118TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
118–253

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE DEPARTMENT OF EDUCATION RELATING TO "IMPROVING INCOME DRIVEN REPAYMENT FOR THE WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM AND THE FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM"

OCTOBER 25, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Ms. FOXX, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.J. Res. 88]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the joint resolution (H.J. Res. 88) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program", having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE

The purpose of H.J. Res 88 is to disapprove of the rule related to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program" that was first announced on August 24, 2022, and published as a final regulation in the Federal Register on July 10, 2023.

49–006

COMMITTEE ACTION

117TH CONGRESS

First Session—Hearings

On April 28, 2021, the Committee on Education and Labor held a hearing on "Building Back Better: Investing in Improving Schools, Creating Jobs, and Strengthening Families and our Economy." The purpose of the hearing was to examine the Biden administration's American Jobs Plan and American Families Plan, which included discussions about the federal student loan program and its impact on college affordability. Testifying before the Committee were Dr. Neal McCluskey, Director, Center for Educational Freedom, CATO Institute, Washington, D.C.; Mr. Brian Riedl, Senior Fellow, Manhattan Institute, Washington, D.C.; Mr. Mark Mitsui, President, Portland Community College, Portland, Oregon; Mr. Rasheed Malik, Senior Policy Analyst, Early Childhood Policy, Center for American Progress, Washington, D.C.; and Ms. Mary Filardo, Founder and Executive Director, 21st Century School Fund, Washington, D.C.

On September 30, 2021, the Committee's Higher Education and Workforce Investment Subcommittee held a hearing on "Protecting Students and Taxpayers: Improving the Closed School Discharge Process." The purpose of the hearing was to learn about improvements to the process for discharging loans for federal student loan borrowers whose school abruptly closes. Testifying before the Subcommittee was Ms. Robyn Smith, Senior Attorney, Legal Aid Foundation of Los Angeles, Los Angeles, CA; Ms. Melissa Emrey-Arras, Director of Education, Workforce and Income Security, Governmental Accountability Office, Washington, D.C.; Mr. Preston Cooper, Research Fellow, Foundation for Research on Equal Opportunity, Washington D.C.; and Ms. Karyn Rhodes, Student Borrower, American Business Institute, Torrance, CA.

On October 26, 2021, the Committee's Higher Education and Workforce Investment Subcommittee held a hearing on "Examining the Policies and Priorities of the Office of Federal Student Aid." The purpose of the hearing was to hear from the Chief Operating Officer of Federal Student Aid about the policies and priorities of the agency. Testimony was received regarding student loan debt forgiveness and pauses to borrowers' obligations to pay their debt. Testifying before the Committee was Mr. Richard Cordray, Chief Operating Officer, Office of Federal Student Aid, Washington, D.C.

On November 17, 2021, the Committee's the Committee's Subcommittees on Early Childhood, Elementary, and Secondary Education and Higher Education and Workforce Investment held a joint hearing on "Examining the Implementation of COVID–19 Education Funds." The purpose of the hearing was to conduct oversight of the Education Stabilization Fund (ESF), though oversight of the administration's actions related to the federal student loan program were discussed. Testifying before the subcommittee were The Honorable Cindy Marten, Deputy Secretary, U.S. Department of Education (ED), Washington, D.C. and The Honorable James Kvaal, Under Secretary, ED, Washington, D.C.

Second Session—Hearings

On May 26, 2022, the Committee on Education and the Workforce held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to review the Fiscal Year 2023 budget priorities of the U.S. Department of Education. The hearing included discussion of the federal student loan programs. Testifying before the Committee was The Honorable Miguel Cardona, Secretary, ED, Washington, D.C.

On July 19, 2022, the Committee’s Higher Education and Workforce Investment Subcommittee held a hearing on “The History and Continued Contributions of Tribal Colleges and Universities.” Testimony was received regarding student loan debt forgiveness and solutions to improve the federal student loan program. Testifying before the Committee was Dr. Sandra Boham, President, Salish Kootenai College, Pablo, MT; Ms. Carrie Billy, President and CEO, American Indian Higher Education Consortium, Alexandria, VA; Dr. Beth Akers, Senior Fellow, American Enterprise Institute, Washington D.C.; and Dr. Cynthia Lindquist, President, Cankdeska Cikana Community College, Fort Totten, ND.

118TH CONGRESS

First Session—Hearings

On February 8, 2023, the Committee on Education and the Workforce held a hearing on “American Education in Crisis.” The purpose of the hearing was to examine the state of education, including higher education and the status of pauses in federal student loan programs in the United States. Testifying before the Committee were Ms. Virginia Gentles, Director, Education Freedom Center, Independent Women’s Forum, Arlington, VA; Dr. Monty Sullivan, President, Louisiana Community and Technical College System, Baton Rouge, LA; The Honorable Jared Polis, Governor, State of Colorado, Denver, CO; and Mr. Scott Pulsipher, President, Western Governors University, Salt Lake City, UT.

On March 23, 2023, the Committee’s Higher Education and Workforce Development Subcommittee held a hearing on “Breaking the System: Examining the Implications of Biden’s Student Loan Policies for Student’s and Taxpayers.” The purpose of the hearing was to discuss with policy experts the harms of the Biden administration’s loan cancellation policies for students, taxpayers, and the economy. Testifying before the Subcommittee were Mr. Marc Goldwein, Senior Vice President and Senior Policy Director, Committee for a Responsible Federal Budget, Washington, D.C.; Dr. Adam Looney, Director, Marriner S. Eccles Institute for Economics and Quantitative Analysis, University of Utah, Salt Lake City, UT; Mr. Sameer Gadkaree, President, the Institute for College Access & Success, Los Angeles, CA; and Dr. Carlo Salerno, Economist and Financial Aid Expert, Los Angeles, CA.

On May 24, 2023, the Committee’s Higher Education and Workforce Development Subcommittee held a hearing on “Breaking the System Part II: Examining the Implications of Biden’s Student Loan Policies for Student’s and Taxpayers.” The purpose of the hearing was to conduct oversight of the Biden administration’s student loan policies. Testifying before the subcommittee were Mr. James Kvaal, Under Secretary of Education, DOL, Washington,

D.C. and Mr. Richard Cordray, Chief Operating Officer, Office of Federal Student Aid, DOL, Washington, D.C.

On July 27, 2023, the Committee's Higher Education and Workforce Development Subcommittee held a hearing on "Lowering Costs and Increasing Value for Students, Institutions, and Taxpayers." The purpose of the hearing was to discuss with policy experts the root causes of student debt and how to fix structural cost problems with accountability. Testifying before the Subcommittee were Mr. Michael B. Horn, Author and Co-Founder of the Clayton Christensen Institute for Disruptive Innovation, Lexington, MA; Mr. Stig Leschly, President and Founder, Postsecondary Commission, Boston, MA; Dr. Stephanie Cellini, Professor of Public Policy and Public Administration, and of Economics, George Washington University, Washington, D.C.; and Dr. Andrew Gillen, Senior Policy Analyst, Texas Public Policy Foundation, Austin, TX.

Legislative Action

On May 10, 2023, the Committee considered H.J. Res. 45 in legislative session and reported it favorably to the House of Representatives by a recorded vote of 24–18. On May 24, 2023, the full House considered H.J. Res. 45 on the floor and passed it by a recorded vote of 218–203. On June 1, 2023, the Senate passed H.J. Res. 45 on the floor and passed it by a vote of 52–46. On June 7, 2023, it was presented to and vetoed by President Biden. On June 21, 2023, the House failed to override the veto by a vote of 221–206.

On September 5, 2023, Rep. Lisa McClain introduced H.J. Res. 88, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program." The bill was referred to the Committee on Education and the Workforce. On September 14, 2023, the Committee considered H.J. Res. 88 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 23 to 19.

COMMITTEE VIEWS

INTRODUCTION

Since taking office, the Biden administration has attempted to ram its radical free college agenda through the backdoor by transferring hundreds of billions of dollars in federal student loan debt to taxpayers.[1] Through expansive new regulations, continuous extensions of the now three and a half year long repayment pause, and attempted blanket cancellation, taxpayers may ultimately spend nearly $1 trillion discharging loans since the repayment moratorium first began in March 2020—more than the federal government has spent on postsecondary education in our nation's history.[2] However, no action has greater implications for students, taxpayers, and our education system than the Biden administration's radical, sweeping changes to income-driven repayment (IDR)

[1] https://www.aei.org/studentdebtforgivenesstracker/
[2] https://edworkforce.house.gov/uploadedfiles/3.23.23_goldwein_testimony.pdf

that will effectively provide de facto "free" college through the federal student loan program.

IDR BACKGROUND

IDR plans are a subset of federal student loan repayment plans that cap a borrower's monthly payment at a percentage of his or her discretionary income. Discretionary income is defined as a portion of a borrower's adjusted gross income (AGI) that exceeds a specified multiple of the federal poverty line (FPL) for the borrower's family size. While in an IDR plan, a situation may arise in which a borrower's monthly payment can be less than the interest that accrues in a given month, and this accumulation of unpaid interest may lead to an increase in the borrower's loan balance. Any loan balance that remains outstanding after the borrower has made qualifying payments according to an IDR plan for a maximum repayment period is forgiven. Today, there are five IDR plans available to borrowers.

History

In 1993, legislation was passed granting ED the authority to create the original IDR option—the income-contingent repayment (ICR) program. The legislation gave ED total discretion to set the amount borrowers would be required to pay monthly. The only major restriction was that borrowers must have their debts forgiven no later than 25 years after entering the program. Under the original terms of ICR, borrowers were required to pay 20 percent of their incomes above the FPL and would have debts forgiven after 25 years; as a result, only borrowers with very low incomes would qualify for reduced payments or loan cancellation. Likely due to the program's complexity, limited eligibility, relatively high expected payments, and lack of awareness of the program, enrollment in ICR was minimal, with only 9 percent of Direct Loan borrowers enrolled in the late 1990s.[3]

Income-Based Repayment

The Income-Based Repayment (IBR) program was established in 2007 in response to rising student debt burdens and concerns that ICR should better protect borrowers from unaffordable payments. IBR increased the generosity of the repayment terms provided to borrowers by redefining discretionary income as AGI that exceeds 150 percent of FPL and lowered the assessment rate to 15 percent. The loan cancellation term remained at 25 years for all borrowers. However, Congress then created the Public Service Loan Forgiveness (PSLF) program, a new 10-year loan cancellation benefit for borrowers employed in public service occupations. In 2010, shortly after IBR became available, the Obama administration proposed reducing payments in the program to 10 percent of income above the exemption and shortening the loan cancelation time to 20 years. Congress quickly enacted these changes in early 2010 but limited them to new student loan borrowers in 2014 and thereafter.

[3] https://www.gao.gov/assets/hehs-97 155.pdf

Obama Administration Expansions

IDR was greatly expanded under the Obama administration. In addition to lowering the assessment rate to 10 percent of discretionary income under IBR, the administration designed two new plans: the Pay As You Earn (PAYE) plan and the Revised Pay As You Earn (REPAYE) plan. The PAYE plan was designed in 2012 as a workaround to the restrictions on IBR for new borrowers put in place by Congress and used the authority provided by the original 1993 legislation creating ICR. The repayment terms under PAYE match those under IBR for borrowers who took out loans after 2007. The Obama administration repeated this process a few years later to create the REPAYE plan, which provided the new IBR terms to all borrowers regardless of when they took out their loans. However, under REPAYE, borrowers with debt from graduate school qualify for loan cancelation after 25 years of payments, not 20. Additionally, for all borrowers in REPAYE, if monthly payments are not high enough to cover accruing interest, half the unpaid amount is immediately canceled.

Trends and Statistics [4]

Enrollment in IDR has grown rapidly following the introduction of more generous plans under the Obama administration.[5] In 2013, 1.6 million borrowers were repaying $72 billion in loans through an IDR plan, with an average balance of $45,759, more than double the average balance of borrowers in non-IDR plans ($20,381). By 2021, IDR enrollment had increased to 8.3 million borrowers with $515 billion of debt, with the average balance reaching $62,123. IDR enrollment growth has greatly outpaced the increase in total outstanding federal student loans and now accounts for about half of outstanding debt. In 2015, 18 percent of borrowers were repaying 34 percent of all Direct Loan balances in IDR plans. By 2021, those figures had increased to 32 percent of borrowers repaying 54 percent of all Direct Loan balances. This increase in participation is also the main contributor to the cost of the Direct Loan program, which, according to the Government Accountability Office (GAO), has cost taxpayers $200 billion since its inception.[6]

BIDEN ADMINISTRATION: THE SAVING ON A VALUABLE EDUCATION (SAVE) PLAN

On January 10, 2023, the Biden administration announced its proposed regulation to modify the REPAYE plan.[7] The final regulation, which the Department dubbed the IDR option the "Saving on A Valuable Education Plan," or the SAVE plan, was published July 10 and is set to take effect July 1, 2024.[8] However, the Department announced it is using executive authority to early implement the majority of these changes when repayment resumes in October.[9]

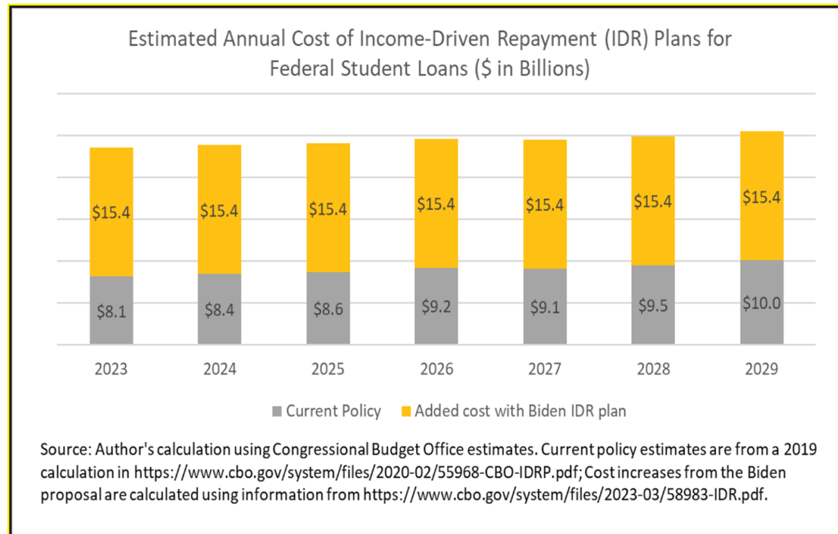
[4] https://www.urban.org/sites/default/files/2022-04/Income-Driven%20Repayment%20of%20Student%20Loans.pdf.
[5] https://research.collegeboard.org/pdf/trends-college-pricing-student-aid-2020.pdf.
[6] https://www.gao.gov/products/gao-22 105365.
[7] https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.
[8] https://www.federalregister.gov/documents/2023/07/10/2023-13112/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program-and-the-federal.
[9] https://www.nasfaa.org/news-item/31149/ED_Releases_Final_Rule_on_Latest_Income-Driven_Repayment_Plan.

The new plan is substantially more generous than existing IDR plans. Undergraduate borrowers will pay 5 percent of any income (down from the current 10 percent) they earn in excess of 225 percent of the poverty line (up from 150 percent). If payments are insufficient to cover monthly interest, the government will cancel the remaining interest so balances do not increase. Any remaining loans will be forgiven after 20 or 25 years, or 10 years under the PSLF program and for borrowers with lower balances.

Implications for Students and Taxpayers

The Biden administration's IDR changes will be far more consequential for students and taxpayers than the administration's one-time student loan bailout. Indeed, previous estimates by CBO found that the Biden administration plan would cost $276 billion over the next decade;[10] other experts like the Penn Wharton Budget Model project the cost to be as high as $559 billion.[11] Regardless of the accounting method, *the Biden administration's SAVE plan will more than double the cost of IDR and is the most expensive regulation in history*. As Figure 1 illustrates, the Biden administration plan alone will cost at least an additional $15.4 billion per year over the next decade.

Figure 1. Estimated Cost of Biden Administration IDR for New Loans



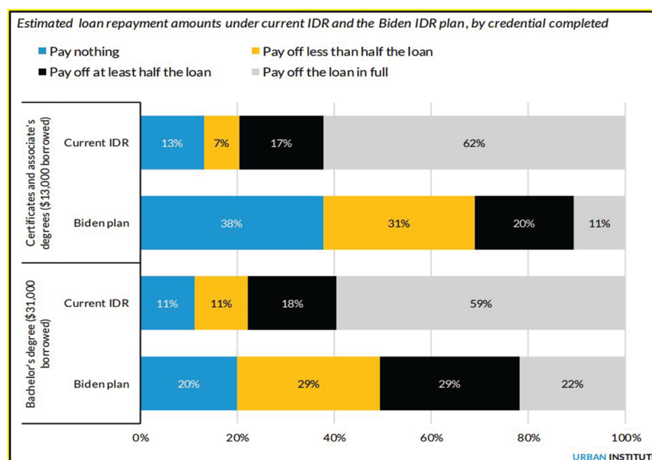
A Backdoor Path to "Free" College

IDR has always served as a taxpayer-funded safety net for borrowers struggling under excessive debt burdens and poor outcomes and, while the program has become an increasingly larger expense for taxpayers, the underlying assumption has always been that most loans would be repaid. Indeed, as recently as 2017, CBO projected that student loan borrowers would, on average, repay close

[10] https://www.cbo.gov/system/files/2023 03/58983–IDR.pdf.
[11] https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/biden-income-driven-repayment-budget-update.

to $1.11 per dollar borrowed.[12] However, *under the SAVE plan, repaying loans will be the exception rather than the norm.*

Figure 2. Estimated Loan Repayment Under Current IDR and Biden Administration Plan



As Figure 2 illustrates, just 22 percent of students obtaining a bachelor's degree will ever fully repay their loans and 50 percent will pay less than half or nothing at all.[13] Even fewer shares of associates and certificate degree holders will ever repay. Simply put, the Biden administration couldn't get its radical "free" college agenda through Congress so it is being done through the loan program by executive fiat. Indeed, consider the following facts:

- Loan cancelation for undergraduate borrowers will exceed the amount they receive in Pell grants.[14]
- The cost of the Biden administration's IDR plan (as estimated by CBO) is three times the cost of the President's free community college proposal.[15]

Tuition Inflation

There is substantial evidence that institutions increase their prices and/or displace their own financial support because of generous federal subsidies. For example, economists at the New York Federal Reserve found that for every $1 increase in loan subsidies, institutions of higher education (IHEs) capture 60 cents on the dollar through increases in tuition.[16] This problem is excessive at the graduate level, where such students make up only a quarter of all borrowers but hold half of all student loan debt. Because there are no borrowing limits in the Grad PLUS loan program, schools are able to easily increase their prices to capture additional revenue because it is taxpayers, not students, who ultimately bear the cost.[17]

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[12] https://edworkforce.house.gov/uploadedfiles/3.23.23_looney_testimony.pdf.
[13] https://www.urban.org/sites/default/files/2023-01/Few-percent20College-percent20Students percent20Will-percent20Repay-percent20Student-percent20Loans-percent20under-percent20the percent20Biden-percent20Administrations-percent20Proposal.pdf.
[14] Ibid.
[15] https://edworkforce.house.gov/uploadedfiles/3.23.23_goldwein_testimony.pdf.
[16] https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf.
[17] https://lesleyjturner.com/GradPLUS_Feb2023.pdf.

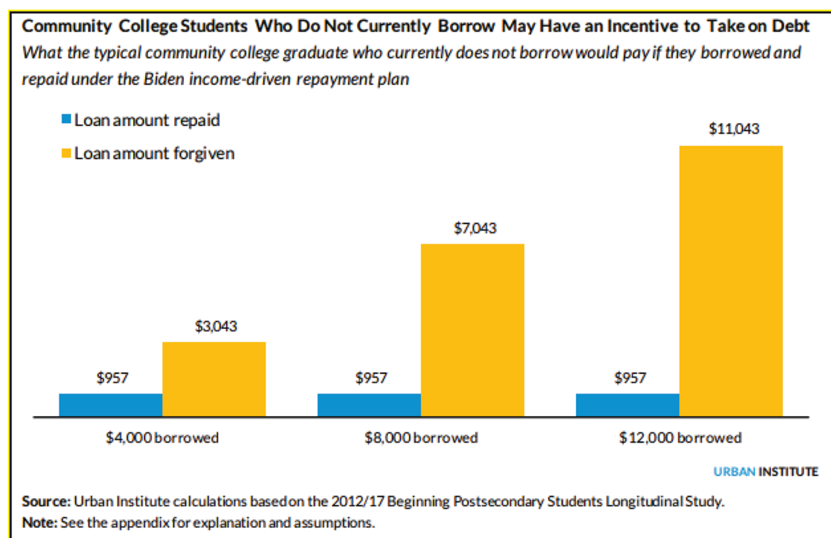
Importantly, there is virtually no accountability for IHEs when it comes to the cost of their degree programs, student outcomes, or borrowers' inability to repay their loans. Because there are few consequences for institutions that charge high prices for low-value degrees, research has shown there are thousands of programs that leave students worse off than if they had not enrolled in the first place—including over a quarter of bachelor degree programs and approximately 40 percent of master's degree programs.[18] Because of this, IDR plans were expected to cost taxpayers at least $200 billion over the next decade even before President Biden took office. Though schools can lose access to student aid dollars if they have a large share of borrowers who default on their loans (*e.g.,* 30–40 percent), few schools have been subject to such consequences, and the repayment pause has made this accountability tool obsolete for several years. However, the SAVE plan will make this absence of accountability permanent and will result in the lowest-quality programs receiving the greatest taxpayer subsidies.

Increased Borrowing

Almost all undergraduate and graduate students will be eligible for reduced payments and eventual cancellation under the proposal. Moreover, the amounts borrowers save (and eventually have canceled) are based largely on the amounts students borrow, which means the benefits are uncapped and disproportionately flow to borrowers with the largest loans, who are more likely to be graduate students and students who attended more expensive programs. For instance, under the current system, a doctor earning the median salary for physicians who works for a public or private nonprofit employer will pay $92,700 toward his loans for the first 10 years of his employment before the remainder is discharged under PSLF. However, under the Department's proposed changes to REPAYE, the doctor's total payments during the first 10 years will drop to $82,500—a savings of over $10,000—despite the fact that the doctor will go on to earn $280,000 annually over his or her lifetime.[19] As a result, even students who do not currently borrow at all or borrow smaller amounts, such as community college students, will have a strong incentive to take on as much debt as they can because there is no marginal cost to them for doing so (see Figure 3).

[18] https://freopp.org/roi/home.
[19] file:///C:/Users/CRussell/Downloads/ED-2023-OPE-0004-7963_attachment_1.pdf.

Figure 3. Potential "Forgiveness" for Community College Graduates



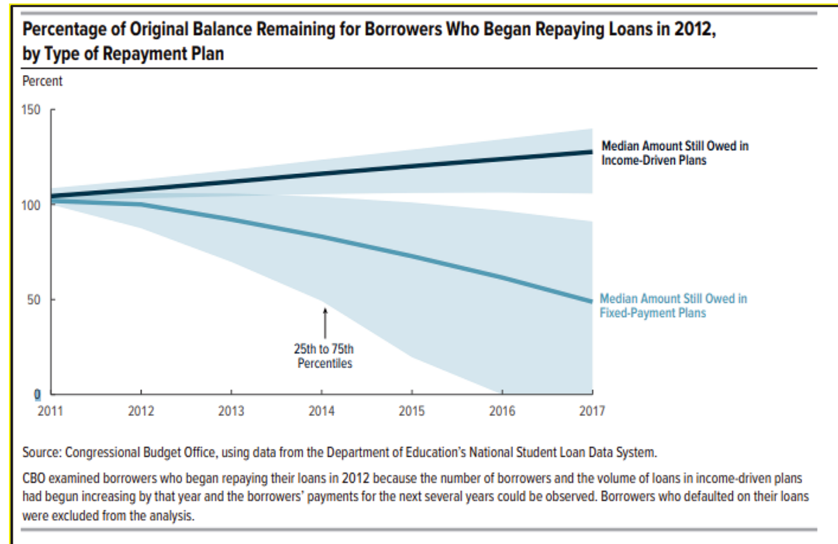
These perverse incentives also mean there is a high potential for abuse. Importantly, a large share of student debt is not used to pay tuition, but rather to provide students cash for rent, food, and other expenses. While students certainly need to pay rent and buy food while in school, under the SAVE plan a student can borrow significant amounts for "living expenses," deposit the check in a bank account, and pay back a fraction of what they owe taxpayers, effectively turning the student loan program into an ATM. For example, at many graduate programs, a single graduate student living alone will be able to borrow more than $20,000 per year just for living expenses and never pay back a penny; that is double what a low-income single mother with two children can expect to get from the Earned Income Tax Credit (EITC) and food stamps combined.[20] These factors, among others, explain why CBO estimates that undergraduate and graduate borrowing will increase by 15 percent and 12 percent, respectively, or roughly $10 billion per year.[21]

Fails to Address the Real Problems

Most ironically, the SAVE plan fails to address the greatest issue facing federal student loan borrowers in IDR, that is, the failure to make progress toward paying down their loans' principal. Growing balances resulting from interest-only payments is one of the most frequently cited issues with the loan program by media outlets, policymakers, and borrowers alike.[22] In fact, as Figure 4 shows, three quarters of borrowers currently enrolled in IDR owe more than they initially borrowed five years after entering repayment.[23]

[20] https://www.brookings.edu/articles/bidens-income-driven-repayment-plan-would-turn-student-loans-into-untargeted-grants/.
[21] https://www.cbo.gov/system/files/2023-03/58983-IDR.pdf.
[22] https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/borrowers-discuss-the-challenges-of-student-loan-repayment.
[23] https://www.cbo.gov/system/files/2020-02/55968-CBO-IDRP.pdf#page=21.

Figure 4. Balance Growth for IDR and Non-IDR Borrowers



Many borrowers complain of making payments year after year, yet never see their balances drop; the promise of future cancellation is cold comfort to people watching interest charges rack up. But the exceedingly low payments under the SAVE plan will be insufficient to cover interest for millions of borrowers. While the government will cancel unpaid interest every month, these borrowers still will not make a dent in the principal. Indeed, under the Biden administration plan, millions of borrowers will make payments year after year, yet never see their balance drop by a single penny. Higher balances will remain a psychological burden for borrowers, and slower repayment rates also will quickly raise aggregate student debt, feeding the "student loan crisis" narrative and intensifying political pressure for further rounds of loan cancellation.

CONCLUSION

The consequences of the administration's radical IDR plan cannot be overstated. Far from saving students from burdensome loans, it will lead colleges and universities to increase their prices, students to borrow excessively for degrees with little value, and taxpayers to cover all or most of the cost of postsecondary education for the vast majority of Americans.

SECTION-BY-SECTION ANALYSIS

H.J. Resolution 88 resolves that Congress disapproves of the rule related to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program," which was first announced on August 24, 2022, and published as a final rule in the Federal Register on July 10, 2023.

EXPLANATION OF AMENDMENTS

No amendments to the resolution were adopted.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.J. Res. 88 takes an important step towards reigning in executive overreach and preventing the Department of Education from unilaterally transferring federal student loan debt to taxpayers.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974.

EARMARK STATEMENT

H.J. Res. 88 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ROLL CALL VOTES

Date: 9/14/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call:4 Bill: H.J.Res. 88 Amendment Number: n/a

Disposition: Adopted by a Full Committee Roll Call Vote (23-19)

Sponsor/Amendment: MOTION TO REPORT

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. GRIJALVA (AZ)		X	
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)		X	
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)		X	
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)		X	
Ms. STEFANIK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)			X	Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)		X	
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)		X	
Mr. GOOD (VA)	X			Ms. WILD (PA)		X	
Mrs. MCCLAIN (MI)	X			Ms. MCBATH (GA)			X
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)		X	
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)			X	Ms. LEGER FERNÁNDEZ (NM)		X	
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)		X	
Mr. MORAN (TX)	X						
Mr. JAMES (MI)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 23 Nos:19 Not Voting:3

Total: 45 / Quorum:42 / Report:

(25 R - 20 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.J. Res. 88 is to reign in executive overreach and prevent the Department of Education from unilaterally transferring federal student loan debt to taxpayers.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.J. Res. 88 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING AND RELATED HEARINGS

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearings held during the 118th Congress was used to develop or consider H.J. Res. 88: "Breaking the System: Examining the Implications of Biden's Student Loan Policies for Student's and Taxpayers (2023)".

The following related hearings were held: "Building Back Better: Investing in Improving Schools, Creating Jobs, and Strengthening Families and our Economy (2021)," "Protecting Students and Taxpayers: Improving the Closed School Discharge Process (2021)," "Examining the Policies and Priorities of the Office of Federal Student Aid (2021)," "Examining the Implementation of COVID–19 Education Funds (2021)," "Examining the Policies and Priorities of the U.S. Department of Education (2022)," "The History and continued Contributions of Tribal Colleges and Universities (2022)," and "American Education in Crisis (2023)," "Breaking the System: Examining the Implications of Biden's Student Loan Policies for Student's and Taxpayers (2023)," "Breaking the System Part II: Examining the Implications of Biden's Student Loan Policies for Student's and Taxpayers (2023)," and "Lowering Costs and Increasing Value for Students, Institutions, and Taxpayers (2023)."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.J. Res. 88 from the Director of the Congressional Budget Office:

At a Glance

H.J. Res. 88, a joint resolution providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program"

As ordered reported by the House Committee on Education and the Workforce on September 14, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	-129,400	-190,800	-260,700
Revenues	0	0	0
Decrease (-) in the Deficit	-129,400	-190,800	-260,700
Spending Subject to Appropriation (Outlays)	not estimated	not estimated	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The resolution would:

- Repeal the income-driven repayment plan for new and existing student loan borrowers created by the final rule published by the Department of Education on July 10, 2023, and prohibit the department from creating a similar plan in the future.

Estimated budgetary effects would mainly stem from:

- Increased future repayments of principal and interest on student loans from repeal of the new income-driven repayment plan (which on average reduces payments for borrowers) thereby reducing the costs of those loans.

Areas of significant uncertainty include:

- Estimating the amount of payments from borrowers with and without the income-driven repayment plan.
- Estimating the enrollment of the new income driven repayment plan versus other repayment options.

Resolution summary: H.J. Res. 88 would disapprove the final rule relating to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program" issued by the Department of Education and published in the *Federal Register* on July 10, 2023. (That rule created a new income-driven repayment plan called Saving on a Valuable Education, or SAVE.) The resolution would invoke a legislative process established by the Congressional Review Act, which would repeal the rule and prohibit the department from issuing the same or similar rules in the future.

Estimated Federal cost: The costs of the legislation, detailed in Table 1, fall within budget function 500 (education, training, employment, and social services).

Table 1.—ESTIMATED CHANGES IN DIRECT SPENDING UNDER H.J. RES. 88

	By fiscal year, billions of dollars—												
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023–2028	2023–2033
	Decreases (−) in Direct Spending												
Estimated Budget Authority	−129.4	−11.8	−13.0	−14.1	−15.6	−15.6	−15.8	−15.8	−15.8	−16.1	−16.2	−199.5	−279.2
Estimated Outlays	−129.4	−10.3	−11.4	−12.4	−13.6	−13.7	−13.8	−13.9	−13.9	−14.0	−14.3	−190.8	−260.7

Basis of estimate:

For this estimate, CBO assumes that the resolution will be enacted before the end of fiscal year 2023. The estimate is relative to CBO's May 2023 baseline, which incorporates the final rule on the SAVE plan published on July 10, 2023.

As required under the Federal Credit Reform Act of 1990 (FCRA), most of the costs of the federal student loan program are estimated on a net-present-value basis. A present value is a single number that expresses a flow of current and future payments in terms of an equivalent lump sum received or paid today. Under FCRA, the present value of all loan-related cash flows is calculated by discounting those expected cash flows to the year of disbursement, using the rates for comparable maturities on Treasury borrowing. For changes to the cost of outstanding loans, the estimated costs or savings are shown in the year in which the legislation making those changes is enacted.

For more information about how CBO estimated this proposal, see the letter transmitted on March 13, 2023.[1]

Background: The July rule created a new income-driven repayment (IDR) plan, called SAVE. In an IDR plan, monthly loan payments are based on the borrower's income and family size and the remaining loan balance is forgiven after a certain period of time in repayment, usually 20 or 25 years. The SAVE plan replaced the Revised Pay-As-You-Earn (REPAYE) repayment plan, one of several existing IDR plans available to borrowers.

In comparison to the REPAYE plan and other IDR plans, the SAVE plan:

- Increases the amount of income exempted from the calculation of monthly payments from 150 percent to 225 percent of the federal poverty guideline, which varies by family size. Payment amounts are calculated based on discretionary income, defined as income above the exempted amount.
- Eliminates accrual of unpaid interest when a borrower's payment does not cover the entire amount of interest due. (The former REPAYE plan waived 50 percent of that interest.)

Beginning in July 2024, the SAVE plan also:

- Reduces from 10 percent to 5 percent the amount of discretionary income that borrowers must pay if they have undergraduate loans only. Borrowers with only graduate loans would continue to pay 10 percent of their discretionary income. Borrowers with undergraduate and graduate loans would pay a percentage of their discretionary income based on the weighted average of their combined loan amounts.
- Allows student borrowers who initially borrowed less than $22,000 to have their outstanding balance forgiven after 10 to 20 years in repayment, depending on the amount borrowed. (Undergraduate borrowers with a balance above that amount would receive forgiveness after 20 years in repayment; graduate borrowers would receive forgiveness after 25 years, which is not a change from the old REPAYE plan.)
- Authorizes the Department of Education to automatically enroll borrowers in an IDR plan if their payments are 75 days

[1] See Congressional Budget Office, letter to the Honorable Virginia Foxx and the Honorable William Cassidy, concerning the costs of the proposed income-driven repayment plan for student loans (March 13, 2023), www.cbo.gov/publication/58983.

delinquent and if they have authorized disclosure of income and tax return information to the department.

Direct spending: CBO estimates that enacting H.J. Res. 88 would reduce direct spending, on a net-present-value basis, by $129.4 billion in 2023, and by $260.7 billion over the 2023–2033 period. CBO expects that, on average, borrowers who enroll in the SAVE plan will pay less in principal and interest than they would if that plan were no longer available. The estimated savings is the present value of the borrowers' projected payments of principal and interest on student loans before accounting for the repeal of that policy, minus the present value of payments after doing so. Under both scenarios, the present value is calculated by discounting the payments the government receives, using methods specified in FCRA.

Outstanding loans: CBO estimates that borrowers will hold a total of $1.4 trillion in outstanding direct loans to students, excluding loans to parents, by the end of fiscal year 2023. If the SAVE plan were repealed, CBO expects that borrowers would make higher payments, on average, and that fewer borrowers would pay using income-driven repayment. Under current law and regulations, CBO estimates that about 60 percent of outstanding loan volume to students will be repaid in an IDR plan. If the SAVE plan were eliminated, the agency expects that the percentage of outstanding volume repaid in an IDR would drop to 50 percent. In total, CBO estimates that enacting H.J. Res 88 would increase future cash inflows from borrowers with outstanding loans by $129.4 billion on a net-present value basis, which is shown as a reduction in direct spending in 2023.

Loans originated in years 2024 through 2033: CBO projects that about $900 billion in new loans will be originated to students over the 2024–2033 period. CBO expects that more students will choose to take out loans, and more students will enroll in an income-driven repayment plan with the SAVE plan available than if it were eliminated. The share of loan volume originated to student borrowers who eventually enroll in any IDR plan would decrease from about 70 percent of volume to about 50 percent. That decrease would stem from two factors:

- Borrowers would be less likely to select an IDR plan because the remaining plans would be less generous than the SAVE Plan, and
- The department would no longer automatically enroll borrowers who are 75 days delinquent into an IDR plan.

Further, CBO estimates that loan volume originated to students over the 2024 though 2033 period would decline by about 8 percent if the SAVE plan were to be eliminated, primarily because repayment options in the loan program would be less generous, on average, and because expected institutional responses to the availability of the plan would not occur.

In total, CBO estimates that enacting H.J. Res. 88 would decrease the costs of future cohorts of loans by $131.3 billion on a net-present value basis.

Sources of data: For this analysis, CBO used administrative data from the National Student Loan Data System for a representative sample of borrowers, along with survey data from the National Postsecondary Student Aid Study. We supplemented that information with other data as inputs to project borrowers' lifetime earn-

ings and repayment of loans.[2] CBO also consulted with a range of experts on postsecondary student aid and reviewed literature on postsecondary enrollment, tuition, and borrowing.

Spending subject to appropriation: Additional funding to administer the student loan program is provided each year in appropriation acts. In fiscal year 2023, the Congress appropriated $2.0 billion for student aid administration, which is used to administer student loans and other student aid programs. CBO has not estimated the impact on the amount of funding that would be needed to administer the student loan program if H.J. Res 88 were enacted. Any change in spending would be subject to the availability of appropriated funds.

Uncertainty: Although CBO has endeavored to develop an estimate of H.J. Res. 88 that is in the middle of the distribution of potential outcomes, those estimates are highly uncertain. In particular, it is difficult to anticipate the ways students and postsecondary institutions will respond to the availability of the plan. If more or fewer borrowers enroll in the SAVE plan or if additional borrowing grows by more or less than CBO projects, the costs could differ significantly from those presented here. The uncertainty is further complicated by difficulty in anticipating changes in the composition or characteristics of enrollees in the new IDR plan relative to those currently participating.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 1.

Increase in long-term net direct spending: None.

Mandates: None.

Previous CBO estimates: On March 13, 2023, CBO published a letter detailing the estimated budgetary effects of the proposed rule for the new IDR, as published by the Department of Education in the *Federal Register* on January 11, 2023. In that letter, CBO estimated that the new IDR plan would increase the cost of the federal student loan program by $276 billion over the 2023–2033 period, assuming the Supreme Court fully invalidated the Administration's plan to cancel outstanding debt. That estimate was relative to CBO's February 2023 baseline projections.

The estimate of the final rule reflects several changes from the estimate of the proposed rule. First, it has been updated to reflect the assumptions in CBO's May 2023 baseline, which projects less overall volume originated over the 2024–2033 period than in the February 2023 baseline. The estimated cost of the new IDR plan is lower under the assumption that less volume will be originated in the future.

In addition, this estimate incorporates the effects of the proposed rule relating to "Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB)," as published by the Department of Education in the *Federal Register* on May 19,

[2] For a technical description of CBO's modeling of income-driven repayment plans, see Nadia Karamcheva, Jeffrey Perry, and Constantine Yannelis, Income-Driven Repayment Plans for Student Loans, Working Paper 2020–02 (Congressional Budget Office, April 2020), www.cbo.gov/publication/56337.

2023. As standard practice, CBO incorporates 50 percent of the budgetary effects of proposed rules into its baseline and estimates. CBO expects that the proposed rule on gainful employment, which requires institutions to meet benchmarks for debt-to-earnings rates, will reduce some of the additional borrowing that would have otherwise occurred.

Finally, it reflects small differences between the proposed and final rule. Under the final rule, several benefits of the SAVE plan, such as reduction in the amount of discretionary income that borrowers must pay if they have undergraduate loans only, do not start until July 2024. Under the proposed rule, those benefits were immediately available.

Other estimates: In the final rule published on July 10, 2023, the Department of Education estimated that the SAVE Plan will cost $156 billion over the 2023–2033 period. Of that total, the department estimates the cost for existing loan cohorts will total $70.9 billion, about $59 billion lower than CBO's estimate. Much of that difference stems from the fact that the department's estimate incorporates the costs of the Administration's plan to cancel up to $20,000 in outstanding balances for eligible borrowers. This assumption makes the estimated costs for outstanding loans much lower than if that assumption had not been included. The Supreme Court invalidated the loan cancellation plan on June 30, 2023.

The department estimated an additional cost of $85.1 billion for loan cohorts originated from 2024 to 2033, about $46 billion lower than CBO's estimate. Most of the difference between CBO's and the department's estimated costs for future loans stems from the fact that the department did not include any costs for increased borrowing among eligible students in the future.

Estimate prepared by: Federal costs: Leah Koestner; Mandates: Erich Dvorak.

Estimate reviewed by: Justin Humphrey, Chief, Finance, Housing, and Education Cost Estimates Unit; Kathleen Fitzgerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.J. Res. 88. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the committee adopts as its own the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.J. Res. 88, as reported by the Committee, makes no changes in existing law.

MINORITY VIEWS

INTRODUCTION

H.J. Res. 88, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to "Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program,"* would nullify the Biden Administration's recently implemented Save on A Valuable Education (SAVE) Income Driven Repayment (IDR) plan. If enacted, H.J. Res 88 would sow chaos through the federal loan system by forcing millions of low- and middle-income borrowers to enroll in more costly repayment plans as they return to repayment for the first time in over three years. Further, it could jeopardize both the Biden Administration's and any future administration's ability to make regulatory changes to the IDR program to support the economic well-being of students and borrowers.

BRIEF HISTORY OF INCOME DRIVEN REPAYMENT PLANS

Since the creation of the Direct Loan program in 1993, statute has required that an (IDR) plan must be available to eligible borrowers.[1] IDR plans calculate loan payments based on a borrower's discretionary income rather than their loan balance alone, and forgive outstanding balances after a certain number of payments.[2] IDR offers a variety of loan repayment options which in turn provides flexibility to borrowers in managing their debt, decreasing defaults, and improving access and affordability in higher education.[3] Since the promulgation of the first IDR plan in 1994, several new plans have been established by statute and by regulation.[4] None of these revised plans have ever been challenged by Congress under the *Congressional Review Act*.

SAVING ON A VALUABLE EDUCATION (SAVE) PLAN

The SAVE plan is the newest iteration of the IDR program that was promulgated after a robust negotiated rulemaking process.

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[1] The *Student Loan Reform Act* (Title IV–A of the *Omnibus Budget Reconciliation Act of 1993;* P.L. 103–66) which authorized the Direct Loan program codified under HEA Sections 455(d)(1)(D) and 455(e), also directed the Secretary of Education to offer a variety of loan repayment plans, including 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.)

[2] Cong. Rsch. Serv., The Department of Education's Notice of Proposed Rulemaking on Improving Income-Driven Repayment for the Direct Loan Program: Frequently Asked Questions, 2 (February 9, 2023), https://www.crs.gov/Reports/R47418.

[3] H.Rep. No 103–111 at 107–113 (1993).

[4] For a detailed history of IDR plans, see Rita R. Zota, Cong. Rsch. Serv., R47418, The Department of Education's Notice of Proposed Rulemaking on Improving Income-Driven Repayment for the Direct Loan Program: Frequently Asked Questions, (2023), https://www.crs.gov/Reports/R47418.

SAVE Plan Negotiated Rulemaking Process

The *Higher Education Act* (HEA) requires the Secretary of Education (Secretary) to conduct negotiated rulemaking for any regulatory proposals related to title IV of the HEA (Title IV) to ensure appropriate feedback and recommendations from relevant stakeholders.[5] One key purpose of negotiated rulemaking is to make the rulemaking process less prone to any subsequent litigation, which is achieved by the intentional convening of stakeholders that represent a wide range of interests likely to be involved in legal challenges to the rule.[6]

In Fall 2021, the Department of Education (Department) began the negotiated rulemaking process on several topics related to college affordability and student loans.[7] The negotiating committee, which was named the Affordability and Student Loans Committee, was tasked with developing changes to the IDR program. The Committee was comprised of negotiators representing dependent students, independent students, student loan borrowers, legal assistance organizations, veterans and military service members, State attorneys general, State higher education executive officers, individuals with disabilities, financial aid administrators, two-year public institutions, four-year public institutions, private nonprofit institutions, proprietary institutions, minority-serving institutions, Federal Family Education Loan (FFEL) lenders, and accrediting agencies.[8] Each negotiator provided unique and thorough feedback to the proposed changes based on the population they represented.

In August 2022, the Biden Administration announced its plan to implement changes to the IDR program, including revisions to the Revised Pay As You Earn (REPAYE) plan, based on the suggestions from the Affordability and Student Loan Committee.[9] Since Committee negotiators did not reach consensus on any specifics of the IDR provisions, the Department has the authority under HEA to utilize "regulatory language developed during the negotiations as the basis for its [proposed rule], or develop new regulatory language for all or a portion of its [rule]." [10]

In January 2023, the Department released a proposed rule for the IDR program changes that built on discussions during negotiated rulemaking.[11] In July 2023, the Department released the

[5] U.S. Dep't. of Educ., The Negotiated Rulemaking Process for Title IV Regulations—Frequently Asked Questions, (May 5, 2021), https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.

[6] Maeve P. Carey, Cong. Rsch. Serv., R46756, Negotiated Rulemaking: In Brief, 4 (2021), https://www.crs.gov/Reports/R46756.

[7] Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings, 86 Fed. Reg. 43609 (Aug. 10, 2021), https://www.federalregister.gov/documents/2021/08/10/2021-16953/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings.

[8] U.S. Dep't. of Educ., 2021 Negotiated Rulemaking: Affordability and Student Loans Committee, 1–2 (Sep. 27, 2021), https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/2021negotrulemakingcomlist.pdf.

[9] The White House, Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need It Most (Aug. 24, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.

[10] U.S. Dep't. of Educ., The Negotiated Rulemaking Process for Title IV Regulations—Frequently Asked Questions, (May 5, 2021), https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.

[11] U.S. Dep't. of Educ., New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation (Jan. 10, 2023), https://www.ed.gov/news/press-releases/new-proposed-regulations-

final rule for IDR program changes, including the establishment of the SAVE plan, which is a revision of the REPAYE Plan.[12] After analyzing over 13,000 public comments, the final rule did not significantly deviate from the proposed rule.[13]

SAVE Provisions Implemented August 2023

Several provisions of the SAVE plan have already gone into effect for borrowers as they return to repayment.[14] The SAVE plan significantly decreased monthly student loan payments for borrowers. It increased the income exemption from 150 percent to 225 percent of the federal poverty line for purposes of determining discretionary income.[15] The plan also offers loan forgiveness after 10 years of payments for borrowers with balances less than $12,000.[16] Additionally, as SAVE payment might include much less interest than a standard monthly payment, under SAVE, any remaining interest a borrower might owe after they have made their full calculated payment is eliminated, preventing ballooning interest.[17] Borrowers have already experienced the benefits of these provisions, and H.J. Res. 88 would jeopardize their ability to continue in the program.

SAVE Provisions to be Implemented July 2024

The SAVE plan will also provide additional benefits to be implemented in July 2024 that will continue to reduce monthly payments and help borrowers manage their repayments.[18] Borrowers with undergraduate loan debt will have their payments reduced from 10 percent to 5 percent of their discretionary income.[19] Borrowers with undergraduate and graduate loans will pay an average of between 5 percent and 10 percent of their income based on the original principal balances. Borrowers with a principal balance of $12,000 or less will receive forgiveness after 10 years of payments. For every additional $1,000 borrowed, the maximum number of years in repayment increases by one year. Undergraduate loan repayment will be capped at 20 years of payments, and graduate loan repayments will be capped at 25 years of payments.[20] Borrowers will also receive credit toward forgiveness for consolidated loans and specific periods of deferment or forbearance.[21] Lastly, borrowers who are 75 days late on payments will be automatically en-

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would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.

[12] Improving Income Driven Repayment for the Federal Direct Loan Program and the Federal Education Loan (FFEL) Program, 88 Fed. Reg. 43820 (Jul. 10, 2023), https://www.federalregister.gov/documents/2023/07/10/2023-13112/improving-income-driven-repayment-for-the-william-d-ford-federal-direct-loan-program-and-the-federal.

[13] *Id.* at 43821 (Jul. 10, 2023). For a detailed summary of the changes made to the IDR program, see Zota, supra note 4.

[14] Federal Student Aid, U.S. Dep't. of Educ., SAVE Repayment Plan Offers Lower Monthly Payments (last visited Oct. 4, 2023), https://studentaid.gov/announcements-events/save-plan.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

rolled in an IDR plan if the borrower has previously permitted the Department to access their tax information.[22]

Estimated Impact on Borrowers

The SAVE plan is the most generous repayment plan ever established and is expected to drastically help millions of low- and middle-income borrowers. The Department estimates that more than one million low-income borrowers will qualify for $0 loan payments each month, allowing families to focus on basic needs like food, housing, and transportation.[23] The SAVE plan also ensures that borrowers do not have ballooning interest by no longer capitalizing monthly interest not covered by a borrower's payment.[24] The Department estimates that 70 percent of borrowers who were on a different IDR plan previously will benefit from this provision.[25]

The Department highlights the following other specific examples of SAVE's impact on borrowers:

- Borrowers will see their total payments per dollar borrowed fall by 40%. Borrowers with the lowest projected lifetime earnings will see payments per dollar borrowed fall by 83%, while those in the top would only see a 5% reduction.
- A typical graduate of a four-year public university will save nearly $2,000 a year.
- A first-year teacher with a bachelor's degree will see a two-third reduction in total payments, saving more than $17,000, while pursuing Public Service Loan Forgiveness.
- 85% of community college borrowers will be debt-free within 10 years because of the early forgiveness for low-balance borrowers provision of the plan.
- On average, Black, Hispanic, American Indian, and Alaska Native borrowers will see their total lifetime payments per dollar borrowed cut in half.[26]

PREVIOUS REPUBLICAN ATTACKS ON IDR [27]

H.J. Res. 88 is not the first attempt by Republicans to attack the Biden Administration's IDR program. On April 26, House Republicans passed H.R. 2811, their *Limit, Save, Grow Act,* with four Republicans joining all voting Democrats in opposition.[28] This bill would require 22 percent across the board cuts to all non-defense discretionary spending over the next ten years.[29] In addition to these harmful cuts to funding for low-income students, students with disabilities, and student mental health services, the bill would

[22] *Id.*
[23] The White House, Fact Sheet: The Biden-Harris Administration Launches the SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments for Millions of Borrowers (Aug. 22, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *See also* H.R. Rep. No. 118–71 at 18–19 (outlying the same argument in relation to H.J. Res. 45, a statement of Congressional disapproval under the *Congressional Review Act* to the one-time student debt relief proposed by the Biden Administration. While the CRA attempt was not successful, the program was struck down by the Supreme Court. Biden v. Nebraska, 143 S. Ct. 2355 (2023).
[28] H.R. 2811, 118th Cong., § 212 (2023).
[29] *Id.*

have rescinded both the SAVE plan and the one-time student debt relief program the Biden Administration previously proposed.[30] It would also prohibit the Department, under any administration, from drafting or proposing any "economically significant regulations" or executive action regarding federal student loans.[31] This thoroughly unserious bill was the vehicle House Republicans attempted to use as a starting point in their negotiations with the White House in talks to raise the debt limit under which the Treasury can borrow to meet existing legal obligations. House Republicans have already passed H.R. 2811 to overturn the IDR program changes and go a step further to prohibit any future regulatory changes to the loan program but are still moving forward with H. J. Res. 88 in what seems like a fruitless endeavor harmful to borrowers.

H.J. RES 88 HARMS BORROWERS AND CREATES CONFUSION

If enacted, H.J. Res. 88 would bar the Biden Administration from continuing to implement the SAVE plan, requiring the Department to promptly change all repayment plans for borrowers enrolled in SAVE. Borrowers currently enrolled in SAVE would be forced to enroll in a different repayment plan, but it remains unclear whether the borrower would be re-enrolled in their previous repayment plan or if they would be automatically enrolled in REPAYE. Regardless, this would revert $0 payments for over one million borrowers and would increase payments for millions more. Since SAVE was designed to support the successful loan repayment of low-income borrowers, H.J. Res. 88 could also create a spike in loan delinquency and default, especially as we enter an unprecedented return to repayment. The timing of this resolution creates further confusion; it is unclear how quickly the Department would need to enforce the retroactive effect of the resolution. This claw back process would be extremely complicated and confusing for borrowers, servicers, and the Department.

Committee Democrats are very concerned that borrowers enrolled in SAVE may also have to worry about:

- *Their monthly payment amount.* It is unclear how long it will take for the Department and servicers to operationalize and implement an unprecedented and required change to enroll borrowers in a less-generous repayment plan.
- *Uncertainty around interest costs.* Borrowers will not know how much in additional loan costs they will pay if they are required to change to a plan that does not address ballooning interest, making payment amounts unclear.
- *Accessing support from loan servicers.* Servicers, who have been preparing for return to repayment under certain plans will now have to turn on a dime which will invariably result in confusion. Servicers will be overwhelmed supporting an unprecedented number of borrowers applying for different repay-

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[30] U.S. Dep't. of Educ., Fact Sheet: House Republican Proposals Hurt Children, Students, and Borrowers, and Undermine Education (Apr. 25, 2023), https://www.ed.gov/news/press-releases/fact-sheet-house-republican-proposals-hurt-children-students-and-borrowers-and-undermine-education.

[31] H.R. 2811, 118th Cong., § 212 (2023).

ment plans in a short period of time and amid all the expected tumult of borrowers returning to repayment.

- *Legal equities in repayment.* Borrowers who have relied on determinations of what their payment amount will be under SAVE could face situations where their servicer under state or federal law must add interest charges to monthly payments after telling them under the SAVE plan such payments were not required.

Republicans believe the SAVE plan is merely a "scheme" to "buy votes ahead of the next election."[32] They argue that SAVE exacerbates rising college costs and excessive borrowing; however, there has been no conclusive research that shows that increasing loan relief through IDR leads directly to increased tuition costs at public institutions. Republicans have continued to push for streamlining the loan repayment programs by creating one standard and one income-based repayment plan.[33] Their proposed IDR plan does not address critical affordability issues within the loan system, but rather focuses on saving money for the taxpayer.[34] Through legislation and commentary, Republicans have made clear their loan reforms are not centered around supporting the economic well-being of low- and middle-income borrowers.

IMPLICATIONS FOR FUTURE DEPARTMENT RULES ON LOAN MODIFICATIONS

The *Congressional Review Act* prohibits agencies from issuing "a new rule that is substantially the same as the disapproved rule unless subsequent law specifically authorizes the reissued rule."[35] In promulgating a new regulation on repayment plans, the Department would not ever be able to create as generous an IDR plan. Furthermore, it remains unclear how "substantially the same" would be interpreted if the Department were to promulgate a new IDR plan in the future. It appears there are significant complexities in determining which aspects of a new regulation would require alteration or omission to comply with the Congressional Review Act.

CONCLUSION

At the time of this markup, House Republicans have already passed their detrimental *Limit, Save, Grow Act* that would have prohibited the Biden Administration from implementing their SAVE plan. H.J. Res. 88 is just another attempt by House Republicans to attack the Biden Administration for addressing the serious financial concerns of low- and middle-income student loan bor-

[32] H. Comm. on Educ. & the Workforce Republicans, Press Release, McClain, Foxx Introduce CRA Resolution to Stop Biden's Latest Free College Scheme (Sep. 5, 2023), https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409498.

[33] H. Comm. on Educ. & the Workforce Republicans, FAIR Act Brings Clarity to Student Loan Borrowers, Protects Taxpayers (Jun. 15, 2023), https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409295.

[34] *Id.*

[35] 5 U.S.C. § 801(b). *But see* Maeve Carey, Cong. Rsch. Serv., IN10996, Reissued Labor Department Rule Tests Congressional Review Act Ban on Promulgating "Substantially the Same" Rules (2019), https://www.crs.gov/Reports/IN10996 (explaining that the "same or similar" standard is not defined in the Congressional Review Act, and highlighting recent attempts by agencies to promulgate a rule on a similar subject as a rule that had been previously successfully disapproved under the Congressional Review Act).

rowers. This is not a worthwhile use of this Committee's time. For the reasons stated above, all Committee Democrats present unanimously opposed H.J. Res 88 when the Committee on Education and the Workforce considered it on September 13, 2023. We urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
RAÚL GRIJALVA.
JOE COURTNEY.
FREDERICA S. WILSON.
SUZANNE BONAMICI.
MARK TAKANO.
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