

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Submitted Online via the Federal eRulemaking Portal at regulations.gov

February 10, 2023

Michael A. Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Notice of Proposed Rulemaking: *Improving Income-Driven Repayment Loans for the William D. Ford Federal Direct Loan Program*, 88 Fed. Reg. 1894 (Jan. 11, 2023)

Dear Secretary Cardona,

Justice In Aging (“JIA”) appreciates the opportunity to comment on the above-referenced Notice of Proposed Rulemaking (the “Proposed Rule”).¹

JIA is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Although student debt is an issue often discussed only in terms of its effect on recent graduates and those just beginning their careers, JIA has experience with older adults for whom student debt poses an impediment to economic security, including parents who took out Parent PLUS loans from the U.S. Department of Education (the “Department” or “ED”) to help their dependent children pay for college or a career school. JIA is particularly concerned about older borrowers from marginalized populations—including women, people of color, people with disabilities, LGBTQ individuals, and people with limited English proficiency—who are struggling to repay Parent PLUS loans because of the lack of affordable repayment options.

¹ This comment was prepared with the assistance of Ben Seel, Senior Counsel, Democracy Forward Foundation.

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Accordingly, although JIA applauds and supports ED’s effort to revise income-driven repayment (“IDR”)² in a manner that will “make it easier for borrowers to repay their loans,”³ it submits this comment to encourage ED to broaden that effort to ensure that struggling Parent PLUS borrowers have access to affordable IDR repayment options, too. Specifically, JIA strongly urges the Department to permit—either in its final rule or in a subsequent rulemaking—borrowers who have consolidated their Parent PLUS loan into a Direct Consolidation Loan to utilize any repayment option created under ED’s ICR Authority, including Pay As You Earn (“PAYE”), and Revised Pay As You Earn (“REPAYE”), as modified by the Proposed Rule.⁴ By allowing Parent PLUS borrowers with consolidated loans to access PAYE and REPAYE, the Department will be extending the most affordable repayment terms currently available under its ICR Authority,⁵ which advances the goal of this Proposed Rule to make student loan repayment more affordable and accessible.

I. Background

A. The Department’s Proposed Rule

On January 11, 2023, “the Department propose[d] several significant improvements to the repayment plans available to student loan borrowers to make it easier for borrowers to repay their loans,” including for “the rules governing IDR plans.”⁶ ED proposes these changes to “ensure that student loan borrowers have greater access to affordable repayment terms based upon their income, resulting in lower monthly payments and lower amounts repaid over the life of a loan.”⁷ For instance, the Department proposes expanding the benefits of REPAYE by:

increasing the amount of income protected from the calculation of the borrower’s payments, lowering the share of unprotected income used to

² IDR is an umbrella term that encompasses plans created pursuant to ED’s authority under the Higher Education Act (“HEA”) to create income-contingent repayment plans (“ICR Authority”), *see* 20 U.S.C. § 1087e(d)(1)(D), as well as its authority to create income-based repayment plans (“IBR Authority”), *see* 20 U.S.C. § 1087e(d)(1)(E).

³ Improving Income-Driven Repayment for the William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 1894, 1894 (Jan. 11, 2023) (to be codified at 34 C.F.R. pt. 685).

⁴ *See* 20 U.S.C. § 1087e(d)(1)(D); *see also* 34 C.F.R. §§ 685.209(a), (c).

⁵ *See* 20 U.S.C. § 1087e(d)(1)(D).

⁶ 88 Fed. Reg. at 1894.

⁷ *Id.*

calculate payment amounts on undergraduate debt, reducing the amount of time before reaching forgiveness for borrowers with low balances, and not charging any remaining accrued interest each month after applying a borrower's payment.⁸

ED also proposes to “streamline and standardize the Direct Loan Program repayment regulations by categorizing existing repayment plans into” three groups: (1) fixed payment repayment plans; (2) IDR plans; and (3) the alternative repayment plan.⁹ Finally, the Department proposes certain changes that it hopes will clarify its existing regulations and “simplify the procedures and terms of the existing plans.”¹⁰

None of the Department's proposed changes, however, purport to expand eligibility for PAYE or REPAYE in a manner that will make repayment more affordable for borrowers with consolidated Parent PLUS loans.¹¹

B. The Parent PLUS Loan Program

When the cost of attendance at a college or career school is not met by other means of financial aid, “graduate or professional students and parents of dependent undergraduate students can” borrow directly from the Department through the Direct PLUS loan program to help cover the remaining costs.¹² When the Direct PLUS loan is “made to a parent borrower,” it “is commonly referred to as a [P]arent PLUS loan.”¹³ Although “[m]ost parents don't pay for college using this loan,” approximately “3.6 million of them—with about \$107 billion in outstanding debt—have.”¹⁴ Accordingly,

⁸ *Id.* at 1895.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.* at 1901 (“The Department is not proposing to change which types of loans are eligible to be repaid under the different IDR plans.”).

¹² *See* U.S. Dep't of Educ., *PLUS Loans*, Fed. Student Aid, <https://studentaid.gov/understand-aid/types/loans/plus> (last visited Feb. 8, 2023); 20 U.S.C. § 1087-2.

¹³ U.S. Dep't of Educ., *Parent PLUS Loans*, Fed. Student Aid, <https://studentaid.gov/understand-aid/types/loans/plus/parent> (last visited Feb. 9, 2023).

¹⁴ *See* Ron Lieber, *The Subprime Loans for College Hiding in Plain Sight*, N.Y. Times, <https://www.nytimes.com/2022/09/17/your-money/parent-plus-loans.html> (Sept. 19, 2022).

debt accumulated through the Parent PLUS loan program represents a small but significant aspect of the larger student debt crisis.¹⁵

To qualify for a Parent PLUS loan, borrowers must: (1) “[b]e the biological or adoptive parent for a student enrolled at least half-time at an eligible school”; (2) “[p]ass a credit check,” “obtain an endorser,” or secure a waiver from the Department based on the borrower’s “explanation of extenuating circumstances related to [their] adverse credit history”; and (3) otherwise “[m]eet the general eligibility requirements for federal student aid,” including being “a citizen or eligible non-citizen.”¹⁶ Those eligible can borrow up to the full “cost of attendance at the school [their dependent] child will attend minus any other financial assistance [the] child receives.”¹⁷ Parent PLUS loans disbursed between July 1, 2022 and July 1, 2023 have a fixed 7.54% interest rate for the life of the loan,¹⁸ which is considerably higher than the interest rate offered for Direct Subsidized Loans and Direct Unsubsidized Loans.¹⁹

Parent PLUS borrowers have three repayment options: a standard repayment plan, a graduated repayment plan, and an extended repayment plan.²⁰ These repayment options are more limited and less affordable than those offered to student borrowers.²¹ For

¹⁵ See 88 Fed. Reg. at 1894 (estimating that “[s]tudent loan debt has risen to \$1.6 trillion in aggregate over the past 10 years”).

¹⁶ Consumer Fin. Prot. Bureau, *What is a Direct PLUS loan?* (Jun. 23, 2021), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-direct-plus-loan-en-553/>; 34 C.F.R. § 685.200(c)(2).

¹⁷ *Parent Plus Loans*, *supra* note 13; 34 CFR 685.203(f).

¹⁸ *Parent Plus Loans*, *supra* note 13.

¹⁹ see U.S. Dep’t of Educ., *Interest Rates and Fees for Federal Student Loans*, Fed. Student Aid, <https://studentaid.gov/understand-aid/types/loans/interest-rates> (last visited Feb. 8, 2023).

²⁰ See 34 C.F.R. § 685.208; see also U.S. Dep’t of Educ., *What Types of Loan Repayment Plans are Available for Direct PLUS Loans?*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/what-loan-repayment-plans-are-available-for-direct-plus-loans> (last visited Feb. 8, 2023) (“Direct PLUS Loans for parent borrowers are eligible for the following repayment plans: Standard Repayment Plan, Graduated Repayment Plan, and Extended Repayment Plan.”).

²¹ See Casey Goldvale et al., *Unrepayable Debt: How Economic, Racial, & Geographic Inequality Shape the Distribution of Parent PLUS Loans* at 4, Georgetown L. Ctr. on Poverty and Inequality (Sept. 2022), <https://www.georgetownpoverty.org/issues/unrepayable-debt> (citing Owen Daugherty, Nat’l Assn. of Student Fin. Aid Admins., *Parent PLUS Loan Packaging Comes Under Scrutiny* (Oct. 20, 2021),

instance, they do not allow Parent PLUS borrowers a “grace period” after their dependent child “graduates, leaves school, or drops below half-time school enrollment.”²² To be sure, parent borrowers “may be able to request to delay making payments while their child is in school or for an additional six months after their child graduates, leaves school, or drops below half-time enrollment by requesting a deferment,” but they will remain “responsible for the interest that accrues while the payments are postponed.”²³ The lack of affordable repayment options for Parent PLUS loans thus poses a hardship for Parent PLUS borrowers because, relative to direct student loan borrowers, their income and ability to accumulate wealth is less likely to increase during repayment, and may even decline due to retirement.²⁴

Perhaps unsurprisingly, especially given the lack of affordable repayment options, estimates show that default rates are increasing for Parent PLUS borrowers, while repayment rates are decreasing.²⁵ This trend appears to be exacerbated by the increasing number of individual Parent PLUS borrowers with significant debt totals. Indeed, “[t]he average annual borrowing amount for parent borrowers has more than tripled over the last 25 years, from \$5,200 per year in 1990 (adjusted for inflation) to \$16,100 in 2014.”²⁶ The increase in borrowing amounts has resulted in “more parents ow[ing] very large balances.”²⁷ For instance, “the share of Parent PLUS borrowers with debt over \$50,000” rose from 3 percent to 13 percent between 2000 and 2014, and the number of borrowers who owed more than \$100,000 increased from 0.4 percent to 4 percent over that same period.²⁸ This is significant because borrowers with substantial debt loads are at greater

https://www.nasfaa.org/news-item/26254/Parent_PLUS_Loan_Packaging_Comes_Under_Scrutiny).

²² *What Types of Loan Repayment Plans are Available for Direct PLUS Loans?*, *supra* note 20.

²³ *Id.*

²⁴ Goldvale et al., *supra* note 21, at 4.

²⁵ Adam Looney & Vivien Lee, *Parents Are Borrowing More and More to Send Their Kids to College—and Many Are Struggling to Repay*, Brookings (Nov. 27, 2018), <https://www.brookings.edu/research/parents-are-borrowing-more-and-more-to-send-their-kids-to-college-and-many-are-struggling-to-repay/> (estimating that “[p]arent borrowers entering repayment in 2000 had repaid about 56 percent of their loan balance after 5 years, compared to only 36 percent in 2009”).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Rachel Fishman, *The Wealth Gap PLUS Debt*, New America (May 15, 2018), <https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/> (citing Adam Looney & Constantine Yannelis, *Borrowers with Large Balances: Rising Student*

risk of default. Indeed, “[n]early a third of all dollars in default are held by borrowers with balances over \$50,000.”²⁹

The consequences of default for Parent PLUS loans—which are not dischargeable in many cases, even through bankruptcy³⁰—are severe. Defaulting on a Parent PLUS loan can lead to the federal government initiating debt collection measures, “including wage garnishment, Social Security garnishment, and seizure of tax refunds.”³¹ Social Security garnishment—euphemistically called an “offset”—has been happening with increasing frequency for “Parent PLUS borrowers ages 65 and older”; the number of those borrowers “currently in default and experiencing government collection methods such as Social Security offsets and seizure of tax refunds” increased by more than 200 percent between FY 2005 and FY 2015.³² Wage garnishment and offset have devastating financial impacts, particularly on low-income older adults who already struggle to make ends meet or are dependent on their Social Security benefits as their sole source of income.³³

Furthermore, it is clear that the burden of the substantial debt totals arising from increased Parent PLUS borrowing—and the attendant risk of default—has not fallen evenly across racial groups. Indeed, whether looking at adjusted gross income (“AGI”) or expected family contribution³⁴ (“EFC”), “a stark picture of the inequity of debt burdens

Debt and Falling Repayment Rates, Brookings (2018), https://www.brookings.edu/wp-content/uploads/2018/02/es_20180216_looneylargebalances.pdf).

²⁹ *Id.*

³⁰ U.S. Dep’t of Educ., *I’m A Parent Who Took Out A Direct PLUS Loan to Help Pay for My Child’s Education. Can My Loan Ever Be Discharged?*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/can-my-plus-loan-ever-be-discharged> (last visited Feb. 8, 2023) (describing circumstances in which a Parent PLUS loan may be discharged, including bankruptcy “in rare cases”).

³¹ Fishman, *supra* note 28.

³² *See id.* (citing Gov’t Accountability Office, *Social Security Offsets: Improvement to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, GAO 17-45 (2016)).

³³ *See generally* Johnson M. Tyler, *Turn the Ship: The Moral Imperative and Legal Authority to Protect Retirees with Defaulted Student Loans from Social Security Offset* at 84-104, Student Borrower Protection Center (2022), <https://protectborrowers.org/wp-content/uploads/2022/08/Beyond-Fresh-Start.pdf#page=84>.

³⁴ EFC “is an index number used to determine . . . eligibility for federal student financial aid.” U.S. Dep’t of Educ., *What is my Expected Family Contribution?*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/what-is-efc> (last visited

when it comes to paying for college” emerges.³⁵ Whereas white participation in Parent PLUS skews toward families with higher incomes, Black participation in Parent PLUS skews toward families without significant financial resources.³⁶ Indeed, “[t]he share of Black Parent PLUS borrowers whose families have so little wealth or income that their [EFC] is zero rose from 15 percent in 2008 to an astonishing 42 percent in 2018. The share for similar Latino/a Parent PLUS borrowers is also high, exceeding 25 percent.”³⁷ The percentage of white Parent PLUS borrowers with an EFC of zero is far lower.³⁸ These trends are closely tied, of course, to broader inequities that have prevented Black families from building and sustaining the kind of intergenerational wealth that allows parents to avoid going into substantial debt to help their child afford an education at a college or career school.³⁹

ED’s willingness to lend substantial sums through Parent PLUS to parents it knows are poorly equipped to repay that debt has pushed those parents toward (or into) economic ruin. To address this crisis, it is imperative that ED allow these vulnerable older borrowers access to its most affordable and flexible repayment plans. Doing so is necessary to ensure that student loans do not prevent these older adults from achieving economic security and address the pervasive inequity in higher education. As explained below, the Department can, within the parameters of its statutory authority, provide Parent PLUS borrowers with greater access to affordable repayment options by allowing those who have consolidated their Parent PLUS loan into a Direct Consolidation Loan to repay their debt through PAYE and the proposed revised REPAYE.⁴⁰

Feb. 8, 2023). It “is calculated according to a formula” that takes into account a “family’s taxed and untaxed income, assets, and benefits (such as, unemployment or Social Security).” *Id.*

³⁵ See Fishman, *supra* note 28.

³⁶ See *id.* (noting that, for white borrowers, approximately 33% have an AGI over \$100,000 and only 10% have an AGI under \$30,000, but that, for Black borrowers, only 10% have an AGI over \$100,000 but more than 33% have an AGI under \$30,000); see also *id.* (estimating, based on 2012 data, that 10 percent of white Parent PLUS borrowers have an EFC of zero, compared to 33 percent of Black borrowers with an EFC of zero).

³⁷ See Peter Granville, *Parent PLUS Borrowers: The Hidden Casualties of the Student Debt Crisis*, The Century Found. (May 31, 2022), <https://tcf.org/content/report/parent-plus-borrowers-the-hidden-casualties-of-the-student-debt-crisis/>.

³⁸ See Fishman, *supra* note 28.

³⁹ See *id.*

⁴⁰ “A Direct Consolidation Loan allows [a borrower] to consolidate (combine) one or more federal education loans into a new Direct Consolidation Loan.” U.S. Dep’t of

II. ED Should Interpret the Higher Education Act to Allow Borrowers Who Repaid Parent PLUS Loans with Direct Consolidation Loans to Access PAYE and REPAYE

Under the HEA, as amended, the Department is required to “offer . . . a variety of plans for repayment of” loans made under the William D. Ford Direct Loan Program.⁴¹ The HEA provides five sources of authority for these repayment options, including: (A) “a standard repayment plan”; (B) “a graduated repayment plan”; (C) “an extended repayment plan”; (D) “an income contingent repayment plan”; and (E) “an income-based repayment plan.”⁴² ED’s authority to establish income-contingent repayment plans—its ICR Authority—and income-based repayment plans—its IBR Authority—is most relevant to this comment.

ED’s ICR Authority provides that it shall establish “an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years.”⁴³ However, plans created under ED’s ICR Authority “shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student,” *i.e.*, a Parent PLUS borrower.⁴⁴

ED’s IBR Authority provides that it shall establish “an income-based repayment plan that enables borrowers who have a partial financial hardship to make a lower monthly payment in accordance with [20 U.S.C. § 1098e].”⁴⁵ Like the HEA provision setting forth Ed’s ICR Authority, plans created under ED’s IBR Authority “shall not be available to the borrower of a Federal Direct PLUS Loan made on behalf of a dependent student,” *i.e.*, a Parent PLUS borrower.⁴⁶ In addition, plans created under ED’s IBR Authority may not be used to repay “a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on [a Parent PLUS loan].”⁴⁷

Ed., *Consolidating Student Loans*, Fed. Student Aid, <https://studentaid.gov/manage-loans/consolidation> (last visited Feb. 8, 2023).

⁴¹ 20 U.S.C. § 1087e(d)(1).

⁴² *Id.* § 1087e(d)(1)(A)-(E).

⁴³ *Id.* § 1087e(d)(1)(D).

⁴⁴ *See id.*

⁴⁵ *Id.* § 1087e(d)(1)(E).

⁴⁶ *Id.*

⁴⁷ *Id.*

Thus, borrowers with Parent PLUS loans are prohibited from repaying those loans through a plan created under ED’s ICR or IBR Authority.⁴⁸ Those same borrowers would be prohibited from consolidating their Parent PLUS loan into a Direct Consolidation Loan and then repaying the Direct Consolidation Loan through a plan created under ED’s IBR Authority.⁴⁹ However, nothing in the text of the HEA prohibits a borrower from consolidating their Parent PLUS loan into a Direct Consolidation Loan and then repaying the Direct Consolidation Loan through a plan created under ED’s ICR Authority.⁵⁰ And, indeed, the Department readily acknowledges that “a Direct Consolidation Loan . . . that repaid a [P]arent PLUS loan may be repaid under an ICR plan,” which is a plan created pursuant to ED’s ICR Authority.⁵¹

The ICR Plan is one of only three repayment plans created by regulation under the Department’s ICR Authority. The Department has also established the PAYE and REPAYE plans under its ICR Authority.⁵² The ICR Plan is the most expensive of those ICR Authority-based repayment plans,⁵³ and requires a fixed monthly payment of approximately 20 percent of a borrower’s discretionary income.⁵⁴ By contrast, the PAYE and REPAYE plans are far more affordable, allowing “monthly payments that are generally equal to 10% of [the borrower’s] discretionary income.”⁵⁵ The Proposed Rule

⁴⁸ *See id.* § 1087e(d)(1)(D), (E).

⁴⁹ *See id.* § 1087e(d)(1)(E).

⁵⁰ *See id.* § 1087e(d)(1)(D).

⁵¹ *See* 88 Fed. Reg. at 1901 (allowing that “a Direct Consolidation Loan disbursed after July 1, 2006, that repaid a parent PLUS loan may be repaid under an ICR plan”); *see also* Consumer Fin. Prot. Bureau, *Options for repaying your Parent PLUS loans*, consumerfinance.gov/paying-for-college/repay-student-debt/federal-parent-plus-loans/ (last visited Feb. 8, 2023) (“Consolidating your Parent PLUS loan will make you eligible for the Income-Contingent Repayment (ICR) plan.”).

⁵² *See* 34 C.F.R. § 685.209(a), (b), (c) (describing the ICR Plan, PAYE, and REPAYE as “income-contingent repayment plan[s]”).

⁵³ *see* U.S. Dep’t Educ., *Income-Driven Repayment Plans*, Fed. Student Aid, <https://studentaid.gov/manage-loans/repayment/plans/income-driven> (last visited Feb. 8, 2023).

⁵⁴ U.S. Dep’t of Educ., *What is the Income-Contingent Repayment (ICR) Plan?*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/icr-plan> (last visited Feb. 8, 2023).

⁵⁵ U.S. Dep’t of Educ., *Pay As You Earn (PAYE) Plan*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/payee-plan> (last visited Feb. 8, 2023); U.S. Dep’t of Educ., *Revised Pay As You Earn (REPAYE) Plan*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/repaye-plan> (last visited Feb. 8, 2023).

will make REPAYE even more affordable, such that “borrowers with only outstanding loans for an undergraduate program pay 5 percent of their discretionary income.”⁵⁶ Allowing borrowers who consolidated a Parent PLUS loan into a Direct Consolidation Loan to choose the most affordable option available under the Department’s ICR Authority would, thus, likely increase repayment rates and decrease default rates.

That outcome advances the Department’s goals of using its IDR authorities to make repayment more affordable for vulnerable borrowers.⁵⁷ Moreover, it is permissible under the HEA, which, as discussed above, does not prohibit borrowers from repaying Direct Consolidation Loans used to retire Parent PLUS debt through repayment plans created under ED’s ICR Authority.⁵⁸ The fact that ED already permits Direct Consolidation Loans used to repay a Parent PLUS loan to be repaid under its ICR Plan—which is a repayment plan created under ED’s ICR Authority—confirms that ED has the authority to expand eligibility for PAYE and REPAYE, including as revised in the Proposed Rule, in this same manner.⁵⁹ Confusingly, however, the Department has taken the view that a Direct Consolidation Loan that repaid a Parent PLUS loan may be repaid through its ICR Plan, but not through “any of the other IDR plans,” including PAYE and REPAYE,⁶⁰ despite the common statutory authority underpinning ED’s ICR Plan, PAYE, and REPAYE.⁶¹

The Department fails to explain in the Proposed Rule how this disparate treatment can be justified under the HEA.⁶² Previously, it has stated that Parent PLUS borrowers with consolidated loans may be denied access to REPAYE in order to “maintain

⁵⁶ 88 Fed. Reg. at 1895.

⁵⁷ *See id.* at 1894.

⁵⁸ *See* 20 U.S.C. § 1087e(d)(1)(D).

⁵⁹ *See* 88 Fed. Reg. at 1901 (allowing that “a Direct Consolidation Loan disbursed after July 1, 2006, that repaid a parent PLUS loan may be repaid under an ICR plan”); *see also Options for Repaying Your Parent PLUS Loans*, *supra* note 51 (“Consolidating your Parent PLUS loan will make you eligible for the Income-Contingent Repayment (ICR) plan.”).

⁶⁰ *See* 88 Fed. Reg. at 1901.

⁶¹ *See* 34 C.F.R. § 685.209(a) (“The [PAYE] repayment plan is an income-contingent repayment plan for eligible new borrowers.”); *id.* § 685.209(c) (“The [REPAYE] repayment plan . . . is an income-contingent repayment plan under which a borrower’s monthly payment amount is based on the borrower’s AGI and family size.”)

⁶² *See generally* 88 Fed. Reg. at 1894-1930.

consistency” with its treatment of those borrowers under IBR and PAYE.⁶³ And, in promulgating PAYE, the Department described that program as one that was “based on the IBR plan and include[d] the same restrictions on the types of loans that may be repaid under the plan.”⁶⁴ Even if the Department at one time viewed PAYE as a creature of its IBR Authority, that would not justify its decision to graft an IBR-specific restriction—*e.g.*, excluding repayment of Direct Consolidation Loans used to repay Parent PLUS loans—onto REPAYE for the sake of “consistency,” as REPAYE which was indisputably created under the Department’s ICR Authority. Likewise, “consistency” is no reason for the Department to repeat that error in the Proposed Rule.

Ultimately, the Department’s ability to expand access to PAYE and REPAYE, as JIA urges it to do, does not turn on ED’s historical understanding or treatment of these programs because it plainly now administers both PAYE and REPAYE as plans created under its ICR Authority.⁶⁵ That settles the matter and makes clear that the Department need not exclude from those programs borrowers who repaid a Parent PLUS loan by consolidating their debt into a Direct Consolidation Loan. Continuing to do so takes a specific statutory restriction applicable only to plans created under ED’s IBR Authority and transplants it into repayment plans created pursuant to a different HEA provision—ED’s ICR Authority—that contains no such restriction. That approach is not supported, let alone required, by the text of the HEA.

In sum, the HEA permits the Department to create payment plans under its ICR Authority that are accessible to borrowers who repaid a Parent PLUS loan with a Direct Consolidation Loan. Having created three such plans—the ICR Plan, PAYE, and REPAYE—the Department should not restrict access to those plans beyond the point required by statute. Accordingly, the Department should clarify in the final rule, or in a separate rulemaking to follow the final rule in short order, that borrowers with a Direct Consolidation Loan used to repay a Parent PLUS loan may repay their debt under the ICR Plan, PAYE, or REPAYE.

⁶³ Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 67203, 67208 (Oct. 30, 2015) (to be codified at 34 C.F.R. pts. 668, 682, 685).

⁶⁴ Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66088, 66099 (Nov. 1, 2012) (to be codified at 34 C.F.R. pts. 674, 682, 685); *id.* at 66089 (describing PAYE as having “features of IBR”).

⁶⁵ *See* 34 C.F.R. § 685.209(a).

III. Conclusion

JIA applauds the Department’s effort to streamline its IDR regulations and make REPAYE a more affordable option for certain borrowers. However, to fully meet its stated goal of “mak[ing] it easier for borrowers to repay their loans,”⁶⁶ the Department must also take action to ensure that older borrowers struggling to repay their Parent PLUS loans have access to an affordable repayment plan. It can do that by clarifying in its final rule that Parent PLUS borrowers who have consolidated their loans are eligible for PAYE and REPAYE, including as revised by the Proposed Rule, and explaining why that change is a “logical outgrowth” of the Proposed Rule.⁶⁷ Alternatively, JIA encourages the Department to engage in further rulemaking to address this issue once it finalizes the Proposed Rule.

Thank you for the opportunity to provide our thoughts on this important matter.

Sincerely,

/s/ Kate Lang

Kate Lang,
Director, Federal Income Security
Justice In Aging

⁶⁶ 88 Fed. Reg. at 1894.

⁶⁷ “A [final] rule is deemed a logical outgrowth [of the proposed rule] if interested parties ‘should have anticipated’ that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.” See *Ne. Maryland Waste Disposal Auth. v. E.P.A.*, 358 F.3d 936, 951-52 (D.C. Cir. 2004).