship (last accessed Sept. 9, 2021).

[60] The Inst. for College Access and Success, Key Provisions in HR 2669 (Sept. 7, 2007), https://ticas.org/affordability-2/key-provisions-in-h-r-2669/ (The IBR "program assures past, present and future students with federal loans that their payments will be fair and manageable and will not extend indefinitely").

[61] *Ensuring That Student Loans are Affordable*, The White House of President Barack Obama https://obamawhitehouse.archives.gov/issues/education/higher-education/ensuring-that-student-loans-are-affordable (last accessed Sept. 2, 2021).

[62] Health Care and Education Reconciliation Act, 20 U.S.C. § 1098e (2018).

[63] *Negotiated Rulemaking for Higher Education 2011 -- Team II, Student Loan Issues*, U.S. Dep't of Educ. https://www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html (last visited Sept. 2, 2021).

[64] 20 U.S.C. § 1098e(e).

[65] *Id.*

[66] *See*, 34 CFR § 685.221 (2013) (Definition of a "new borrower").

[67] Office of the Press Secretary, *FACT SHEET: Help Americans Manage Student Loan Debt*, The White House of Barack Obama (Oct. 25, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/10/25/fact-sheet-help-americans-manage-student-loan-debt ("In the 2010 State of the Union, the President proposed – and Congress quickly enacted – an improved income-based repayment (IBR) plan, which allows student loan borrowers to cap their monthly payments at 15% of their discretionary income. Beginning July 1, 2014, the IBR plan is scheduled to reduce that limit from 15% to 10% of discretionary income. Today, the President announced that his Administration is putting forth a new "Pay As You Earn" proposal to make sure these same important benefits are made available to some borrowers as soon as 2012.")

[68] Negotiated Rulemaking, *supra* note 63.

[69] 34 C.F.R. § 685.209 (Note that PAYE is also available only to FFEL borrowers who consolidate their FFEL loans into a Direct Consolidation loan.).

[70] *Id.*

[71] *Id.*

[72] Barack Obama, *Presidential Memorandum -- Federal Student Loan Repayments*, The White House of Barack Obama, Office of the Press Secretary (June 9, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments.

[73] *Negotiated Rulemaking for Higher Education 2014 - 2015*, U.S. Dep't Educ. https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html (last visited Sept. 2, 2021).

[74] 34 C.F.R. § 685.209.

[75] *Id.*; John R. Brooks, *The Case for More Debt: Expanding College Affordability By Expanding Income-Driven Repayment*, 2018 Utah L. Rev. 847, 854, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3080&context=facpub.

[76] See Antoinette Flores, *Proposed Student Loan Repayment Plan Would Extend the Same Income-Based Terms to All Federal Loan Borrowers*, Ctr. for Am. Progress (Aug. 18, 2015, 4:19 PM), https://www.americanprogress.org/issues/education-postsecondary/news/2015/08/18/119574/proposed-student-loan-repayment-plan-would-extend-the-same-income-based-terms-to-all-federal-loan-borrowers/#; Congressional Research Service, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers* (June 21, 2021) https://crsreports.congress.gov/product/pdf/R/R45931#page=37; Fed. Student Aid., *supra* note 3.

[77] Lauren Frias, *Only 32 student-loan borrowers - ever - have qualified for full forgiveness through an income-driven repayment plan*, Yahoo! News, (Mar. 10, 2021), https://news.yahoo.com/only-32-student-loan-borrowers-041905513.html.