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**Comments to the Department of Education on Federal Student Aid Program Proposed Regulations
(Submitted August 19, 2009)**

Introduction

On behalf of our low-income clients, the National Consumer Law Center (NCLC)¹ is responding to the Department of Education's notice of proposed rulemaking on federal student aid programs. This notice was published on July 23, 2009 (74 Fed. Reg. 36555).

Deanne Loonin from the National Consumer Law Center was a Team 1 negotiator and NCLC was part of the consensus reached by the Team 1 negotiators. We continue to support the consensus, but are submitting these comments for clarification purposes.

Clarification of Choice of Repayment Plans after Consolidation with Direct Loans

We support the proposed regulation which clarifies that borrowers with FFEL consolidation loans in default may consolidate with Direct Loans for the purpose of obtaining an ICR or IBR plan.²

The current regulations at 34 C.F.R. §685.220(d)(1)(ii)(D) state in a footnote that the rules published at 73 Fed. Reg. 63257 intended to make a similar change for borrowers in default on non-consolidation FFEL loans. This footnote points out the problem, but does not resolve it. We recommend that the Department clarify this provision in the final regulations and affirm that these borrowers may also select either IBR or ICR.

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* (3d ed. 2006 and Supp.), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC's Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities to borrowers and advocates. See www.studentloanborrowerassistance.org.

² Proposed change to 34 C.F.R. §685.220(d)(1)(i)(B)(4).

It is our understanding that in the interim, the Department is taking the position that borrowers in default on FFEL consolidation or non-consolidation loans may choose either ICR or IBR. This is stated in Section D of the Direct Loan consolidation application.

However, there is currently no system that we know of to allow borrowers coming out of default to select IBR. Some of our clients have been told that they must first select ICR and then post-consolidation, inform the servicer that they would like to switch to IBR. This is overly cumbersome for borrowers. It also fails to give the borrowers a real choice at the time of application. On one hand, borrowers coming out of default are told that they can select either IBR or ICR. On the other hand, they are given no way to select IBR. This is particularly problematic for borrowers who qualify for IBR, but not ICR, and for those who will have lower payments under IBR.

The regulations are being clarified to ensure that borrowers have a choice. We urge the Department to act as quickly as possible to ensure that there is a system in place to make this a real choice.