

Comments to the Department of Education on Federal Student Aid Program Interim Final
Regulations
(Submitted September 8, 2006)

Introduction

On behalf of our low-income clients, the National Consumer Law Center (NCLC)¹ is responding to the Department of Education's student aid program interim final regulations, published on August 9, 2006. (71 Fed. Reg. 45666).

The comments below focus on one specific area of concern in the interim final regulations. There are other issues of particular importance to low-income consumers that we hope will be addressed during the upcoming negotiated rulemaking process and in the ongoing Congressional debates.

Ensuring Access to the Income Contingent Repayment Plan

The Direct Loan income contingent repayment (ICR) plan is an extremely valuable, but underutilized tool to help borrowers get out of default and improve government collections of defaulted loans. This plan is currently available only through the Direct Loan Program.

NCLC and other advocates for low-income borrowers have advocated for legislation that would allow qualified borrowers in all of the main federal loan programs to access the ICR directly. This option should be available before and after default.²

Until these recommendations are adopted, it is essential to ensure that eligible borrowers are able to obtain an ICR.

The ICR is one of the few flexible repayment options available to borrowers after default. Under the ICR, borrowers make payments based on their incomes, taking family size into

¹ The National Consumer Law Center, Inc. is a nonprofit Massachusetts corporation, founded in 1969, specializing in consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises and annual supplements on consumer credit laws, including Student Loan Law (2d ed. 2002), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers.

² See generally National Consumer Law Center, "No Way Out: Student Loans, Financial Distress, and the Need for Policy Reform (June 2006), available at: http://www.nclc.org/action_agenda/student_loans/content/nowayout.pdf.

account. The ICR formula also considers the total amount of student loans owed. This is the only existing repayment plan that helps ensure that borrowers can repay their obligations without suffering severely unmanageable financial hardships.

As noted in the interim regulations, section 8009 of the Higher Education Reconciliation Act (HERA) amended section 428C(a)(3)(B)(i) of the Higher Education Act (HEA) and added a provision limiting a borrower's ability to "re-consolidate" a consolidation loan. Direct Loan consolidation borrowers are now prohibited from obtaining another Direct consolidation loan, even if they are in default and even if this is the most efficient and effective way for them to re-enter repayment and stay in repayment. Borrowers with defaulted FFEL consolidation loans are allowed to obtain a Direct Consolidation loan only if their loan has been submitted to the guaranty agency by the lender for default aversion and the borrower wants to consolidate into Direct Loan for the purpose of obtaining an ICR.

These changes were presumably intended to curb so-called "two step" consolidation where FFEL consolidation borrowers have been allowed to consolidate with Direct and then "re-consolidate" with FFEL. The problem is that the regulations may have the unintended consequence of preventing borrowers in default from entering repayment using an ICR--the most fair and effective repayment option available.

Recommended Changes

We urge the Department to:

1. Clarify that FFEL consolidation loan borrowers are eligible to consolidate with Direct Loans not only if their loans are in default aversion with a guaranty agency, but also if the loans have gone into default after referral to a guaranty agency. It is critical to ensure that borrowers with loans in default have access to the ICR since they are not eligible for many of the other, flexible repayment options available to borrowers who are current or in delinquency status.
2. Clarify that borrowers with defaulted Direct consolidation loans are not completely barred from obtaining an ICR. We at a minimum urge the Department to clarify that these borrowers may rehabilitate these loans. Those who rehabilitate currently have the right to repay through a reasonable and affordable repayment plan.³ We urge the Department to use the ICR formula in these circumstances to determine repayment amounts. The Department should clarify this issue and ensure that borrowers are informed of these options.

³ 34 C.F.R. §685.211(f).