DEPARTMENT OF EDUCATION

34 CFR Part 30

[Docket ID ED–2023–OPE–0123]

RIN 1840–AD95

Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations related to the Higher Education Act of 1965, as amended (HEA), to provide for the waiver of certain student loan debts. The proposed regulations would specify the Secretary's authority to waive all or part of any student loan debts owed to the Department based on the Secretary's determination that a borrower has experienced or is experiencing hardship related to such a loan.

DATES: We must receive your comments on or before December 2, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *Regulations.gov*. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under "FAQ." If you require an accommodation or cannot otherwise submit your comments via *Regulations.gov*, please contact *regulationshelpdesk@gsa.gov* or by phone at 1–866–498–2945. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. Please submit your comment only once so that we do not receive duplicate copies. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department's policy is to generally make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *Regulations.gov*. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department may not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *Regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. For example, "a former student with a graduate level degree" does not provide information that identifies a third-party individual as opposed to "my sister, Jane Doe, had this experience while attending University X," which does provide enough information to identify a specific third-party individual. For privacy reasons, the Department reserves the right to not make available on *Regulations.gov* any information in comments that identifies other individuals, includes information that would allow readers to identify other individuals, or includes threats of harm to another person or to oneself.

FOR FURTHER INFORMATION CONTACT: Tamy Abernathy, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 245–4595. Email: *NegRegNPRMHelp@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

A brief summary of these proposed regulations is available at *https://www.regulations.gov/docket/ED-2023-OPE-0123*. These proposed regulations would clarify the use of the Secretary's longstanding authority to grant a waiver of some or all of the outstanding balance on a Federal student loan.[1] Under this proposed rule, the Department would specify how the Secretary would exercise discretionary authority to grant waivers using the following standard: the Secretary would determine that a borrower is experiencing or has experienced hardship related to the loan: (1) that is likely to impair the borrower's ability to fully repay the Federal government, or (2) that renders the costs of enforcing the full amount of the debt not justified by the expected benefits of continued collection of the entire debt (proposed § 30.91(a)).

The proposed regulations would then provide a non-exhaustive list of factors the Secretary may consider in deciding whether to grant relief (proposed § 30.91(b)). Then, proposed § 30.91(c) would provide a process by which the Secretary may grant individualized automatic relief through a predictive assessment based on the factors in proposed § 30.91(b). Should the Secretary choose to exercise such discretion, proposed § 30.91(c) would provide immediate, one-time relief as soon as practicable. And, proposed § 30.91(d) would provide a primarily application-based process by which the Secretary may provide additional relief on an on-going basis.

The proposed regulations describe two different pathways that the Secretary could take to exercise discretion to grant a waiver in instances where the borrower meets the hardship standard in proposed § 30.91(a). We describe those pathways in greater detail in the preamble below to assist the public in understanding how the proposed regulations would operate and to clarify terminology to guide such a discussion.

The first pathway would be a "predictive assessment," pursuant to proposed § 30.91(c), under which the Secretary would consider information in

[1] As discussed more fully below, these proposed regulations focus on the Secretary's waiver authority under sections 432(a)(6) and 468(2) of the HEA. Section 432(a)(6) provides that, "in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may . . . waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption." 20 U.S.C. 1082(a)(6). Section 468(2), the Perkins Loan Program's authorizing statute, features a similar waiver provision. 20 U.S.C. 1087hh(2). The Department views sections 432(a)(6) and 468(2) as permitting the Secretary to waive the Department's right to require repayment of a debt when there are circumstances that warrant such relief, such as the circumstances specified in these proposed regulations. The Department acknowledges that several states have challenged the Department's authority to waive loans under sections 432(a)(6) and 468(2) through litigation focused on separate proposed rules issued by the Department on April 17, 2024 (89 FR 27564) that also rely on the Department's waiver authority under the HEA. *See Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo.). In that separate litigation, a Federal district court has preliminarily enjoined the Department "from implementing the Third Mass Cancellation Rule," a term that the plaintiffs used to refer to the April 2024 NPRM, and "from mass canceling student loans, forgiving any principal or interest, not charging borrowers accrued interest, or further implementing any other actions under the Rule or instructing federal contractors to take such actions." Memorandum and Order, Doc. 57 at 3, *Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo. Oct. 3, 2024). As of the publication of this NPRM, this litigation remains pending with no final decision on the merits, including no final decision pertaining to the Secretary's authority under sections 432(a)(6) and 468(2) of the HEA.

the Department's possession to determine whether the borrower meets the proposed standard for hardship in § 30.91(a) such that their loans are at least 80 percent likely to be in default within the next two years. The Department would make a predictive assessment that considers factors indicating hardship (described in proposed § 30.91(b)) and may, in the Secretary's discretion, then provide immediate relief by granting waivers to eligible borrowers, without requiring any action by those borrowers to seek that relief.

The second pathway, which is under proposed § 30.91(d), would be a determination based on a ''holistic assessment'' of the borrower's circumstances (based on the factors in proposed § 30.91(b)) that meets the proposed hardship standard for waiver specified in proposed § 30.91(a). This assessment would focus on borrowers who are not otherwise eligible for the immediate relief under proposed § 30.91(c) and who are not eligible for relief sufficient to redress their hardships through other Department programs supporting student loan borrowers. Under this pathway for relief, the Department would conduct a holistic assessment of the borrower's hardship based on information about the borrower's experience with the factors in proposed § 30.91(b) obtained through an application or based on information already within the Department's possession, or a combination of the above. A borrower would be eligible for relief if, based on the Department's holistic assessment, the Department determines that the borrower is highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship.

The two pathways for relief described above, namely the immediate relief in proposed § 30.91(c) and the additional relief in proposed § 30.91(d), would operate separately and distinctly from each other and would therefore be fully severable. Because these proposed regulations only concern waivers due to hardship, these proposed hardship waivers would therefore also be separate and distinct from other proposed rules related to waivers of Federal student loan debt.[2]

Summary of This Regulatory Action

These proposed regulations would add a new § 30.91, which would reflect in regulations the Secretary's existing discretionary authority under section 432(a)(6) of the HEA to waive some or all of the outstanding balance of a loan owed to the Department when the Secretary determines that a borrower has experienced or is experiencing hardship related to the loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government, or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt. In addition to establishing this standard, the proposed provision would also specify the factors that the Secretary would consider in evaluating hardship and the particular processes by which the Secretary may provide relief under the standard for determining hardship.

We note that the Department published a Notice of Proposed Rulemaking in the **Federal Register** on April 17, 2024 (April 2024 NPRM) (89 FR 27564) but explained at that time that the April 2024 NPRM did not include proposed regulations for waivers related to hardship.[3] As discussed in greater detail in the Negotiated Rulemaking section of this NPRM, hardship waivers were discussed at a fourth session of the negotiating committee on February 22 and 23, 2024. The Committee reached consensus on proposed language, which is included in this NPRM.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis* (RIA), the proposed regulations would have significant impacts on borrowers, taxpayers, and the Department. Instances in which the Secretary decides to waive all or part of a borrower's outstanding loan balance would result in transfers between the Federal government and borrowers. This would create benefits for borrowers by eliminating the hardship they are facing with respect to their loans, allowing them to better afford necessities like food or housing, afford retirement, cover childcare or caretaking expenses, or otherwise improve their financial circumstances. In the case of a waiver of the full outstanding balance of the loan, a borrower would no longer have a repayment obligation and also no longer face the risk of delinquency or default. A borrower who receives a partial waiver would have a more affordable repayment obligation that could be repaid in full over time. The transfers resulting from the proposed regulations would be mitigated to the extent that the Secretary would exercise discretion to waive loans in whole or part where the borrower is unlikely to have the ability to repay, or where the costs of continued collection outweigh the benefits, allowing the Department to prioritize collection of loans that are most likely to be repaid.

Beyond transfers, these regulations would create administrative costs for the Department to process and implement relief based upon information in the Department's possession or based upon applications filed by borrowers.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. For your comments to have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Department will not accept comments submitted after the comment period closes. Please submit your comments only once so that we do not receive duplicate copies.

The following tips are meant to help you prepare your comments and provide a basis for the Department to respond to issues raised in your comments in the notice of final regulations (NFR):

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and subsections of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.

[2] *See* 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra,* a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits. These regulations differ from the waivers proposed in the April 2024 NPRM along various dimensions, including that the provisions in these final regulations apply distinct and different eligibility criteria, and these provisions address different challenges with student loan repayment faced by borrowers and the Department. As further described throughout these proposed regulations, these provisions specify relief for borrowers that are experiencing or have experienced hardship that meet certain criteria. Specifically, under proposed § 30.91(c), the Secretary could provide individualized automatic relief through a predictive assessment based on certain factors. Under proposed § 30.91(d), the Secretary could provide relief based on a holistic assessment of the borrower's specific circumstances using the standard specified in these proposed regulations. Accordingly, the waivers in these proposed regulations would operate separately and distinctly from the waivers proposed in the April 2024 NPRM.

[3] As described above, *see* n.1, *supra,* a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

• Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences.

• Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.

• Do not include personally identifiable information (PII) such as Social Security numbers or loan account numbers for yourself or for others in your submission. Should you include any PII in your comment, such information may be posted publicly.

• Do not include any information that directly identifies or could identify other individuals or that permits readers to identify other individuals. Your comment may not be posted publicly if it includes PII about other individuals.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. A well-supported comment is often more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM in § 30.91, the *Regulatory Impact Analysis,* and *Paperwork Reduction Act* sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that are computer-generated. Comments containing the promotion of commercial services or products and spam will be removed.

We may not address comments outside of the scope of these proposed regulations in the NFR. Generally, comments that are outside of the scope of these proposed regulations are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the NFR.

Comments containing personal threats will not be posted to *Regulations.gov* and may be referred to the appropriate authorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Directed Questions

The Department is particularly interested in comments on the following directed questions:

1. Is ''two years'' the appropriate measurement window for the waivers specified in proposed § 30.91(c) related to borrowers who are likely to be in default, or should the Department use a different time frame, and if so, what timeframe and why?

2. Is ''80 percent'' likelihood of being in default within the next two years the appropriate eligibility threshold for immediate relief in proposed § 30.91(c), or should the Department consider a different likelihood percentage, and if so, what should it be and why?

3. As described in this NPRM, eligibility for a hardship waiver under proposed § 30.91(d) would be relatively rare and limited to circumstances where the Secretary finds: (i) the borrower is highly likely to be in default, or experience similarly severe negative and persistent circumstances, and (ii) other options for payment relief would not sufficiently address the borrower's persistent hardship. The Department invites feedback from the public on what circumstances constitute similarly severe negative and persistent circumstances that are comparable to default.

4. Under proposed § 30.91(d), is ''highly likely'' to be in default or to experience similarly severe negative and persistent circumstances the appropriate eligibility threshold? If so, why? If not, should the Department use a different likelihood threshold, and, if so, what threshold and why?

5. How should the Department help make certain that borrowers have the opportunity to enroll or apply for other programs administered by the Department that may be advantageous to the borrower and successfully demonstrate a hardship that qualifies for a waiver under proposed § 30.91(d)?

6. How can the Department improve or refine the estimates in the RIA related to the anticipated volume of applications for the application-based hardship waiver process, as well as the estimates related to the approval rate for such applications?

7. As described in this NPRM, the Department believes a presumption in favor of a full waiver is appropriate and would provide consistency in decision-making, but that this presumption could be rebutted in certain circumstances. For example, the Secretary may find the presumption in favor of full waiver is rebutted if there is evidence that a partial waiver would sufficiently reduce a borrower's monthly payment in a manner that alleviates their hardship under these regulations. The Department seeks input from the public on the types of circumstances and evidence that the Department should consider to determine when partial relief is more appropriate.

8. Under what circumstances, pursuant to proposed § 30.91(d), would a borrower who is eligible for a $0 monthly payment under an income-driven repayment plan meet the standard for relief in proposed § 30.91(d) of being highly likely to be in default or experience similarly severe and persistent negative circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship?

9. Under what circumstances would a borrower be highly likely to be in default, or experience similarly severe negative and persistent circumstances, such that relief pursuant to proposed § 30.91(d) would be appropriate?

10. What type of data could the Department use to determine whether a borrower who has not submitted an application qualifies for relief under

proposed § 30.91(d), and how could ED obtain those data?

11. If the Department were to establish a cap on the amount of relief eligible borrowers could receive, what would be a reasonable cap and what data, research, or other information would support the setting of such a cap? The Department is particularly interested in different approaches for formulating and justifying the amount of capped relief. For example, the Department welcomes feedback on whether the Department should apply any of the following approaches: a universal cap, a progressive cap based on the extent of the hardship up to a maximum possible limit, or a cap that provides proportional relief based on other circumstances.

Background

Federal student loans provide an important resource for Americans to enroll in postsecondary education programs if they do not have the financial means to pay the total cost of attendance up front. Because postsecondary education generally provides economic returns, the increased financial benefits from greater education and training can be used to repay the debts incurred to pay for those opportunities.

Unfortunately, over the decades since the HEA was enacted, the increasing price of postsecondary education has exceeded the growth in family incomes.[4] For many students, available grant aid is not sufficient to cover postsecondary expenses, leading Federal student loans to fill a critical and inescapable gap in postsecondary education financing for many families.

Generally, financing postsecondary education with loans yields returns—such as increased income—that help borrowers afford their debts.[5] Increasing access to higher education through student loans also provides well-documented benefits to communities and to the national economy and society. These benefits extend even to individuals who never attended college themselves. For example, college certificate and degree attainment typically lead to higher earnings, increasing the ability of individuals to spend money and invest in their local community.[6]

The HEA contains many provisions intended to assist borrowers when their investment in postsecondary education does not result in the expected benefits. The Department offers several options for payment relief and other forgiveness opportunities. For example, when an educational institution misrepresents the value of an education financed with a student loan, the HEA authorizes discharge of the obligation through a borrower defense claim. The HEA also provides for discharge when a school falsely certifies a borrower's eligibility for a loan, or someone obtains a loan in the borrower's name through identity theft. Other types of loan discharges are available if a borrower is unable to complete a program because an institution closes, or if the borrower becomes totally and permanently disabled.

The Department offers several different repayment options, some of which base payments on a borrower's income and forgive any remaining amounts after an extended period of payments, which is either 20 or 25 years for most plans.[7]

While existing discharge and repayment programs provide critical relief to borrowers, they do not capture the full set of circumstances that may impair borrowers' ability to fully repay their loans. Many situations unique to individual borrowers can cause borrowers to experience significant hardship repaying student loans and may make the cost of collecting the loan exceed the expected benefits of continued collection. Such situations often are not covered by existing avenues for relief. For example, older borrowers with high educational debt burdens can be at increased risk of financial insecurity since they are also more likely to be exposed to higher medical costs and declining incomes.[8] But these risks are not factored into the determination of eligibility for relief under existing Department programs. Borrowers with significant medical expenses, dependent care expenses, or other extraordinary and necessary costs also may not qualify for other discharge and repayment programs, which do not assess such expenses in determining eligibility.

These proposed regulations would clarify how the Secretary would exercise their authority to waive some or all outstanding loan debt in certain situations where the Secretary determines that a borrower is facing hardship that impairs their ability to fully repay the loan or imposes unwarranted costs that exceed the benefits of continued collection. The proposed regulations describe the transparent, reasonable, and equitable factors the Secretary would use to determine when such waivers could be granted.

Section 432(a) of the HEA outlines the Secretary's legal powers and responsibilities relevant to this rulemaking. That section delegates to the Secretary the discretion to exercise certain ''general powers.'' In particular, section 432(a)(6) provides that, ''in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.''

The provisions of section 432(a)(6) are in, and explicitly apply to, title IV, part B, of the HEA, which establishes the FFEL program. Section 432(a)(6), however, also applies to the Direct Loan program. In creating the Direct Loan program, Congress established parity between the FFEL and Direct Loan programs, providing in section 451(b)(2) of the HEA that Federal Direct Loans ''have the same terms, conditions, and benefits as loans made to borrowers'' under the FFEL program. 20 U.S.C. 1087a(b)(2).[9] By its plain language, section 451(b)(2) requires that the benefits of FFEL loans should be available under the Direct Loan program, including the benefit to a borrower when the Secretary exercises

[4] For example, the published tuition and fees for public four-year, public two-year, and private nonprofit four-year institutions were, respectively, 209 percent, 151 percent, and 178 percent higher than those costs in the early 1990s (inflation adjusted). Over a similar time period, incomes rose by about 30 percent-40 percent among families outside of the top quintile, and 65 percent for families in the top quintile (inflation adjusted). *See* Ma, Jennifer and Matea Pender. *Trends in College Pricing and Student Aid 2023* (2023). New York: College Board.

[5] Avery, Christopher and Sarah Turner. ''Student loans: Do college students borrow too much—or not enough?.'' *Journal of Economic Perspectives* vol. 26, no. 1 (2012): 165–192. Lovenheim, Michael, and Jonathan Smith. ''Returns to different postsecondary investments: Institution type, academic programs, and credentials.'' *Handbook of the Economics of Education* vol. 6 (2023): 187–318. Elsevier.

[6] Matsudaira, Jordan. ''The Economic Returns to Postsecondary Education: Public and Private Perspectives.'' *Postsecondary Value Commission* (2021). Moretti, Enrico. Estimating the social return to higher education: evidence from longitudinal and repeated cross-sectional data. *Journal of Econometrics 121,* no. 1–2 (2004): 175–212.

[7] *See* 20 U.S.C. 1087e(e) and 20 U.S.C. 1098e.

[8] See, for example, this US Government Accountability Office (GAO) report that demonstrates higher rates of debt among older Americans, *https://www.gao.gov/products/gao-21-170.* For a discussion of how medical costs account for a larger share of expenditures among older individuals also see, Banks, James, Richard Blundell, Peter Levell, and James P. Smith. ''Life-cycle consumption patterns at older ages in the United States and the United Kingdom: Can medical expenditures explain the difference?.'' *American Economic Journal: Economic Policy 11, no.* 3 (2019): 27–54.

[9] See *Sweet* v. *Cardona,* 641 F. Supp. 3d 814, 823–25 (N.D. Cal. 2022); *Weingarten* v. *DOE,* 468 F. Supp. 3d 322, 328 (D.D.C. 2020); *Chae* v. *SLM Corp.,* 593 F.3d 936, 945 (9th Cir. 2010).

discretionary authority under section 432(a)(6) to waive loan obligations for those experiencing hardship. A benefit is ''something that produces good or helpful results or effects,'' [10] and disallowing Direct Loan borrowers experiencing hardships the same opportunity as FFEL borrowers to have all or part of the balance of their loans eliminated plainly would afford different benefits between the loan programs, the result section 451(b)(2) was created to avoid.

The Secretary's waiver authority under section 432(a)(6) of the HEA also extends to HEAL and Perkins loans. When transferring the HEAL loan program to the Department, Congress explicitly stated that the Secretary's powers with respect to collecting FFEL loans extend to HEAL loans. See Division H, title V, section 525(d) of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76). Likewise, section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.

The Department's statutory waiver authority dates to the enactment of the Higher Education Act in 1965.[11] The Department has viewed its waiver authority as permitting the Secretary to waive the Department's right to require repayment of a debt.[12] Having such bounded flexibility is critical for the Department's administration of the comprehensive and complex student loan programs, where unforeseen challenges could, absent waiver, interfere with the Secretary's ability to administer the title IV programs effectively and efficiently.

The Department's waiver authority operates within the context of the HEA's text, structure, and goals, and the well-established principles that govern debt collection and waiver more broadly. Some agencies that exercise waiver authority consider whether collection of debts would be against equity and good conscience or the best interest of the United States. Agencies have also articulated numerous factors that may weigh in favor of waiving an individual's debt, including when collection would defeat the purpose of the benefit program or impose financial hardship, among other considerations. We have taken such factors into consideration here.

On June 30, 2023, the Department announced that it would conduct a negotiated rulemaking process to specify the standard the Secretary plans to use in exercising the Secretary's authority to waive loan debts under section 432(a) of the HEA. On April 17, 2024, the Department published the April 2024 NPRM, laying out some of the proposals from the negotiated rulemaking process, including the waiver of loans that have seen their balances grow far beyond what they were upon entering repayment, loans that first entered repayment a long time ago, loans held by borrowers that are otherwise eligible for certain forgiveness opportunities, or debts taken out to attend programs or institutions that failed to provide sufficient financial value.[13]

The waivers proposed in this NPRM are distinct from those in the April 2024 NPRM and are specifically related to determinations about whether borrowers are facing, or have faced, hardship. While it is possible that a borrower could qualify for a waiver under these proposed regulations as well as under other proposed and existing regulations, this NPRM is fully separate from, and these proposed regulations would operate independently of, such other regulations. In addition, paragraphs (a) through (d) of proposed § 30.91 would operate independently of each other and therefore would be fully severable, as more fully explained below.

Pathways to Relief

In this NPRM, the Department describes two pathways by which the Secretary could exercise discretion to provide waivers of some or all of the outstanding balance of a Federal student loan held by the Department. Both of these proposed pathways would operate separately and independently from each other and therefore would be fully severable. As noted above, the regulations specify: (i) a pathway for ''immediate relief'' using a predictive assessment in proposed § 30.91(c); (ii) a pathway for ''additional relief'' using a holistic assessment in proposed § 30.91(d) based on an application or data already in the Secretary's possession, or a combination of both.

Under both pathways to relief, the Secretary proposes to analyze each individual borrower's circumstances, as reflected in the factors in proposed § 30.91(b), to determine whether the borrower is experiencing or has experienced hardship as defined by these regulations.

Under the first pathway to relief, using a ''predictive assessment'' as described in proposed § 30.91(c), the Secretary would use data already in the Department's possession (that is, not acquired by application) to identify borrowers who meet the standard in proposed § 30.91(a) such that they are at least 80 percent likely to be in default in the next two years after the proposed regulations' publication date.[14] The Secretary would conduct this analysis by using a predictive model that considers the borrower's circumstances as described by factors in proposed § 30.91(b). The Secretary then could choose to exercise discretion to grant ''immediate relief'' to borrowers who qualify under proposed § 30.91(c).

Under the second pathway for relief, described in proposed § 30.91(d), the Secretary may exercise discretion to grant a waiver to a borrower who meets the standard of hardship based on a holistic assessment of the borrower's circumstances, based on the factors described in proposed § 30.91(b). The Department interprets the hardship required for relief under proposed § 30.91(d) as: the borrower must be highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship. This holistic assessment may rely on data already in the Secretary's possession or acquired from a borrower through an application process that would allow a borrower to provide additional data relevant to the factors in proposed § 30.91(b), or a combination of both. The Department anticipates that the number of borrowers for whom the Department possesses sufficient information to conduct the

[10] *https://www.merriam-webster.com/dictionary/benefit.*

[11] *See* Public Law 89–329, 79 Stat. 1246 (Nov. 8, 1965).

[12] The authority to waive loan balances is provided by the statutory text of the HEA, such that the Secretary's exercise of this authority in this proposed regulation is unaffected by the Supreme Court's decision in *Biden* v. *Nebraska,* 600 U.S. 477 (2023). In *Nebraska,* the Court interpreted a provision of the HEROES Act, which authorizes waiver or modification of ''statutory or regulatory provisions'' applicable to the Federal student loan programs under certain circumstances. The Court found that the debt-relief program at issue there exceeded the scope of the HEROES Act authority to waive and modify rules. Here, unlike in *Nebraska,* the Secretary's waiver authority derives from section 432(a)(6) of the HEA, which broadly authorizes waiver of Department claims, and therefore applies directly to ''waiving loan balances or waiving the obligation to repay on the part of the borrower.'' *Nebraska,* 600 U.S. at 497 (internal citation omitted).

[13] 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra,* a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

[14] Borrowers who may be included in this model are those who have at least one federally held loan that has entered repayment.

holistic assessment without data acquired from an application would be small.

These proposed regulations account for challenges facing individual borrowers, while also recognizing that many borrowers are similarly situated. The Department has a longstanding practice of providing appropriate relief when it identifies specific circumstances that warrant relief and affect multiple borrowers. Such relief, regardless of how data is collected to make a determination about relief, is appropriate when individuals share relevant features. This approach comports with the HEA's statutory requirements and can also help to improve administrative efficiency and provide consistency across borrowers.[15]

Overall, these proposed regulations would provide important transparency and clarity about how the Secretary may exercise the discretion to provide relief in situations where a borrower is facing, or has faced, a hardship that might not be addressed through other means. Providing relief in such situations would help alleviate the challenge of repaying student loans for many individual borrowers and better target the costs involved in the Department's efforts to enforce collection and repayment.

Public Participation

The Department has significantly engaged the public in developing this NPRM, as described here and below in the *Negotiated Rulemaking* section.

On July 6, 2023, the Department published a document in the **Federal Register**[16] announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations pertaining to the Secretary's authority under section 432(a) of the HEA, which relates to the modification, waiver, or compromise of loans.

On July 18, 2023, the Department held a virtual public hearing at which individuals and representatives of interested organizations provided advice and recommendations relating to the topic of proposed regulations on the modification, waiver, or compromise of loans. The Department considered the oral comments made by the public during the public hearing and written comments submitted between July 6, 2023, and July 20, 2023. We also held four negotiated rulemaking sessions of two days each. During each daily negotiated rulemaking session, we provided an opportunity for public comment. The fourth two-day session in February 2024 focused exclusively on the issue of hardship criteria for discharge and the public had an opportunity to comment on the first day of that session. Additionally, non-Federal negotiators shared feedback from their stakeholders with the negotiating committee.

The Department accepted written comments on possible regulatory provisions that were submitted directly to the Department by interested parties and organizations. You may view the written comments submitted in response to the July 6, 2023, **Federal Register** document on the Federal eRulemaking Portal at *Regulations.gov*, within docket ID ED–2023–OPE–0123. Instructions for finding comments are also available on the site under ''FAQ.''

Transcripts of the public hearings may be accessed at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.*

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of regulations on which the negotiators reached consensus, unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at:

https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

On August 31, 2023, the Department published a document in the **Federal Register**[17] announcing its intention to establish the Committee to prepare proposed regulations for the title IV, HEA programs. This document set forth a schedule for Committee meetings and requested nominations for individual negotiators to serve on the negotiating committee. In the document, we announced the topics that the Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Civil Rights Organizations:* Wisdom Cole, NAACP, and India Heckstall (alternate), Center for Law and Social Policy.
- *Legal Assistance Organizations that Represent Students or Borrowers:* Kyra Taylor, National Consumer Law Center, and Scott Waterman (alternate), Student Loan Committee of the National Association of Chapter 13 Trustees.
- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education:* Lane Thompson, Oregon DCBS—Division of Financial Regulation, and Amber Gallup (alternate), New Mexico Higher Education Department.
- *State Attorneys General:* Yael Shavit, Office of the Massachusetts Attorney General, and Josh Divine (alternate), Missouri Attorney General's Office who withdrew from the committee during the third session.
- *Public Institutions of Higher Education, Including Two-Year and Four-Year Institutions:* Melissa Kunes, The Pennsylvania State University, and J.D. LaRock (alternate), North Shore Community College.
- *Private Nonprofit Institutions of Higher Education:* Angelika Williams, University of San Francisco, and Susan Teerink (alternate), Marquette University.
- *Proprietary Institutions:* Kathleen Dwyer, Galen College of Nursing, and Belen Gonzalez (alternate), Mech-Tech College.
- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA):* Sandra Boham, Salish Kootenai College, and Carol Peterson (alternate), Langston University.
- *Federal Family Education Loan (FFEL) Lenders, Servicers, or Guaranty Agencies:* Scott Buchanan, Student Loan Servicing Alliance, and Benjamin Lee (alternate), Ascendium Education Solutions, Inc.
- *Student Loan Borrowers Who Attended Programs of Two Years or Less:* Ashley Pizzuti, San Joaquin Delta College, and David Ramirez (alternate), Pasadena City College.
- *Student Loan Borrowers Who Attended Four-Year Programs:* Sherrie Gammage, The University of New Orleans, and Sarah Christa Butts (alternate), University of Maryland.

[15] *See* HEA section 432(a)(6).

[16] 88 FR 43069 (July 6, 2023).

[17] 88 FR 60163 (August 31, 2023).

- *Student Loan Borrowers Who Attended Graduate Programs:* Richard Haase, State University of New York at Stony Brook, and Dr. Jalil Bishop (alternate), University of California, Los Angeles.
- *Currently Enrolled Postsecondary Education Students:* Jada Sanford, Stephen F. Austin University, and Jordan Nellums (alternate), University of Texas.
- *Consumer Advocacy Organizations:* Jessica Ranucci, New York Legal Assistance Group, and Ed Boltz (alternate), Law Offices of John T. Orcutt, P.C.
- *Individuals with Disabilities or Organizations Representing Them:* John Whitelaw, Community Legal Aid Society Inc., and Waukecha Wilkerson (alternate), Sacramento State University.
- *U.S. Military Service Members, Veterans, or Groups Representing Them:* Vincent Andrews, Veteran. Originally the alternate, Mr. Andrews became the primary negotiator for this constituency group after Michael Jones withdrew from the Committee.
- *Federal Negotiator:* Tamy Abernathy, U.S. Department of Education.

At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any negotiator of the Committee for the Committee to be considered to have reached agreement and noted that consensus votes would be taken on each separate part of the proposed rules.

The Committee reviewed and discussed the Department's drafts of regulatory language and alternative language and suggestions proposed by negotiators.

At its third meeting in December 2023, the Committee reached consensus on some proposed regulations that have since been published in the April 2024 NPRM.[18] That NPRM also included all other proposed provisions from the third session on which consensus was not reached.

On February 2, 2024, the Department published a document in the **Federal Register** [19] announcing a fourth session of Committee negotiations on February 22 and 23, 2024 to focus exclusively on the issue of borrowers facing hardship. Some primary or alternate negotiators were unable to attend the fourth session of Committee negotiations in February 2024. Where the primary was unable to attend, the alternate filled the role of primary. The following Committee members participated in the fourth session, representing their respective constituencies:

- *Civil Rights Organizations:* Wisdom Cole, NAACP.
- *Legal Assistance Organizations that Represent Students or Borrowers:* Scott Waterman (alternate who served as primary), Student Loan Committee of the National Association of Chapter 13 Trustees.
- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education:* Lane Thompson, Oregon DCBS—Division of Financial Regulation.
- *State Attorneys General:* Yael Shavit, Office of the Massachusetts Attorney General.
- *Public Institutions of Higher Education, Including Two-Year and Four-Year Institutions:* Melissa Kunes, The Pennsylvania State University.
- *Private Nonprofit Institutions of Higher Education:* Angelika Williams, University of San Francisco, and Susan Teerink (alternate), Marquette University.
- *Proprietary Institutions:* Kathleen Dwyer, Galen College of Nursing, and Belen Gonzalez (alternate), Mech-Tech College.
- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA):* Carol Peterson (alternate who served as primary), Langston University.
- *Federal Family Education Loan (FFEL) Lenders, Servicers, or Guaranty Agencies:* Scott Buchanan, Student Loan Servicing Alliance.
- *Student Loan Borrowers Who Attended Programs of Two Years or Less:* Ashley Pizzuti, San Joaquin Delta College.
- *Student Loan Borrowers Who Attended Four-Year Programs:* Sarah Christa Butts (alternate who served as primary), University of Maryland.
- *Student Loan Borrowers Who Attended Graduate Programs:* Richard Haase, State University of New York at Stony Brook, and Dr. Jalil Bishop (alternate), University of California, Los Angeles.
- *Currently Enrolled Postsecondary Education Students:* Jordan Nellums (alternate who served as primary), University of Texas.
- *Consumer Advocacy Organizations:* Jessica Ranucci, New York Legal Assistance Group, and Ed Boltz (alternate), Law Offices of John T. Orcutt, P.C.
- *Individuals with Disabilities or Organizations Representing Them:* John Whitelaw, Community Legal Aid Society Inc.
- *U.S. Military Service Members, Veterans, or Groups Representing Them:* Vincent Andrews, Veteran.
- *Federal Negotiator:* Tamy Abernathy, U.S. Department of Education.

For more information about the Committee membership in the fourth session, please visit our Session 4 Meeting Summary: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/final-session-4-summary-2-27-24.pdf.*

During that fourth session, the Department presented regulatory text for waivers that could assist borrowers who have experienced or are experiencing hardship. The negotiators reached consensus on this language.

This NPRM only includes proposed regulations on hardship. Because the Committee reached consensus on the proposed regulations, the proposed regulatory text in this NPRM is the same text on which consensus was reached.

For more information on the negotiated rulemaking sessions, please visit: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.*

Summary of Proposed Changes

These proposed regulations would add § 30.91 specifying the Secretary's authority to waive some or all of the outstanding balance of a loan owed to the Department when the Secretary determines that a borrower has experienced or is experiencing hardship related to the loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect. For each section of the regulations discussed, we include the statutory citation, the current regulations being revised (if

[18] 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra,* a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri* v. *Biden,* No. 24-cv-1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

[19] 89 FR 7317 (February 2, 2024).

applicable), the new proposed regulatory text, and the reasons why we proposed to add new regulatory text or revise the existing regulatory text.

§ 30.91(a) Standard for Waiver Due to Hardship

Statute: Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.[20]

Current Regulations: None.

Proposed Regulations: Under proposed § 30.91(a), the Secretary may waive up to the outstanding balance of a Federal student loan owed to the Department when the Secretary determines that the borrower has experienced or is experiencing hardship related to that Federal student loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government, or the Secretary has determined that the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

Reasons: Proposed § 30.91(a) sets forth the purpose of proposed § 30.91. It clarifies both the types of Federal loans that could be considered for waiver under proposed § 30.91 as well as the proposed standard that the Department would apply to determine if a borrower has faced, or is facing, hardship in a manner and extent that makes the borrower eligible for relief.

The Department proposes to include all types of Federal student loans held by the Department in § 30.91 because, among loans held by the Department, no programmatic differences exist between the loan types that would justify waiver of some of a borrower's loans and not others.

The Department proposes to consider waiver in situations in which a borrower ''has experienced'' or ''is experiencing'' hardship, because, in addition to current hardship that may raise immediate concerns, there could be situations where the Department has clear indicators of hardship, but such indicators may not be current. The Department believes that in certain situations, it would be appropriate and reasonable for the Department to infer that the past observed hardship has continued. For example, if the Department has evidence from two years ago that a borrower has an incurable and chronic condition, then it would be reasonable to infer that situation has continued. It is also likely that, because reviewing information submitted by a borrower would involve significant Department staff time, the Department could make reasonable assumptions and inferences about facts that might have changed during the intervening time. The Department would retain the ability to request updated information if necessary to reach a determination.

Acknowledging past hardship also recognizes that previous periods of hardship may have current and future consequences for a borrower. For example, a borrower who struggled to repay their loans may have seen their balance increase in size such that full repayment of that greater amount is no longer feasible.

In all cases, the Secretary would only consider waiver of loans that are outstanding. The Department would not consider waivers of loans that are paid off or otherwise satisfied because, once repaid, a borrower's debt no longer exists. Moreover, a borrower could not be experiencing hardship that meets the proposed standard on a Federal loan that has been repaid. For the same reason, the Department would also not consider reimbursement of payments made on loans that are outstanding.

As noted above, the Department's proposed standard for assessing whether a borrower's hardship circumstances warrant relief involves determining whether such circumstances are likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

The Department proposes to evaluate whether a hardship is likely to impair the borrower's ability to fully repay the Federal government for several reasons. Whether a borrower can fully repay the debt aligns with general Federal principles of debt collection that guide agencies on the appropriateness of discharging all or part of a debt when the borrower is unlikely to fully repay their debt within a reasonable period or the agency is unlikely to collect the debt in full within a reasonable period. *See, e.g.,* 31 CFR 902.2(a)(1) and (2).

Considering situations where the borrower's hardship is ''likely'' to impair the ability to fully repay a loan allows the Department to make a reasonable, informed predictive determination regarding the impact of a borrower's hardship, based upon factors that, from the Department's experience with student aid programs, are strongly correlated with an inability to fully repay student loan obligations. The Department would assess these factors to predict which borrowers face or have faced hardship likely to cause continued impairment of their ability to repay a loan without jeopardizing their financial security. For example, lengthy time in repayment, in conjunction with other factors such as repayment history, may predict that a borrower may be unable to pay the loan without jeopardizing basic needs, such as housing, food, medication, and other essentials. Use of predictive measures would permit the Secretary to address hardships before borrowers suffer the most significant consequences associated with student loan struggles, such as delinquency and default and their follow-on effects.

In addition to the impairment of a borrower's ability to repay, the Department proposes an additional standard for evaluating eligibility for relief where a borrower's hardship causes the cost of collection to exceed the expected benefits to the Federal government of continued collection. Such an approach acknowledges circumstances where it no longer advances the financial, operational, or programmatic goals of the Department to continue attempting to collect on a loan. In deciding whether collection advances such goals, the Department would consider a range of possible costs flowing from collection action. This might include financial and non-financial costs to the Department directly related to loan collection, such as compensating student loan servicers or debt collectors, and, because the Department's resources are limited, operational and administrative costs associated with outreach to high-risk borrowers unlikely to repay loans, rather than more beneficial outreach to other borrowers who may be more likely to be able to fully repay.

In assessing the costs of collection, the Department may also consider whether collection advances the principles of the title IV programs. For example, a key purpose of the title IV programs is to enable borrowers who pursue postsecondary education to improve their future economic outcomes,[21] and it may be contrary to

[20] *See* 20 U.S.C. 1087hh(2).

[21] In enacting the HEA, Congress emphasized a central purpose was to ''extend the benefits of college education to increasing numbers of students . . . drawing upon the unique and invaluable resources of . . . universities to deal with national problems of poverty and community development.'' H.R. Rep. 80–561 (1965) at 2–3. Title IV was

Continued

this purpose to seek collection from borrowers who, due to labor market changes or family health challenges, are unable to participate fully in the market and repay their loans.

Proposed § 30.91(a) would permit the Secretary to waive all or part of an outstanding loan balance. Waiving part, but not all, of the amount owed could alleviate a borrower's inability to repay the remaining debt or alter the Department's cost-benefit equation associated with collecting the loan. The proposed regulation would preserve the Secretary's discretion to determine when it would be appropriate to provide such a partial waiver.

The language in proposed § 30.91(a) should be understood in the context of the standards for relief described in the discussion of proposed § 30.91(c) and § 30.91(d). If the Secretary determined that a borrower is eligible for relief under proposed § 30.91(a), the Secretary would next need to determine the amount of the outstanding balance to waive. To do so, the Secretary would assess the borrower's hardship factors to determine whether it is likely that those hardship issues could be addressed by only waiving part of the balance rather than the full amount. Generally, the Department would adopt a rebuttable presumption that the full amount would be eligible for waiver where the borrower meets the criteria in this proposed section. Such a presumption could, however, be rebutted if the Secretary concludes that the effect of the hardship on the borrower would be ameliorated by less than a full waiver.

The Department is proposing to use a presumption of a full waiver because we believe that full relief would be warranted in the majority of circumstances in which a waiver is granted under this standard, and because doing so would produce the most consistent decision-making. We reach this conclusion based upon past challenges in establishing methodologies for partial relief in other types of student loan forgiveness. For instance, the Department has struggled to address the issue of partial relief for years in the context of approved borrower defense to repayment discharges. Multiple borrower defense regulations have contemplated the award of partial discharges for borrowers.[22] In those situations, the amount of relief was based upon the determined amount of financial harm faced by the borrower. The Department attempted to capture this through formulas that took into account typical borrower earnings compared to earnings at other comparable types of institutions and programs but encountered legal and methodological challenges with such approaches. In using such approaches, the Department struggled to make sure that the comparisons being drawn included the earnings of the borrower whose relief was being contemplated (for example, methodologies used the earnings of borrowers who graduated but there could be approved claims from non-graduates). The Department also could not determine that the experiences of the typical borrower matched those of the borrower in question. Ultimately, the Department adopted a rebuttable presumption of full relief for these discharges.

Though the Department has not previously implemented the hardship waivers proposed in this NPRM, we believe such a process would result in similar issues were we to not use a rebuttable presumption of a full waiver. Similar to calculating financial harm for approved borrower defense claims, we would need to calculate an amount that would allow the borrower to repay the debt in full in a reasonable period or justify the government's cost of collection based upon the expected benefits. Although a de minimis amount of debt might be predictably repaid, we have not been able to identify an implementable principle that would lead to consistent results for partial relief.

Moreover, the Department would need to make these decisions consistently. We do not anticipate that waivers would be granted across a common group of borrowers who attended the same school and program the way they typically are for borrower defense claims. That means the approaches attempted in borrower defense, which draw comparisons to similar educational programs, would not work here. The Department would therefore need to use a fully individualized process to determine relief. That has risks of inconsistency, especially in situations where waivers are granted as part of an application approach in which there is a holistic assessment of the factors. Borrowers approved under such a process could have very different characteristics from each other, making it challenging to determine how such characteristics should be weighted for consistent waiver amount determinations.

Overall, then, we believe a rebuttable presumption of a full waiver would facilitate the greatest consistency in decision-making. Here, a rebuttable presumption means that if the presumption of full relief were rebutted, only then would the Department conduct a more involved determination. And doing so in more isolated cases would allow the Department's determinations to be more consistent and accurate.

The committee reached consensus on this section.

§ 30.91(b) Factors That Substantiate Hardship

Statute: Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.[23]

Current Regulations: None.

Proposed Regulations: Proposed § 30.91(b) provides a non-exhaustive list of factors related to the borrower that the Secretary may consider in determining whether a borrower meets the hardship standard for relief under these regulations. These factors are:

- Household income;
- Assets;
- Type of loans and total debt balances owed for loans described in proposed 30.91(a), including those not owed to the Department;
- Current repayment status and other repayment history information;
- Student loan total debt balances and required payments, relative to household income;
- Total debt balances and required payments, relative to household income;
- Receipt of a Pell Grant and other information from the Free Application for Federal Student Aid (FAFSA) form;
- Type and level of institution attended;
- Typical student outcomes associated with a program or programs attended;
- Whether the borrower has completed any postsecondary certificate or degree program for which the borrower received title IV, HEA financial assistance;

intended to increase student access to a ''highly skilled professional [and] technical'' workplace evolving in the United States. *Id.* at 20. Further, after signing the HEA into law, President Lyndon Johnson remarked that, among other purposes, the Act intended to provide ''a way to deeper personal fulfillment, greater personal productivity, and increased personal reward.'' *See* Public Papers of the Presidents, Johnson 1965 book 2, at 1103–04.

[22] *See, e.g.,* 81 FR 75926 (Nov. 1, 2016) and 84 FR 49788 (Sept. 23, 2019).

[23] *See* 20 U.S.C. 1087hh(2).

• Age;
• Disability;
• Age of the borrower's loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan;
• Receipt of means-tested public benefits;
• High-cost burdens for essential expenses, such as healthcare, caretaking, and housing;
• The extent to which hardship is likely to persist; and
• Any other indicators of hardship identified by the Secretary.

Reasons: The Department proposes this non-exhaustive list in proposed § 30.91(b)(1) through (16) to identify the data likely to best substantiate whether a borrower would be eligible for relief. The Department proposes that the list be non-exhaustive, and further proposes a ''catch-all'' provision in § 30.91(b)(17), to preserve the Department's flexibility to address unanticipated factors that affect specific borrowers. Although the list in proposed § 30.91(b) is not exhaustive, we believe that providing this extensive list of the factors that would be most relevant to the Secretary's determination provides appropriate notice and guidance as to what the Secretary would consider.

We do not anticipate that the Secretary would need to evaluate every factor in proposed § 30.91(b) for a given borrower. Rather, these factors identify different items that could be considered, either individually or in concert with other factors in proposed § 30.91(b), to make determinations of whether the borrower is eligible for relief. There are some factors that, might be sufficient with only limited additional evidence to determine a borrower is eligible for relief. By contrast, there are other factors that are likely to serve as contributing factors, but that would likely require several more factors to sufficiently demonstrate that the borrower is eligible for relief.

In an assessment of the borrower's factors indicating hardship, whether under proposed § 30.91(c) or § 30.91(d), the Department anticipates that determining that a borrower is eligible for relief would be the result of considering multiple factors identified in proposed § 30.91(b) and the interplay between those factors, including looking at a combination of the borrower's current financial circumstances and the history of their loan, to make the required determination of whether a borrower is eligible for relief.

The factors listed in proposed § 30.91(b) fall into several different groups, which in turn would inform how the factor could help demonstrate hardship. Below we discuss these groupings and how they could inform the Secretary's determination of whether the borrower has experienced, or is experiencing, hardship that would qualify for relief.

We note that the term ''factors'' is used in the title of proposed § 30.91(b) and ''indicators'' is used in the regulatory text of proposed § 30.91(b). The term ''indicators'' was intended to refer to factors that may indicate hardship. To avoid confusion with the use of the term ''indicators'' in statistical terminology, we use ''factors'' where possible.

Borrower's current and past finances (factors 1, 2, 3, 5, 6, 7, 14, and 15). One category of proposed factors relates to borrowers' current finances. These are listed below with their corresponding number in proposed § 30.91(b):

1. Household income;
2. Assets;
3. Type of loans and total debt balances owed for Federal student loans, including those not owed to the Department;
5. Student loan total debt balances and required payments, relative to household income;
6. Total debt balances and required payments, relative to household income;
7. Receipt of a Pell Grant and other information from the Free Application for Federal Student Aid (FAFSA) form;
14. Receipt of means-tested public benefits; and
15. High-cost burdens for essential expenses, such as healthcare, caretaking, and housing.

The Department proposes these factors because they would provide important information about a borrower's financial situation. Information about household income and assets would help the Secretary understand the level of resources a borrower might have available to put toward their loans.

The borrower's household income also could be a relevant factor for evaluating their likelihood of default. Research has found a borrower's earnings to be correlated with their likelihood of default,[24] and a 2021 Pew survey indicated that borrowers who reported relatively low incomes or volatile incomes also reported substantially higher student loan default rates, as compared to borrowers who reported higher incomes or who reported stable earnings.[25]

Assets would be relevant to determine whether a borrower's ability to repay a loan is impaired, because they are a component of a borrower's finances that might be liquidated to allow repayment. They also might provide a financial cushion that would allow a borrower to avoid default in the event of a job loss or a large unplanned expense, such as medical expenses.[26] Homeownership, for example—whether by the borrower or the borrower's parents—appears to be correlated with lower likelihood of default.[27] Homeowners can potentially obtain liquidity by borrowing against their home in times of need, and homeownership also correlates with other measures of creditworthiness and financial advantage. Because assets—particularly more liquid assets that can be tapped quickly in times of financial distress—might provide a valuable cushion against default, information on a borrower's assets, such as savings and investments, would be relevant to the determination of whether the hardship standard in proposed § 30.91(a) is met.

Similarly, the proposed factor related to receipt of means-tested public benefits could inform the Secretary if other government entities have determined that a borrower meets the qualifications for public assistance, which would streamline the Secretary's evaluation process.

Those data also could indicate hardship overall. Receipt of means-tested public benefits, such as through the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF), indicates an individual or family is likely living at or near the Federal Poverty Level. Demonstrated eligibility for these programs could indicate that a borrower lacks additional funds to put toward repaying their student loan debt. Additionally, survey data indicate that borrowers who received public benefits were more likely to report not making

[24] Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' *Brookings Papers on Economic Activity* 2015, no. 2 (2015): 1–89. Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. ''What Matters in Student Loan Default: A Review of the Research Literature.'' Journal of Student Financial Aid 39, no. 1 (2009): 19–29.

[25] Takti-Laryea, Ama and Phillip Oliff. ''Who Experiences Default?'' Pew Charitable Trusts. March 1, 2024. *https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default.*

[26] Ibid.

[27] Scott-Clayton, Judith. ''What accounts for gaps in student loan default, and what happens after.'' (2018). Brookings. Mueller, Holger M. and Constantine Yannelis. ''The rise in student loan defaults.'' Journal of Financial Economics 131, no. 1 (2019): 1–19. Mezza, Alvaro A. and Kamila Sommer. '' ''A Trillion-Dollar Question: What Predicts Student Loan Delinquencies?.'' Journal of Student Financial Aid 46, no. 3 (2016): 16–54.

payments on their loans or having defaulted on a debt.[28]

Federal Pell Grants are awarded to students who demonstrate financial need. Information about Pell Grant receipt and other data from the FAFSA could provide helpful information about a borrower's economic circumstances at the time they went to college, as well as their trajectory over the course of their enrollment in higher education, which could help give the Secretary a perspective on the duration of hardship that some borrowers face, and help the Secretary determine the likelihood that the hardship would continue.

Researchers have found that receipt of a Pell Grant and the average amount of the Pell Grant (which is determined by a number of factors related to the borrower's enrollment, expenses, and financial capacity) is correlated with difficulties repaying loans.[29] Other evidence indicates that a borrower's expected family contribution (EFC)—an index number that until recent legislative changes was used to determine eligibility for Federal student aid including Pell Grants using data on students' income, assets, and other FAFSA inputs—is correlated with default on student loans within 12 years.[30]

Other borrower experiences that are reflected in data reported on the FAFSA also can be associated with future student loan default, including parental education, borrower age, and dependency status.[31]

The other proposed factors in this group (paragraphs 3 through 6) would provide important context about the extent to which financial resources available to the borrower must be put toward other critical expenses. For instance, information about a borrower's other debt obligations would give the Secretary a more in-depth picture of a borrower's financial situation that would account for other debts, including non-Federal student loans, that are not otherwise known to the Department. That helps in understanding total debt burden and how much of a borrower's income goes to debt repayment.

The type of student debt that borrowers hold, and the amount of that debt, can be predictive of the likelihood of being in default. For example, to receive a Grad PLUS or Parent PLUS loan, a borrower must not have an adverse credit history. This check for adverse credit history, along with likely differences among parents, graduate students, and undergraduate students, is likely to generate a pool of borrowers with different characteristics than borrowers who receive other types of Federal loans. Parent PLUS and Grad PLUS borrowers typically borrow at older ages, at which point many will have more established careers. Parent PLUS loans have lower rates of default than Federal loans issued directly to students. For example, in fiscal year 2015, among borrowers aged 50 to 64 who hold Parent PLUS loans, 10 percent were in default, while borrowers in the same age group who held Federal loans for their own education had a default rate of 35 percent.[32] Many older borrowers who take out Federal loans for their own education, however, have held their loans for a long time and are likely to have experienced repayment struggles.[33] An examination of data about those who borrowed FFEL loans to attend institutions of all types in Texas and who entered repayment between 2004 and 2010 indicates that Parent PLUS borrowers had higher repayment rates than student borrowers during this period, although Parent PLUS borrowers who borrowed for their children to attend Minority-Serving Institutions (MSIs) paid down less debt and were more likely to default than borrowers for children who attended other institutions.[34]

Total student loan balance has been shown to correlate with default, though the link between total student loan balances and default can vary across borrowers.[35] A borrower's outstanding balance, and the type of loans for which they were eligible, can be broadly correlated with other factors that could affect a borrower's ability to repay, such as level of education, whether the borrower completed education, and the borrower's dependency status. Federal student loan borrowers with higher balances tend to be less likely to enter default; more than half of borrowers in default as of 2015 owed less than $10,000.[36] This may be because many borrowers with relatively high balances used loans to attend graduate school, which can often lead to higher earnings. Others could be parents who are borrowing to help pay for a child's education.[37] Because both balance amount and debt type may be correlated with a borrower's potential for experiencing default, these factors would be relevant for the Secretary to consider in determining whether a borrower is eligible for relief.

In addition to debt by itself, payments and the amount of debt relative to a borrower's income, such as their required monthly payments relative to monthly income, are correlated with an increased likelihood of default. For example, among a cohort of borrowers who first entered post-secondary education in 2003–04, higher debt-to-income ratios were associated with higher rates of default.[38] Other data show that among bachelor's degree recipients who left school in 1993, those with a monthly payment that was more than 12 percent of their monthly income were more likely to default by 2003 than those with debt payments that were a

[28] Blagg, Kristin. ''The Demographics of Income-Driven Student Loan Repayment.'' February 26, 2018. Urban Institute. *https://www.urban.org/urban-wire/demographics-income-driven-student-loan-repayment.* Takti-Laryea, Ama and Phillip Oliff. ''Who Experiences Default?'' Pew Charitable Trusts. March 1, 2024. *https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default.*

[29] Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System. Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

[30] Scott-Clayton, Judith. ''What accounts for gaps in student loan default, and what happens after.'' (2018). Brookings. The EFC is no longer being used in financial aid calculations, starting with the 2024–2025 FAFSA form. Instead, there is a new index called the Student Aid Index (SAI) that will be used. While the EFC and SAI use different calculations, we expect the general evidence about EFC (*e.g.,* that is correlated with default) to also be true for SAI.

[31] Ibid. Steiner, Matt and Natali Teszler. ''Multivariate Analysis of Student Loan Defaulters at Texas A&M University.'' (2005) Texas Guaranteed Student Loan Corporation. Looney, Adam, and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89. Specifically, higher age at time of repayment is negatively associated with default, as is being a dependent. Borrowers who report a family income of under $25,000 on their first FAFSA are more likely to default.

[32] U.S. Government Accountability Office. ''Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Borrowers with Obtaining Permitted Relief.'' December 2016.

[33] Blagg, Kristin and Victoria Lee. ''The complexity of education debt among older Americans.'' November 2017. Urban Institute.

[34] Di, Wenhua, Carla Fletcher, and Jeff Webster. ''A Rescue or a Trap? An Analysis of Parent PLUS Student Loans.'' (2022). Federal Reserve Bank of Dallas.

[35] See, for example, Scott-Clayton 2018, Appendix Table A2, where amount borrowed is associated parabolically with likelihood of default.

[36] Looney, Adam, and Constantine Yannelis. ''How useful are default rates? Borrowers with large balances and student loan repayment.'' Economics of Education Review 71 (2019): 135–145. Dynarski, Susan M. ''An economist's perspective on student loans in the United States.'' Human Capital Policy (2021): 84–102. Edward Elgar Publishing.

[37] Ibid.

[38] Scott-Clayton, Judith. ''What accounts for gaps in student loan default, and what happens after.'' (2018). Brookings.

lower share of income.[39] It is possible that these trends may be different in recent years due to the growth in usage of IDR plans. However, because analyses like this rely on surveys that follow the repayment histories of borrowers over a long-time horizon, these currently represent the best evidence available to the Department about longer-term repayment experiences.

A borrower's debt obligations beyond student loan debt can affect financial stability, with research and data from a variety of settings indicating that the types of debts that borrowers hold, their payments, and the ratio of total debt to income, may be predictive of default.[40] In addition, in the presence of financial distress, debtors may need to prioritize other payments instead of their student loans in an effort to preserve liquidity or avoid losing the home or auto that serves as collateral on other debt.[41]

The proposed factor in § 30.91(b)(15), related to high costs of other essential expenses, also captures a key concept that is not directly considered in other Department forms of repayment assistance. Formulas for income-driven repayment plans, for example, only focus on household size, income, and an amount of income protected based upon a multiplier of the Federal Poverty Level. The Department continues to believe that is the best approach for administering income-driven repayment obligations, as it is a simpler way to determine a payment obligation. However, that approach does not account for situations where borrowers face exceptionally high costs that are not otherwise factored in. During negotiated rulemaking, the Department heard from a borrower who is expending significant resources caring for a sick relative. In cases where the borrower is the only individual able to bear those costs on behalf of the relative, those costs may reduce the amount of income available for making payments on Federal student loans and are an expense that could not reasonably be adjusted or anticipated by the borrower. Agencies engaged in collection activity often consider the borrower's overall expenses and whether such expenses are necessary or excessive.[42] Specifying that the Secretary may consider high-cost burdens for essential expenses in the hardship determination would allow the Secretary to address particularly concerning situations that could impair the borrower's ability to fully repay their loan or heighten the costs of enforcing the full debt to a point that such enforcement is not justified.

Among those who experienced student loan default, the time and financial burden of caring for young or medically needy family members is mentioned as a reason for missing student loan payments.[43] Among borrowers who pursued discharge of their student debt through bankruptcy proceedings, those who were a caretaker for family members who have health or medical conditions were more likely to be successful than borrowers who pursued bankruptcy proceedings, but who did not have that same family need.[44] Evidence also suggests that having medical collections is associated with student loan repayment struggles.[45]

For some borrowers, student loan payments make up a large portion of a household's overall budget. As payments restarted in October 2023 following the end of the payment pause, borrowers—particularly those with non-$0 scheduled payments—anticipated making changes to their household budget, such as reducing discretionary spending or savings.[46] Therefore, essential expenses and duties would be relevant to the Secretary's determination of whether a borrower meets the hardship standard in proposed § 30.91(a).

Experience repaying student loans (factors 4 and 13). Another category of proposed factors relates to information about the borrower's experience repaying student loans. These factors are:

4. Current repayment status and other repayment history information; and

13. Age of the borrower's loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan.

The Department proposes considering these two factors because they provide information about what is already known about the ability of the borrower to repay their debt. Repayment history could indicate if the borrower has previously experienced struggles repaying their debt.[47] Similarly, the age of loans would provide information about how long a borrower has held these debts. The longer a loan is outstanding without being repaid, the greater the concern about its eventual repayment. This is particularly true for loans that are well past the 10-year repayment period that is part of the Standard Repayment Plan.[48] For example, in a sample of students who first entered postsecondary education in 1995–1996 and have not borrowed since the 1999–2000 school year, the average borrower who had debt 20 years after entering school still owed 95 percent of what they initially borrowed, and the median borrower owed 69 percent.[49]

The Department has detailed information on the repayment histories of borrowers who first entered repayment on their student loans prior to the pandemic-related pause on student loan repayment. For borrowers who newly entered repayment when student loan payments restarted in October 2023, the Department will have at least six months of repayment history. In the Department's experience, repayment status and other information relevant to a borrower's loan history, including the borrower's ability to access payment options under Title IV of the HEA, can be a strong predictor of student loan default. Borrowers who default often stay in default for a long

[39] Choy, Susan P. and Xiaojie Li. ''Dealing with Debt: 1992–93 Bachelor's Degree Recipients 10 Years Later. Postsecondary Education Descriptive Analysis Report.'' (2006) NCES 2006–156.

[40] Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System. Blagg, Kristin. ''Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default.'' (2018). Urban Institute. Fuster, Andreas and Paul S. Willen. ''Payment size, negative equity, and mortgage default.'' American Economic Journal: Economic Policy 9, no. 4 (2017): 167–191.

[41] For example, see Li, Wenli. ''The economics of student loan borrowing and repayment.'' Business Review Q3 (2013): 1–10. Federal Reserve Bank of Philadelphia. Ionescu, Felicia and Marius Ionsecu. ''The Interplay Between Student Loans and Credit Card Debt: Implications for Default in the Great Recession.'' Federal Reserve Bank Finance and Economics Discussion Series: 2014–14 (2014).

[42] *See, e.g.,* 31 CFR 902.2(g).

[43] Pew Charitable Trusts. ''Borrowers Discuss the Challenges of Student Loan Repayment.'' (2020).

[44] Iuliano, Jason. ''An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard,'' American Bankruptcy Law Journal 86, no. 3 (Summer 2012): 495–526.

[45] Cohn, Jason. ''Student Loan Default Patterns: What Different Paths through Default Can Tell Us about Equitably Supporting Borrowers.'' (November 2022). Urban Institute.

[46] Monarrez, Tomás, and Dubravka Ritter. ''Resetting Wallets: Survey Evidence on Household Budget Adjustments with Student Loan Payments Resumption.'' (2024): 1–19.

[47] The Department recognizes that a borrower's documented repayment history could also be affected by servicer recordkeeping, access to complete payment history, right to alternative payment arrangement, loan forgiveness, cancellation, or discharge. Separate and apart from these proposed regulations, the Department has taken steps to address these issues such as through the payment count adjustment. Moreover, even with these possible limitations, the Department believes that it is still useful to include this factor because repayment history can still provide valuable information about a borrower's hardship.

[48] Federal Student Aid, U.S. Department of Education. ''Standard Repayment Plan.'' *https://studentaid.gov/manage-loans/repayment/plans/standard.*

[49] U.S. Department of Education, National Center for Education Statistics, Beginning Postsecondary Students: 1996/2001 (BPS). *https://nces.ed.gov/datalab/powerstats/table/nsqptw.*

time and those who have a history of delinquency or previous defaults may be more likely to default again.

Whether a borrower postpones payments through deferment or forbearance could also be predictive of student loan default, though the diverse bases for these postponement periods means that their predictive power is context-dependent. For example, some borrowers use a deferment for additional school enrollment or military service, while others may seek a deferment due to economic hardship. In one study, the median defaulter among those who first entered postsecondary education in 2003–04 and experienced default within 12 years used two forbearances.[50] However, in another study, roughly 43 percent of a cohort of borrowers who entered repayment in fiscal year 2011 and attended community colleges in one State did not make a payment, or postpone their payments using deferment or forbearance, before their loans entered default.[51]

The Department acknowledges that the inclusion of factors related to a borrower's repayment history could create a perception that borrowers could intentionally change their repayment behavior to improve their chances of receiving a waiver. However, as described below, the Department believes that the plan for considering waivers would not encourage large numbers of borrowers to act in such a strategic manner. With respect to the relief under proposed § 30.91(c), the Department proposes using the publication date of the NPRM as the start of the two-year period in which a borrower may be predicted to default. This would prevent borrowers from trying to artificially establish hardship through strategic nonpayment; likewise, it prevents granting relief to any such borrowers. Failure to pay carries substantial risks to borrowers. Since there is no guarantee that they would receive any relief under this proposed rule, failure to pay would negatively impact credit scores, and risk wage garnishment or the loss of loan benefits. Overall, we believe using data from the publication date of the NPRM would negate the ability for borrowers to game the hardship model.

With respect to the relief proposed under § 30.91(d), the Department would also take measures that prevent strategic maneuvers to qualify for waiver. First, as part of the holistic assessment, the Department would consider a multitude of factors that interact with each other. Therefore, borrower attempts to adjust behavior and qualify under that provision could result in a borrower hurting themselves through delinquency or default with no guarantee of a waiver. Second, solely being in delinquency or default is no guarantee that a borrower's application would be approved. Third, as part of the holistic assessment, the Department would consider anomalous changes in repayment behavior—such as a borrower suddenly showing signs of struggle when other borrower conditions appear favorable for repayment. Overall, we believe the negative borrower consequences of delinquency and default, combined with a multi-factor eligibility assessment that is not limited to such status, would discourage intentional nonrepayment of loans.

Borrower's personal attributes (factors 11 and 12). Another category of factors relates to additional information about a borrower's personal attributes. These are:

11. Age; and
12. Disability.

The Department proposes including these factors because they can provide additional information about the ability of the borrower to repay their loans, the likely amount the Department might be able to collect from a borrower, and the associated costs of enforced collections. Considering a borrower's age can help inform the likelihood that their financial position is going to improve, deteriorate, or stay the same. This is especially true when used in concert with other factors. For instance, elderly borrowers are highly unlikely to see their income increase and are instead more likely to see their income diminish as they stop working. Relatedly, information on a borrower's disability could indicate whether their earnings are affected, which could help the Secretary understand the resources they may or may not have available to repay their loans. Disability information may also indicate that the borrower faces additional expenses that subtract from what a borrower could pay on their loans. For many people, earnings grow as they age and gain more experience; however, many older borrowers have held their loans for a long time and may have experienced repayment struggles.[52] Older borrowers may also be more likely to have financial commitments (such as expenses for children or caring for others) that can result in difficulty making student loan payments.[53] Earnings also tend to peak for workers in their mid-fifties, and so borrowers who hold loans until and beyond this age may see their ability to pay plateau or erode if their expenses are consistent but their income declines.[54]

Borrowers are eligible for a discharge of their student loans if they qualify for a total and permanent disability (TPD) discharge.[55] To qualify for a TPD discharge, the Secretary must determine that a borrower is ''unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months.'' [56] With the proposed hardship waivers, the Secretary would be looking at situations where a borrower's disability may impair the extent to which they can work without rising to the level that would justify a TPD discharge. For example, the Department may consider, as one of several factors, whether a disability that limits a borrower's ability to work full-time for a sustained period, but does not completely preclude part-time work, increases the likelihood of default, and indicates hardship impairing the likely ability to fully repay the loan, even if that borrower would not qualify for a TPD discharge. Although employment rates for people with disabilities have increased since the COVID–19 pandemic, working-age individuals with disabilities have employment rates that are roughly half of their counterparts without disabilities.[57] Moreover, the medical costs that may be associated with treatment for a substantial disability or disabilities may make it more difficult to make student loan payments. Among borrowers who have successfully been granted a student loan discharge in bankruptcy and have a medical problem or a dependent medical problem, a work-limiting

[50] Miller, Ben. ''Who Are Student Loan Defaulters?'' (2017). Center for American Progress.

[51] Campbell, Colleen, and Nicholas Hillman. ''A Closer Look at the Trillion: Borrowing, Repayment, and Default at Iowa's Community Colleges.'' Association of Community College Trustees (2015).

[52] Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. ''What Matters in Student Loan Default: A Review of the Research Literature.'' Journal of Student Financial Aid 39, no. 1 (2009): 19–29.

[53] Ibid.

[54] Tamborini, Christopher R., ChangHwan Kim, and Arthur Sakamoto. ''Education and lifetime earnings in the United States.'' Demography 52, no. 4 (2015): 1383–1407.

[55] *See, e.g.,* 20 U.S.C. 1087(a)(1) (authorizing the Department to cancel or discharge FFEL loans due to total and permanent disability), 20 U.S.C. 1087a(b)(2) (Direct loans), and 20 U.S.C. 1087dd(c)(1)(F)(ii) (Perkins loans).

[56] 20 U.S.C. 1087(a)(1).

[57] Andara, Kennedy, Anona Neal, and Rose Khattar. ''Disabled Workers Saw Record Employment Gains in 2023, But Gaps Remain.'' (2024). Center for American Progress.

medical condition was relatively common.[58]

Data and surveys indicate that borrowers with a disability tend to have a higher probability of default, with variation across conditions.[59] Half of borrowers who reported a disability in a 2021 Pew survey were in default, compared to a third of those without a disability.[60]

Borrower's postsecondary experiences (factors 8, 9, and 10). The final group of factors are those related to a borrower's postsecondary educational experience. Those factors are:

8. Type and level of institution attended;

9. Typical student outcomes associated with a program or programs attended; and

10. Whether the borrower has completed any postsecondary certificate or degree program for which the borrower received title IV, HEA financial assistance.

The Department proposes to include these factors because there are clear connections between student outcomes and the type of institution attended.[61] Similarly, there are very strong correlations between non-completion of a certificate or degree program and struggles repaying student loans, as described further below. This information could be particularly helpful for determining whether a borrower may be at heightened risk of default, which might indicate that the borrower satisfies the hardship standard in proposed § 30.91(a).

The level of education pursued, and the type of institution attended, can have a substantial impact on a student's earning trajectory and on their propensity to default and propensity to experience hardship as defined in proposed § 30.91(a). Across multiple studies and datasets, the sector and level of education provided by the institution correlate with propensity to default. In particular, students who attended for-profit institutions are more likely to default.[62] For example, among a cohort of borrowers who first entered undergraduate education in 2003–04, borrowers who entered a for-profit institution were 10 percentage points more likely to default than those who enrolled at other types of institutions.[63] Further, students enrolled in two-year schools, or vocational schools, were more likely to default relative to students enrolled in four-year institutions.[64] And students who enroll in non-selective four-year institutions were more likely to default than those who enroll in selective four-year institutions.[65]

The Department has long used a CDR measure to assess an institution's continued participation in title IV aid programs. An institution's CDR is highly predictive of future student loan delinquency.[66]

Research also has shown that there can be differential financial returns to programs of study.[67] Certain programs are also more likely to produce graduates with high amounts of debt, relative to typical earnings, which may affect loan repayment outcomes.[68] While the prevalence of loan default among borrowers who attended a particular institution or program is not a direct measure of academic quality, it can provide insight into whether the financial returns provided by a program or institution are sufficient for borrowers.

While not independently determinative of hardship, whether a borrower has completed their program of study generally correlates with student loan delinquency and default.[69] Borrowers who leave school without the credential they were pursuing have debt but lack the additional earnings premium that can come with attaining a degree or certificate. Students who leave school without completing their degree are less likely to report financial well-being and are more likely to express a desire to have done things differently in their higher education experience.[70] These factors are relevant

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[58] Iuliano, Jason. ''An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard,'' American Bankruptcy Law Journal 86, no. 3 (Summer 2012): 495–526.

[59] Campbell, Colleen. ''The Forgotten Faces of Student Loan Default.'' (2018). Center for American Progress. Specifically, 60 percent of borrowers with emotional or psychiatric condition, 40 percent of those with orthopedic or mobility impairment, and 37 percent of those with a health impairment or problem experienced a default within 12 years, relative to 28 percent of those without a disability.

[60] Takti-Laryea, Ama and Phillip Oliff. ''Who Experiences Default?'' Pew Charitable Trusts. March 1, 2024. *https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default.*

[61] See, for example, Black, Dan A. & Smith, Jeffrey A. (2006). Estimating the Returns to College Quality with Multiple Proxies for Quality. *Journal of labor Economics* 24.3: 701–728. Cohodes, Sarah R. & Goodman, Joshua S. (2014). Merit Aid, College Quality, and College Completion: Massachusetts' Adams Scholarship as an In-Kind Subsidy. *American Economic Journal: Applied Economics* 6.4: 251–285. Andrews, Rodney J., Li, Jing & Lovenheim, Michael F. (2016). Quantile treatment effects of college quality on earnings. *Journal of Human Resources* 51.1: 200–238. Dillon, Eleanor Wiske & Smith, Jeffrey Andrew (2020). The Consequences of Academic Match Between Students and Colleges. *Journal of Human Resources* 55.3: 767–808. Further discussion is included in **Federal Register** Vol. 88, No. 194.

[62] Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?.'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.; Armona, Luis, Rajashri Chakrabarti, and Michael F. Lovenheim. ''Student debt and default: The role of for-profit colleges.'' *Journal of Financial Economics* 144, no. 1 (2022): 67–92.; Deming, David J., Claudia Goldin, and Lawrence F. Katz. ''The for-profit postsecondary school sector: Nimble critters or agile predators?.'' *Journal of Economic Perspectives* 26, no. 1 (2012): 139–164.

[63] Scott-Clayton, Judith. ''What accounts for gaps in student loan default, and what happens after.'' (2018). Brookings.

[64] Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

[65] Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

[66] Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.

[67] Webber, Douglas A. ''The lifetime earnings premia of different majors: Correcting for selection based on cognitive, noncognitive, and unobserved factors.'' Labour economics 28 (2014): 14–23.; Andrews, Rodney J., Scott A. Imberman, Michael F. Lovenheim, and Kevin M. Stange. ''The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability.'' No. w30331. National Bureau of Economic Research, 2022.

[68] Cellini, Stephanie Riegg, and Nicholas Turner. ''Gainfully employed? Assessing the employment and earnings of for-profit college students using administrative data.'' Journal of Human Resources, 59(3) (2019): 342–371.; Christensen, Cody and Lesley J. Turner. ''Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings?'' Brookings Institution (2021).

[69] Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. ''What Matters in Student Loan Default: A Review of the Research Literature.'' Journal of Student Financial Aid 39, no. 1 (2009): 19–29.; Mezza, Alvaro A. and Kamila Sommer. ''A trillion dollar question: What predicts student loan delinquencies?'' Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. ''A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.'' Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89. Scott-Clayton, Judith. ''What accounts for gaps in student loan default, and what happens after.'' (2018). Brookings.

[70] Lockwood, Jacob and Webber, Douglas, Non-Completion, Student Debt, and Financial Well-Being: Evidence from the Survey of Household Economics and Decisionmaking (August, 2023). FEDS Notes No. 2023–08–21.

to the Secretary's determination of whether the borrower is experiencing or has experienced hardship that meets the eligibility requirements.

Other factors (factors 16 and 17). In addition to the proposed factors discussed above, the Department proposes to include § 30.91(b)(16) to capture whether a borrower's hardship is likely to persist. This information could help inform decisions about the amount of a potential waiver, as hardships that are likely to persist would counsel in favor of either larger or complete waivers. In addition, and as described more fully below, under proposed § 30.91(d), the Department's holistic assessment would consider the persistence of the borrower's hardship as part of the determination whether the borrower met the eligibility requirements of showing a high likelihood to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship.

Finally, proposed § 30.91(b)(17) would be a catch-all provision. As already noted, it would be important to acknowledge that rare unanticipated circumstances may cause a borrower to experience hardship that satisfies the standard for relief.

The Secretary's consideration of factors indicating hardship. Using the factors in proposed § 30.91(b), under both a predictive assessment of the factors (under proposed § 30.91(c)) and a holistic assessment of the factors (under proposed § 30.91(d)), the Secretary would engage in a fact-specific analysis of individual borrowers to determine whether the facts indicate that a borrower is facing hardship that meets the eligibility requirements.

The committee reached consensus on this section.

§ 30.91(c) Immediate Relief for Borrowers Likely To Default

Statute: Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.[71]

Current Regulations: None.

Proposed Regulations: Proposed § 30.91(c) would specify the Secretary's discretionary authority to provide for immediate, one-time relief to borrowers who are likely to default on their student loan obligations. Specifically, should the Secretary choose to exercise such discretion, the Secretary would be able to consider the factors in proposed § 30.91(b) to waive all or part of the federally held student loans of borrowers who the Secretary determines, based on data in the Secretary's possession, have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the next two years after these proposed regulations are published.

Reasons: Proposed § 30.91(c) provides that the Secretary may discharge loans for borrowers who would likely be in default within two years of the publication date of this proposed regulation. The Department proposes specifying the Secretary's authority to grant relief for borrowers at a high risk of defaulting because we are concerned about borrower hardship caused by default and its effects. The Department proposes a statistical model, discussed in more detail below, that describes the weighting of the factors in proposed § 30.91(b) that would predict which borrowers are likely to be in default within the two-year period and therefore meet the hardship standard in proposed § 30.91(a).

As previously described, a borrower's default status can be indicative of the borrower's hardship repaying the loan.[72] Department data show that borrowers who default on their student loans tend to be individuals who are lower income, are the first in their families to attend college, have lower amounts of loan debt and yet still struggle with repayment, and did not complete their postsecondary programs.

Importantly, using likelihood of being in default as an indicator of hardship draws an explicit connection between a borrower's financial circumstances and their ability to repay the loan. Default indicates that a borrower has already faced hardship impairing their ability to fully repay the loan, and default itself typically creates cascading consequences that would further impair the ability to pay.[73] When a borrower defaults, their entire loan balance is accelerated, potentially leading to wage garnishment and offset of Federal tax refunds and benefits such as Social Security.[74] Default is also reported to consumer reporting agencies, likely reducing borrowers' credit scores, and impeding them from obtaining credit or securing employment. Injury to borrowers' credit history and scores from default may also affect borrowers' ability to obtain housing, often disqualifying them from mortgages and affecting the ability to rent property. Finally, default may render borrowers ineligible for additional title IV, HEA assistance, which may be needed to complete an unfinished education. Therefore, defaults can compound the burdens of existing loans by preventing the economic boost of a completed education necessary to repay the debt. For all the reasons described above, the relief under proposed § 30.91(c) is consistent with the exacting definition of "hardship," [75] because default is typically a result of significant economic privation (such as income insufficient to meet expenses, resulting in an inability to meet basic needs) and is a cause of further privation.

Using a predictive assessment of the factors in proposed § 30.91(b) to grant immediate relief to borrowers likely to be in default also would serve important practical purposes. This approach would allow the Department to assess likely default based on information it already has, without soliciting additional information from borrowers or other sources. The Department would be able to assess borrower data that correlate with student loan default, and therefore predict which borrowers are likely to experience default within the two-year period. This includes the factors in proposed § 30.91(b) that correlate with default rates, such as borrowers' current repayment status and other repayment history, non-completion of a postsecondary program, low-income levels shown on a FAFSA, receipt of a Pell Grant, and attendance at a particular type and level of institution.

[71] *See* 20 U.S.C. 1087hh(2).

[72] Li, Wenli. "The economics of student loan borrowing and repayment." 2013. Business Review, Federal Reserve Bank of Philadelphia, issue Q3, pages 1–10. Takti-Laryea, Ama and Phillip Oliff. "Who Experiences Default?" Pew Charitable Trusts. March 1, 2024. *https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default.*

[73] Federal Student Aid, U.S. Department of Education. " Student Loan Delinquency and Default." *https://studentaid.gov/manage-loans/default.*

[74] Although the Secretary would consider the risk of default as a circumstance indicating the borrower is likely suffering hardship in repaying the loan, the statutory consequences of default remain unaffected by the regulation. Borrowers who enter default would remain subject to these consequences, while other borrowers may demonstrate a high risk of default indicating hardship, and therefore justifying a waiver, regardless of whether they have ever entered default on their loans.

[75] "Hardship" is defined as "Privation; suffering or adversity." Black's Law Dictionary (12th ed. 2024).

If the Secretary exercises discretion under proposed § 30.91(c), the Secretary's grant of waivers under proposed § 30.91(c) would be a one-time action. The Department anticipates that shortly after finalizing and implementing these regulations, the Department could identify borrowers who would be eligible for waivers under proposed § 30.91(c) based on data as of the publication of the NPRM, and then would expeditiously choose whether to exercise discretion to provide such relief as part of a one-time action.

The waivers under proposed § 30.91(c) would be one-time actions for two reasons. The Department has taken significant steps to reduce the likelihood of default in the future, such as giving borrowers a pathway to return defaulted loans to repayment status through the Fresh Start program.[76] Therefore, the Department anticipates that in the future fewer borrowers will be likely to default. Second, the relief available through proposed § 30.91(d), by submitting an application that would be reviewed on a holistic basis, would provide a pathway to relief going forward for borrowers who continue to experience hardship even with the measures described above. However, the proposed one-time relief in proposed § 30.91(c) would remain necessary to many borrowers who have had loans for years without access to such benefits. These borrowers may already have struggled with delinquency and default and may be more likely to have already experienced challenges with application processes in the past.[77] Providing relief to such borrowers, without requiring them to take additional steps, reduces the cost to borrowers to gain access to eligible relief, and potentially reduces the administrative costs to government.

The Department proposes to limit this waiver provision to borrowers who are highly likely to be in default in the near term. Therefore, proposed § 30.91(c) would provide a waiver only to borrowers who the Secretary determines have an ''80 percent'' or higher likelihood of being in default within two years after these proposed regulations are published. In determining the proper threshold to propose for this provision, the Department believes it is important to propose a likelihood of being in default greater than 50 percent. A number lower than 50 percent would not be appropriate because it would imply that a borrower was more likely to not be in default than they were to be in default, and therefore materially less likely to be experiencing hardship that would impair their ability to fully repay their loans. We ultimately decided to propose an 80 percent threshold to distinguish a pool of borrowers with a distinctly higher risk of default, as measured by the factors in proposed § 30.91(b). Our goal in choosing a proposed threshold for this provision is to identify clusters of borrowers in the probability distribution who are highly likely to be in default within two years. Under the Department's proposed modeling of the likelihood that a borrower is in default within the next two years, which is described below, there is a significant group of borrowers with minimal predicted risk of being in default and another significant group of borrowers with a relatively high predicted risk of being in default. The difference between the number of borrowers who are 80 percent likely to be in default and those with somewhat lower likelihood of being in default, such as 60 percent or 70 percent, is minimal, but the Department nonetheless proposes 80 percent because it reasonably identifies borrowers who are most at risk for default. However, as the Department continues to obtain newly available repayment data through the publication of this NPRM—and particularly data after the payment pause ended—the Department would continue to incorporate such data into the model. As such, we seek feedback from the public about whether the Department should adjust the proposed 80 percent threshold, as well as feedback on whether there are other reasons to adjust the 80 percent threshold and the related justification.

Because we have taken steps to address default going forward, the Department proposes using the likelihood of being in default within two years of the publication date of the NPRM, as the Department is intent on providing relief to borrowers who are likely to experience hardship in the near term. We believe two years would be reasonable, since it is a relatively short time period that would also reflect the possible time it might take for a borrower to default if they began repayment or were current at the start of the observation window. Generally, a borrower is not treated as being in default on their loan until they are 270 days late on payments, with additional days added for the transfer of the loan to the Debt Management and Collections System (DMCS). Were the Department to consider borrowers who are likely to be in default within a shorter period, many borrowers experiencing hardship would be excluded because they could not be in default within that timeframe. For example, were we to only consider borrowers likely to be in default within 12 months, then any borrower with fewer than two missed payments could not default within that window. A two-year observation window also would allow us to capture borrowers who may be using deferment or forbearance to postpone loan repayment due to economic hardship. For example, a borrower who used a 12-month postponement at the start of the observation window may still default within the second year. We believe using the proposed statistical model described below to identify borrowers who are highly likely to default within two years would be reasonable because these are borrowers who the Department can reasonably predict have experienced or are experiencing hardship that impairs their ability to fully repay their loans.

As noted above, we recognize that a model designed to predict the likelihood of being in default in the future might lead some to argue that borrowers would be able to qualify for a waiver by intentionally not repaying their loans, thereby increasing their risk of being in default. However, we believe this risk is minimal in this instance. First and foremost, as noted above, we are proposing that at the time of the final rule, we would use data as of the publication of these proposed rules. Since these regulations would identify borrowers eligible for relief using data as of the NPRM's publication to predict future outcomes, and since we anticipate that the Secretary's discretionary grant of waivers under proposed § 30.91(c) would be a one-time action, borrowers would have limited opportunity to change their likelihood of relief by strategically not paying and would have no opportunity after this NPRM is published. Even if a later date were chosen, trying to avoid payment to artificially indicate repayment struggles would be a significant risk on the part of borrowers because the issuance of any particular waiver is discretionary and is based on the consideration of multiple factors. Therefore, any borrower who intentionally fails to repay loans to try to qualify for a waiver may end up harming their credit and facing the consequences of delinquency or default with no guarantee of receiving a waiver. Second, the Department's analysis considers the experience of

[76] *See https://studentaid.gov/announcements-events/default-fresh-start.*

[77] See for example, Ganong, Peter and Jeffrey B. Liebman. ''The decline, rebound, and further rise in SNAP enrollment: Disentangling business cycle fluctuations and policy changes.'' *American Economic Journal: Economic Policy* 10 (4) (2018): 153–176.

borrowers across the entire student loan portfolio. As such, even if an individual borrower exhibits signs of delinquency, that borrower may still not be identified as sufficiently likely to be in default if most similarly situated borrowers are not predicted to be in default.

To assess the proposed hardship standard in § 30.91(a) when granting relief under proposed § 30.91(c), the Department proposes to use a statistical model that would predict likelihood of being in default within two years. The model would guide how the Secretary would consider and weigh data associated with the factors identified in proposed § 30.91(b) that are accessible to the Secretary without the need for additional data collection.

This proposed model would be designed to predict default on a Federal student loan in any quarter for two years from the date these proposed regulations are published. Student loan default would be estimated by a series of ''predictors,'' a term that we use to refer to the data elements that serve as inputs into the model, which would correspond to the 17 factors identified in proposed § 30.91(b). In Table 1 below, we include a list of the explanatory predictors that we propose to consider based on data currently available to the Department. We describe the proposed process for designing and refining the prediction model that incorporates the factors from proposed § 30.91(b) in further detail below.

As noted, the Department would derive these predictors from several data sources available to the Department. Some of the data would come from individual records available in the National Student Loan Data System (NSLDS), such as repayment histories and loan debt outstanding. Other data would be derived from information provided on the borrower's FAFSA, such as Adjusted Gross Income or parental education. Some data would be compiled based on multiple sources held within the Department, such as data on the programs for which students borrowed and data that are reported on the College Scorecard or in cohort default rate reports that indicate typical student outcomes associated with a program or programs attended.

TABLE 1—PROPOSED MODEL INPUTS (''PREDICTORS'')

Past and Present Repayment Statuses.
Total amount of debt outstanding.
Past and present types of loans held, and amounts borrowed.
Year of loan disbursement.
Ratio of current loan balance to balances from 4 months prior.
Repayment plans in which borrower currently participates.
Payments made on student loans.
Scheduled payments on student loans.
Interest rate on loans.
Years in repayment.
Pell Grant receipt.
Adjusted Gross Income from the borrowers' first FAFSA.
Expected Family Contribution calculated from inputs on the FAFSA.
Parent education level reported on the FAFSA.
Dependent/independent status.
Borrower age.
Highest academic level reported for the borrower's loans.
Highest degree the borrower ever reported pursuing.
Graduation indicator.
Year of graduation, for those graduated.
Predominant degree of the school the student last attended or from which they last graduated.
Ownership type of the school the student last attended or from which they last graduated.
Cohort default rates of the school the student last attended or from which they last graduated.
Earnings and debt information from College Scorecard of the school the student last attended or from which they last graduated.

Note: The Department proposes to use loan repayment statuses that reflect the benefits provided by On Ramp and Fresh Start policies.

The proposed process for designing and refining the statistical model to determine which borrowers meet the hardship standard in proposed § 30.91(a) based on 80 percent likelihood of being in default (as described in proposed § 30.91(c)) within two years would be as follows. First, the Department would develop and validate the model using multiple two-year random samples of data on Department-held loans with data ranging from 2017 to February 2020. The Department proposes to use samples from this time period because it contains the most recent period of at least two years of uninterrupted repayment before the COVID–19 payment pause, and therefore should provide the most up to date predictions about the relationship between the predictors described above and observed default over a two-year period. We would use these data to estimate the extent to which the previously described explanatory predictors (displayed in Table 1) would predict whether a borrower was likely to be in default on a student loan in any quarter within two years and therefore would meet the hardship standard in proposed § 30.91(a).

The Department would then evaluate a variety of methods to include the ''predictors'' in the proposed model to create the most accurate predictions of likelihood of being in default. There are generally two forms that predictors can take in the source data. The first form is continuous, which means that the predictor can be any value within a range. For example, the amount of outstanding debt that a borrower has could take on dollar values from greater than 0 to the maximum amount of outstanding debt in our data. The second form is categorical, which are predictors that have a finite number of distinct groups (*e.g.,* type of higher education institution). We propose to scale continuous predictors by their means and standard deviations, but would also consider those same predictors without scaling, and as categorical variables defined with different types of cutoff values to create those categories. The Department would also consider additional statistical model specifications such as those that include interactions among individual predictors, the use of higher order polynomials, and those that generate estimates using different subgroups of the model. Among these approaches to including variables in the model, the Department would estimate the model using logistic regression as well as machine learning approaches, such as gradient boosted trees.[78]

Next, to select the proposed model from among various potential specifications and options, we would evaluate the performance of the model using a distinct random hold out test sample of Department-held loans from the same time period as the training sample. In this step, to evaluate the performance of the model, we would calculate commonly used metrics, including measures of model fit, confusion matrices with a variety of threshold levels, standard metrics derived from the confusion matrices, and other performance metrics.[79]

[78] Gradient boosted trees are a machine learning approach commonly used for prediction based on decision trees. Decision trees use a ''tree-like'' hierarchical structure to split the data at various points in the distribution of predictor variable values, with the goal of predicting the value of the target variable (in this application, default within two years). Boosted trees typically perform better than single decision trees or random forest methods by sequentially learning from many decision trees. See Hastie, Tibshirani, and Friedman (2009), *The Elements of Statistical Learning: Data Mining, Inference, and Prediction.* 2nd Edition.

[79] See for example, Albanesi, Stefania and Domonkos F. Vamossy. ''Predicting Consumer Default: A Deeper Learning Approach.'' NBER Working Paper 26165 (2019). Khandani, Amir E.,

Generally, these measures provide different ways of comparing observed outcomes to outcomes predicted by the model, and a model would be considered to perform better if it more accurately classified borrowers into those who will be in default and those who will not be in default.

The proposed assessment based on this model would produce a score for each borrower that accumulates the prediction related to the predictors included in the model for likelihood of being in default within two years. The scores would range from 0 percent to 100 percent. This score could be interpreted as an estimate of the probability that a borrower is in default within the next two years. We would use the score from the model to assist with identifying borrowers who were at least 80 percent likely to be in default on a student loan in any quarter within two years of the proposed regulations' publication date.

Once the regulations are finalized and implemented, this model would be used to conduct an individualized determination of whether each borrower fits within the hardship standard in proposed § 30.91(a) and therefore qualifies for a waiver under proposed § 30.91(c).

For purposes of this NPRM, we estimated which borrowers would have an 80 percent likelihood of being in default within the applicable two-year period using a 5 percent sample of Department-held loans as of April 2024. At the time of the publication of the NPRM, however, the Department will have access to additional data that could be used to refine the model. For example, in the data used for modeling in this NPRM, the Department has recent borrower repayment history only for about five months since the end of the payment pause. At the time of the publication of the NPRM, however, the Department will be able to observe recent repayment and engagement experiences over a longer time horizon through the date of the NPRM.

The Department proposes to measure this two-year window as of the publication date of the NPRM to preclude strategic behavior to increase the likelihood of receiving hardship relief by defaulting on loans. The reason for measuring the two-year window as of the publication date of the NPRM is because we are intent on providing relief as soon as possible once the NPRM is finalized, and because we are concerned that a longer period between finalizing the regulations and measuring the two-year window could create incentives for borrowers to attempt to strategically adjust their repayment behavior to be more likely to obtain a waiver.

The committee reached consensus on this regulatory provision.

§ 30.91(d) Process for Additional Relief

Statute: Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.[80]

Current Regulations: None.

Proposed Regulations: Proposed § 30.91(d) provides that the Secretary may rely on data in the Secretary's possession that may have been acquired through an application or any other means to provide relief, including automated relief, based on criteria demonstrating that the borrower has experienced or is experiencing hardship.

Reasons: Proposed § 30.91(d) would clarify the procedures the Department could use to provide relief if the Secretary were to exercise the discretion under this section to issue waivers.

The pathway for discretionary relief under proposed § 30.91(d) is for the Secretary to assess a borrower's circumstances in a holistic manner, which may be based in part on an application submitted by the borrower, to determine if the borrower is experiencing or has experienced hardship. Proposed § 30.91(d) operates fully independently and separately from proposed § 30.91(c) and would therefore be fully severable.

The Department intends the ''hardship'' necessary to trigger relief under proposed § 30.91(d) to be a substantial harm. The Department interprets the hardship required for relief under proposed § 30.91(d) as: the borrower must be highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship. The requirement that other payment relief options would not sufficiently address a borrower's persistent hardship would apply both to borrowers who meet the standard because the Department finds they are highly likely to be in default and to borrowers who meet the standard because the Department finds they are highly likely to experience similarly severe negative and persistent circumstances.

Default is one of the strongest indications that a borrower has not been able to use options available to avoid hardship in repaying their student loans, so the Department would use a standard related to default as one part of the hardship test for individual applicants under proposed § 30.91(d).

In addition, the Department would also have to determine that other options for payment relief under the HEA, including IDR plans and other forgiveness opportunities, are not sufficient for the borrower to avoid a high likelihood of being in default or similarly severe and persistent negative circumstances.[81] To determine whether the borrower faces a persistent hardship, the Department would consider the factors described in proposed § 30.91(b).

The Department makes student loans to students with the expectation that they will be repaid according to the terms provided under the HEA and laid out in the Master Promissory note. The Department understands that many borrowers experience difficulty repaying their loans at some point in their repayment experience that necessitates relief from monthly payments calculated under the standard 10-year repayment plan. As discussed above, there are many options under the HEA available to borrowers who may experience difficulty repaying their loans. Relief options include the short-term use of deferment or forbearance options. These proposed regulations are not designed to supplant any of the options available to borrowers. Rather, these proposed regulations are designed as a safety valve for those borrowers who cannot receive sufficient relief to avoid hardship via payment relief options already in existence under the

Adlar J. Kim, and Andrew W. Lo. ''Consumer Credit-Risk Models Via Machine-Learning Algorithms.'' *Journal of Banking and Finance,* 34(2010): 2767–2787. Hastie, Trevor, Robert Tibshirani, and Jerome Friedman. *The Elements of Statistical Learning: Data Mining, Inference, and Prediction.* 2nd Edition (2009).

[80] *See* 20 U.S.C. 1087hh(2).

[81] The Department recognizes that the relief in proposed § 30.91(d) would include a determination that other payment relief options are not sufficient, but the relief under proposed § 30.91(c) would not include such a determination. The Department does not think such a determination is necessary for the relief under proposed § 30.91(c) because eligible borrowers under that provision may have spent years or decades without access to other IDR plans, such as PAYE and REPAYE, and did not benefit from strengthened loan servicer accountability under the new USDS contracts. This determination also would not be needed under proposed § 30.91(c) because borrowers would have little to no ability to influence the results under proposed § 30.91(c) with strategic non-payment.

HEA. For the purposes of proposed § 30.91(d), the Department would consider the availability of the following payment relief options [82] to determine whether such options could sufficiently address the borrower's hardship: deferment or forbearance; forgiveness opportunities such as borrower defense discharge and TPD discharge, and income-driven repayment (IDR) plans.

A payment relief option would not be sufficient if it would not prevent the borrower from still experiencing a hardship related to the loan that makes them highly likely to be in default or experience similarly severe negative and persistent circumstances that substantially impairs their ability to fully repay the loan. For example, a borrower that is on an IDR plan with a $0 monthly payment might still be eligible for a waiver if the borrower would still be highly likely to experience similarly severe negative and persistent circumstances because they have a persistent hardship and lack the disposable income needed to fully repay the loan without jeopardizing their basic financial security over an extended period of time. In other words, the Department could determine that a payment relief option was not sufficient if it only temporarily delayed—but did not eliminate—the need to discharge some or all of the borrower's loans to sufficiently address the hardship.

The Department seeks to provide relief for individuals who are experiencing hardship without creating incentives for borrowers to strategically choose to cease making payments in order to qualify for relief. Proposed § 30.91(c) would prevent this strategic behavior by specifying the Secretary's discretion to provide one-time immediate relief based on a predictive assessment that would use the publication date of this NPRM as the beginning of the two-year period. There would be no future opportunity to change behavior and to obtain relief under proposed § 30.91(c).

For proposed § 30.91(d), the Department would address the risk of strategic behavior with a two-fold requirement that the borrower must be highly likely to be in default, or experience similarly severe negative and persistent circumstances, and that other options for payment relief would not sufficiently address the borrower's persistent hardship, including IDR plans, for those eligible. As a result, a borrower who is experiencing a high likelihood of being in default that they could avoid by enrolling in an IDR plan but has chosen not to enroll as an attempt at strategic behavior, would be extremely unlikely to receive relief under proposed § 30.91(d). In cases where a borrower who could find sufficient relief from hardship through an IDR plan applies for relief under proposed § 30.91(d), the Department would encourage that borrower to enroll in IDR, and that borrower would be unlikely to be eligible for a waiver under proposed § 30.91(d). Nor would a borrower who faces default simply because they have chosen not to make payments, without any evidence of experiencing hardship, receive relief under proposed § 30.91(d). These requirements would advance the goal of the proposed regulations and apply the standard of proposed § 30.91(a), providing relief in cases of genuine hardship.

Moreover, should the Secretary choose to exercise authority under these regulations, proposed § 30.91(c) would provide relief to the millions of borrowers who are experiencing hardship already, and in many cases who have lacked access to the full range of repayment options that will now be fully available going forward. Relief would only be available to individuals under proposed § 30.91(d) who experience hardship that is not sufficiently addressed by other options for payment relief and have a high likelihood of being in default or experiencing similarly severe negative and persistent circumstances.

One type of borrower eligible for relief under proposed § 30.91(d) would be a borrower who is already enrolled in an IDR plan but who is highly likely to default or experience similarly severe negative and persistent circumstances even with an IDR plan's payment protections. Although IDR plans take into account income and household size, there are borrowers who would still experience hardship related to their loans that could not be remedied through other means. Consistent with the factors described in § 30.91(b), the Secretary could consider, for example, whether an individual has unusually high expenses (such as nondiscretionary medical or housing expenses) such that they are highly likely to be in default, or to experience similarly severe negative and persistent circumstances.

In general, to determine whether an individual has such high expenses, the Department would look to established benchmarks, such as the Department of Housing and Urban Development measures of a ''rent burdened'' or ''severely rent burdened'' household that pays rent m 30 or 50 percent of household income, respectively, or the Internal Revenue Code standard allowing for deduction of health expenses in excess of 7.5 percent of Adjusted Gross Income. The Department would consider these expenses in the context of the borrower's overall financial resources, including income, assets, and debt.

As an example, consider an individual who is earning $80,000 a year, has $35,000 in loans, few assets, three dependents, and a monthly payment obligation of approximately $277 a month under an income-based repayment plan. That obligation would not ordinarily lead to hardship. However, in this example, the individual lives in a high-rent area and pays the typical rent of $2,300 for a one-bedroom apartment (more than 30 percent of their income or ''rent burdened'' under the HUD standard) and has a dependent that requires medication and treatment for a chronic health condition that costs $1,600 per month (well in excess of 7.5 percent of AGI). In order to pay for these expenses in addition to other essentials, like food and transportation, the borrower is in default or is on the verge of being in default after missing seven months of payments. If this borrower demonstrated that they did not have the assets to avoid being in default, and that their circumstances were unlikely to improve within a period of time, then they could potentially receive relief under this provision.

There may also be cases where an individual can demonstrate hardship even in the absence of a payment burden (such as when a borrower has a $0 IDR payment). For example, a borrower may be able to show that they meet the standard for hardship described above if they can show that, even with a $0 IDR payment, the existence of the debt itself causes the required hardship. As stated above, a borrower on an IDR plan with a $0 monthly payment may also be able to show that they are still highly likely to experience similarly severe negative and persistent circumstances because they have a persistent hardship and lack the disposable income needed to fully repay the loan without jeopardizing their basic financial security over an extended period of time. The Department has also included a directed question regarding the circumstances in which this might occur.

Relief under proposed § 30.91(d), whether based on data ''acquired through an application or by any other means'' would be assessed on a holistic basis to determine whether the standard described above for proposed § 30.91(d)

[82] A payment relief option would only be available to a borrower if they satisfied the applicable statutory and regulatory requirements.

is met.[83] The Department interprets the word ''automated'' as used in proposed § 30.91(d) to mean relief that the Secretary may grant based on information already in the Department's possession rather than acquired through an application. The Department anticipates that the number of borrowers for whom the Department would possess sufficient information to conduct the holistic review without data acquired from an application would be small. The Secretary would not be able to use a default risk model such as a model similar to the one described in § 30.91(c) in order to provide relief under proposed § 30.91(d). A borrower could only receive a waiver without an application under proposed § 30.91(d) if the Department's holistic review of the borrower's data satisfied the same stringent standard that the Department would apply for application-based relief. Such cases would be considered rare since the data that the Department possesses would have to sufficiently establish eligibility including that other options for payment relief would not sufficiently address the borrower's persistent hardship and would also need to sufficiently distinguish such borrowers from otherwise similar borrowers who would not be deemed to qualify for relief.

The Department recognizes that to meet this stringent standard, the Department would need data that would allow the Secretary to determine whether a borrower meets proposed § 30.91(d)'s standard. The Department notes that the Secretary would need to expand or refine data elements in the future to provide relief to borrowers under proposed § 30.91(d) without an application because, at the time of preparing this NPRM, the Department does not currently have sufficient data available to determine whether a borrower meets the eligibility standard. We seek feedback from the public about the type of data that could be used for relief without an application under proposed § 30.91(d), and how those data could be obtained.

As discussed throughout this NPRM including in the Regulatory Impact Analysis, the proposed process under § 30.91(d) would likely involve detailed reviews of applications submitted by borrowers or other data already in the Department's possession. We anticipate that the processes under § 30.91(d) would take time to implement following the publication of a final rule, including developing an application, producing clarifying guidance, and hiring and training staff. Given the administrative costs associated with this process, we also anticipate that the volume of applications the Department would be able to process would be low at first and would be dependent on the amount of funding received by FSA through the annual appropriations process. Therefore, depending on the number of applications, it would take time for the Department to make waiver determinations on a borrower's individual application, and the Department would not be in position to guarantee a response within a specific period. As a result, borrowers should anticipate continuing to make payments while their application is pending.

The committee reached consensus on this section.

Regulatory Impact Analysis

Executive Orders 12866 (as Modified by 14094) and 13563

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action would have an annual effect on the economy of $200 million or more. Table 4.1 in this regulatory impact analysis (RIA) provides an estimate of the net budget effects of each provision of these proposed regulations. We also provide estimates of the administrative costs for these provisions. Because the net budget effect is larger than $200 million a year, this proposed regulatory action is subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094). Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and considering—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to

[83] The Department recognizes that determining eligibility for relief under proposed § 30.91(c) relies on data already in the Department's possession. However, as explained elsewhere, proposed § 30.91(c) and proposed § 30.91(d) are designed to address different challenges and accordingly have different eligibility criteria as described in this NPRM. Proposed § 30.91(c) is designed to provide, at the Secretary's discretion, immediate relief on a one-time basis to address the hardship of borrowers who may have spent years or decades without access to other IDR plans, such as PAYE and REPAYE, and did not benefit from strengthened loan servicer accountability under the new USDS contracts. By contrast, proposed § 30.91(d) is meant to provide ongoing relief to borrowers on a going-forward basis even after the Department has implemented various improvements to assist with student loan repayment, such as the implementation of IDR plans and updated servicer contracts. The Department believes that in most instances, additional information would be necessary for the Department to conduct a holistic assessment to determine whether the borrower meets the specific standard for relief under proposed § 30.91(d).

encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations upon on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that, in the Department's estimation, best balance the size of the estimated transfer and qualitative benefits and costs. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

As described in OMB Circular A–4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, the summary of key proposed provisions, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under the *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

1. Congressional Review Act Designation

Pursuant to the Congressional Review Act (*5 U.S.C. 801 et seq.*), the Office of Information and Regulatory Affairs designated that these regulations are covered under *5 U.S.C. 804(2)* and *(3).*

2. Need for Regulatory Action

These proposed regulations describe circumstances in which the Secretary might exercise the longstanding discretionary waiver authority under sections 432(a)(6) and 468(2) of the HEA to waive all or part of a Federal student loan held by the Department to provide relief to a borrower who has experienced or is experiencing hardship.

Addressing the issue of hardship is critical in building a strong student loan program. While the Department currently offers a number of options for payment relief, including IDR plans and forgiveness opportunities, the complexity of borrowers' lives may lead to hardships that are not sufficiently addressed by these existing options such that these hardships are likely to impair their ability to repay a Federal loan in full or cause the anticipated costs of collecting the loan to exceed the likely benefits of continued collection of the entire debt. The Department frequently hears from borrowers about a range of these situations, such as borrowers facing significant unexpected expenses caring for loved ones with chronic illnesses, living with disabilities that limit but do not eliminate work opportunities, dealing with financially burdensome medical bills, or fearing that they will struggle to repay loans as they prepare to exit the workforce by retiring.

Sections 432(a)(6) and 468(2) of the HEA provide the Secretary with discretion to address these situations. Issuing a clear regulatory framework to address hardship would better inform the public about how the Secretary might exercise this waiver authority by considering a set of factors and standards that would allow for the consistent treatment of similarly situated borrowers, while also recognizing the inherent variability of each borrower's particular situation.

As further explained in the preamble, these proposed regulations specify two different pathways by which the Secretary may exercise discretion to grant relief to borrowers experiencing hardship: a pathway for immediate relief using a ''predictive assessment'' (proposed § 30.91(c)) and a separate pathway for additional relief based on a ''holistic assessment'' of information submitted by the borrower through an application or acquired by any other means (proposed § 30.91(d)).

For the immediate relief described in proposed § 30.91(c), the Secretary proposes to assess whether the borrower meets the hardship standard by determining whether a borrower has at least an 80 percent chance of being in default within two years, using a predictive assessment based on data already in the Department's possession to analyze the hardship factors in proposed § 30.91(b). The use of a predictive assessment would allow the Department to recognize situations in which similarly situated borrowers face comparable challenges likely to impair their ability to fully repay the loan, or that would cause the costs of collecting the loan to outweigh the benefits.

Further, this predictive assessment under proposed § 30.91(c) would be based on data in the Department's possession and therefore would promote efficiency and reduce administrative costs. For example, the predictive assessment would promote efficiency because it would eliminate the need for individual borrowers to complete applications and for the Department to process those applications. Furthermore, using this predictive assessment would also avoid the risk that many borrowers in need of relief would miss out on the opportunity for relief because they are unaware of the need to apply or be unable to overcome the administrative challenges of applying.

While the predictive assessment described in proposed § 30.91(c) would reduce administrative burden for both borrowers and the Department and could be implemented quickly because it would rely on data the Department already has, it would not be able to capture all borrowers who are experiencing hardship that satisfies the proposed standard for waiver. One reason is that the Department currently does not have data on several of the factors described in proposed § 30.91(b), such as information on debts not owed to the Department or a borrower's expenses for caretaking, housing, and other factors, which could be burdensome for some borrowers.

Therefore, the Department would also need the discretionary option of receiving additional information from borrowers through an application process so that the Department could conduct a holistic assessment of the borrower's circumstances to determine whether the borrower meets the applicable standard for hardship under proposed § 30.91(d). As described in the preamble, under this process, the Department would determine whether: (i) the borrower is highly likely to be in default or experience similarly severe and persistent negative circumstances, and (ii) other options for payment relief would not sufficiently address the borrower's persistent hardship. The Department could also make this determination based on information already in the Department's possession, or a combination of information already in the Department's possession or received through an application. This application-based pathway would be important to give borrowers the opportunity to provide additional information and data that might not be captured in existing data systems to which the Department has access, or to describe any additional relevant circumstances.

Overall, the relief contemplated in these proposed regulations would provide important support in situations where a borrower's investment in postsecondary education fails to yield the potential benefits from completing such an education. Generally, postsecondary education provides significant individual and societal benefits. Earning a postsecondary credential typically provides individuals with a range of personal benefits in the labor market, including higher income and lower unemployment risk.[84] In addition to individual benefits related to earnings and employment, additional education can provide a host of individual benefits, including greater access to health insurance, increased job satisfaction, and overall happiness.[85] Increasing levels of postsecondary attainment also have spillover benefits for communities and society, including benefits to those who never attended or completed postsecondary education. For example, researchers have documented that wages of non-college graduates rise when the supply of college graduates increases.[86] Increases in education are also linked to higher civic participation, reduced crime, and improved health of future generations.[87]

For some borrowers, financing an education does not lead to individual net benefits. Loans taken out for postsecondary education commonly take a decade or more to repay, and borrowers may never reach sustained periods of income security necessary to afford and manage their loans. This could be because they never complete their program and therefore never receive a meaningful earnings return, or they may lose the income security attendant to an education when they face unexpected and significant life events outside their control, such as the need to care for sick dependents, expensive medical problems, or the onset of disabilities that limit work opportunities.

These proposed regulations would establish a framework for the Secretary to exercise the discretionary waiver authority in a consistent and transparent manner. This framework would fill existing gaps in relief that are otherwise available from the Department to assist borrowers with managing repayment of their loans. The Department's existing avenues for payment relief, for example, may be insufficient to assist older borrowers with high student loan debt burdens at increased risk of default and resulting financial insecurity, or those with significant obligations expenses for child or dependent care. Therefore, these proposed regulations would specify the Secretary's authority to grant relief where the Secretary determines the borrower's hardship impairs the borrower's ability to fully repay loans or makes collecting the loans unjustifiably costly.

Summary of Proposed Key Provisions

Table 2.1 below summarizes the proposed provisions in the NPRM.

TABLE 2.1—SUMMARY OF PROPOSED PROVISIONS

Provision	Regulatory section	Description of proposed provision
Standard for waiver due to likely impairment of borrower ability to fully repay or undue costs of collection.	§ 30.91(a)	Provides that the Secretary may waive up to the outstanding balance of a Federal student loan held by the Department if the Secretary determines that the borrower has experienced or is experiencing hardship related to such a loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.
Factors that substantiate hardship	§ 30.91(b)	Provides a non-exclusive list of factors the Secretary could consider in determining whether a borrower meets the standard for waiver based on hardship.
Immediate relief for borrowers likely to default.	§ 30.91(c)	Provides that the Secretary may consider the borrower's factors indicating hardship described in proposed § 30.91(b) to exercise discretion to waive all or some of outstanding loans held by borrowers who the Secretary determines have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the two years after the publication of the proposed regulations.
Process for additional relief	§ 30.91(d)	Provides that the Secretary may rely on data obtained from an application or by any other means, or potentially a combination or both, to provide relief for borrowers who are highly likely to be in default or to experience similarly severe and persistent negative circumstances, and other payment relief options do not sufficiently address the borrower's persistent hardship.

3. Discussion of Costs, Benefits and Transfers

Overall, waivers that the Secretary grants under the proposed regulations would result in costs in the form of transfers from the Federal Government to student loan borrowers. The size of these transfers would vary based upon the number of borrowers who the Secretary determines are at least 80 percent likely to be in default and, therefore, eligible for waiver under proposed § 30.91(c). It would also depend on the number of borrowers who are approved for waivers under proposed § 30.91(d). The Department believes that these transfers would

[84] Barrow, Lisa and Ofer Malamud. ''Is College a Worthwhile Investment?'' *Annual Review of Economics* 7 no. 1 (2015): 519–555. Card, David. ''The Causal Effect of Education on Earnings.'' *Handbook of Labor Economics* 3 (1999): 1801–1863.

[85] Oreopoulos, Philip and Kjell G. Salvanes. ''Priceless: The Nonpecuniary Benefits of Schooling.'' *Journal of Economic Perspectives* 25 no. 1 (2011):159–184.

[86] Moretti, Enrico. ''Estimating the social return to higher education: evidence from longitudinal and repeated cross-sectional data.'' *Journal of econometrics* 121, no. 1–2 (2004): 175–212.

[87] Currie, Janet, and Enrico Moretti. ''Mother's education and the intergenerational transmission of human capital: Evidence from college openings.'' *The Quarterly journal of economics* 118, no. 4 (2003): 1495–1532; Lochner, Lance, ''Nonproduction Benefits of Education: Crime, Health, and Good Citizenship,'' in E. Hanushek, S. Machin, and L. Woessmann (eds.), *Handbook of the Economics of Education,* Vol. 4, Ch. 2, Amsterdam: Elsevier Science (2011); Ma, Jennifer, and Matea Pender. *Education Pays 2023: The Benefits of Higher Education for Individuals and Society.* Washington, DC: College Board. Milligan, Kevin, Enrico Moretti, and Philip Oreopoulos. ''Does education improve citizenship? Evidence from the United States and the United Kingdom.'' *Journal of public Economics* 88, no. 9–10 (2004): 1667–1695.; Lochner, Lance, and Enrico Moretti. ''The effect of education on crime: Evidence from prison inmates, arrests, and self-reports.'' *American economic review* 94, no. 1 (2004): 155–189.

provide significant benefits to borrowers in the form of waiving their obligation to repay some or all of their Federal student loan debt. The Department would also see benefits from waivers granted on loans that are unlikely to be repaid in a reasonable period, which would prevent or reduce costly collection efforts.

The transfers to borrowers in the form of waivers could result in costs to the Federal Government and in turn taxpayers, to the extent that borrowers receiving waivers might otherwise have repaid the loan in part or whole, or the financial costs of collecting the loan might have proved less than the benefits of collection. The proposed rules would also result in administrative expenses for the Department to implement these provisions. When considering all these factors, the Department believes that the benefits from these proposed regulations would outweigh the costs.

What follows is a description of the data used to create estimates in this RIA, followed by a discussion of the costs, benefits, and transfers for each of the distinct regulatory provisions.

Data Used in This RIA

This section describes the data used in the RIA. To generate information about the expected number of borrowers who would be eligible to receive relief under these proposed regulations, the Department relied upon non-public records contained in the administrative data the Department uses to administer the title IV, HEA programs.

The primary data used in the RIA to estimate the number of borrowers who could potentially qualify for a waiver under proposed § 30.91(c) is a 5 percent random sample of the Federal Department-held student loan portfolio with at least one open title IV, HEA student loan as of April 30, 2024. We are using a random sample including over 2 million borrowers, but we present all estimates in the analyses below in terms of the full Department-held student loan portfolio. The data we use for modeling in the RIA are stored in the National Student Loan Data System (NSLDS), maintained by the Department's Office of Federal Student Aid. The Department determined that a sample of this size was appropriate to provide reasonable estimates of the impact of the proposed regulation. A sample of this size is similar to what the Department uses in other modeling, such as for the annual President's budget and for the net budget impact modeling in this RIA.

Analysis of Costs, Benefits, and Transfers for Each Proposed Regulatory Section

The sections that follow contain a discussion of the costs, benefits, and transfers for the different proposed regulatory provisions if the Secretary chooses to grant waivers under such provisions. We separately discuss the relief potentially provided under proposed § 30.91(c)'s pathway for ''immediate relief'' and proposed § 30.91(d)'s pathway for ''additional relief'' based on an application or information already in the Secretary's possession, or both, because those provisions would represent different pathways for the Secretary to exercise discretion to grant a waiver for a borrower. Implementation of each of these provisions would include administrative costs for the Department. Because these administrative costs generally would represent baseline implementation expenses, we provide a separate discussion of administrative costs at the end of this part of the RIA.

We do not include a discussion of proposed § 30.91(a) or (b), which would establish the standard for hardship and the indicators to be considered in determining if a borrower is facing hardship, because these provisions do not describe discretionary pathways for relief that may result in costs, benefits, and transfers.

§ 30.91(c) Immediate Relief for Borrowers Likely To Be in Default

Should the Secretary choose to grant waivers under proposed § 30.91(c), the proposed regulations would result in costs in the form of transfers from the Department to borrowers through waiver of outstanding debt to the Department. Waiving these amounts would eliminate future payments by these borrowers to the Department, which is a cost to the Federal Government and, by extension, to taxpayers. The extent of transfers and their associated cost would vary depending on the eligible borrower's amount of outstanding debt, loan type(s), age of the loan, likelihood of repayment, and other factors. The proposed regulations would also result in administrative expenses for the Department to implement these provisions. When considering all these factors, the Department believes that the benefits from these proposed regulations would outweigh the costs.

Borrowers who are in default are likely to have repeated instances of default or be in default for a protracted time. Department data show that almost all of those who were likely to be in default in the next two years had struggles with loan repayment in the past, as evidenced by instances of current or prior default, or of payment delinquency. Acknowledging past hardship recognizes that previous periods of hardship may have current and future consequences for a borrower. For example, a borrower who struggled to repay their loans may have seen their balance increase in size such that full repayment of that greater amount is no longer feasible. The likelihood of prior or persistent repayment struggles observed in Department data is similar to that found in other data. A Federal Reserve Bank of Philadelphia survey of borrowers demonstrated that most of the individuals who anticipated difficulties making loan payments after the payment pause ended also reported making no or partial payments prior to the pandemic forbearance.[88] These data also suggest that there is greater prevalence of longer-term or repeated defaults among communities with greater shares of Black and Hispanic residents, and that student loan default commonly co-occurs with delinquency and collections on other types of debt, such as medical debts and utilities.[89] These distributional effects reflect underlying differences in income, completion status, and other factors that correlate with student loan struggles.[90]

In addition, many of the borrowers who might receive a waiver under proposed § 30.91(c) have been in repayment for an extended time. For instance, based on analysis of Department data, in 2022, more than 1 million borrowers held loans that had been in default for at least 20 years. These borrowers could have been subject to negative credit reporting, wage garnishment, tax refund offset, and even litigation. If these loans are still outstanding after all this time, notwithstanding the availability of those powerful collection tools, the odds that they would be fully repaid in a reasonable period are unlikely.

Older loans are also likely to be held by older borrowers. Analysis of Department data indicates that almost a

[88] Akana, T., & Ritter, D. (2022). Expectations of Student Loan Repayment, Forbearance, and Cancellation: Insights from Recent Survey Data. Federal Reserve Bank of Philadelphia.

[89] Cohn, Jason. ''Student Loan Default Patterns: What Different Paths through Default Can Tell Us about Equitably Supporting Borrowers.'' (November 2022). Urban Institute. See also LaVoice, J., & Vamossy, D. F. (2024). Racial disparities in debt collection. *Journal of Banking & Finance, 164,* 107208.

[90] The Department provides this information for showing proposed § 30.91(c)'s likely effects rather than an underlying reason for proposing such a waiver.

quarter of borrowers who would receive a waiver are over 55 years old. The older the borrower, the greater the likelihood that they will stop working prior to successful repayment. Forty-one percent of non-Parent PLUS borrowers 62 years of age and older with an open loan have held their student loans for more than 20 years, and 30 percent of borrowers 62 years of age and older with an open loan have held their student loans for more than 25 years.[91] Waiving such loans would not create significant costs for the Government in the form of transfers because the Department is unlikely to receive significant additional payments from a retired borrower.

About two-thirds of borrowers who may receive a waiver received a Pell Grant in our data, but this number is likely an underestimate because Pell Grant status is unavailable for most borrowers who entered repayment on their last loan before 1999.

Borrowers would receive significant benefits from no longer having to repay loans, and the Federal Government would also see benefits from conserved administrative costs through discontinued servicing or collecting on loans that the Department does not expect to be repaid in full.

As noted above, these transfers would create some costs for the Federal government and, by extension, taxpayers. However, as discussed above, these waivers would generally affect loans with lower expected repayment rates (therefore have a low likelihood of generating funds for the Federal government), and any limited lost revenue from waiving some of the Department's worst-performing loans would likely be outweighed by significant individual and social economic benefits to the borrower. Specifically, the waivers proposed here would provide borrowers facing hardship with a greater ability to avoid financial distress, and potentially lower delinquency rates on other types of debt, promote consumption (which can benefit the economic wellbeing of their communities), improve access to credit, and may reduce reliance on other forms of the Federal safety net.[92]

[91] U.S. Department of Education. Negotiated Rulemaking for Higher Education 2023–2024 Materials for Student Loan Debt Relief Session 2 (November 6–7, 2023): Data on Older Borrowers and Parents. *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/data-on-older-borrowers-and-parents-session-2.pdf.*

[92] See, for example, The Economics of Administration Action on Student Debt, available at *https://www.whitehouse.gov/cea/written-materials/2024/04/08/the-economics-of-administration-action-on-student-debt/.*

Di Maggio, M., Kalda, A., & Yao, V. (2019). *Second chance: Life without student debt* (No. w25810). National Bureau of Economic Research.

To estimate the number of borrowers we would expect to be eligible for relief under proposed § 30.91(c), we followed the process described for implementing proposed § 30.91(c) above, where we used predictors that correspond to the 17 factors described in proposed § 30.91(b) to predict whether borrowers were at least 80 percent likely to be in default on a student loan in any quarter for the subsequent two years after the NPRM's publication. For the purposes of the NPRM, we used a 5 percent sample of Department-held loans as of April 2024.

Should the Secretary choose to exercise authority under these regulations, we estimate that approximately 6.0 million borrowers would be eligible to receive relief under proposed § 30.91(c). This estimate is based on output of the proposed model developed to estimate the likelihood that a borrower would have been in default within two years.

The estimate of borrowers who may receive waivers under this provision uses data as of April 30, 2024, and calculates the two-year measurement window as of April 30, 2024. The Department chose April 30, 2024, because it was the most recent comprehensive dataset available to the Department at the time that the Department was developing the proposed model for this NPRM. The borrower portfolio may change between April 2024 and the publication of the NPRM, both in terms of its composition (*i.e.,* which borrowers are in the portfolio) and in the borrowers' circumstances (*e.g.,* the loans held by borrowers and outstanding debt amount may change between April 30, 2024 and the publication of the NPRM). It is not clear what the substantive effects of such changes would be, as they could drive the model's outcomes in different directions. Estimates presented in the NPRM also do not include potential overlap with relief that would be provided by any proposed rules that are not yet final as of the publication of this NPRM, or of waivers through other provisions that were not yet implemented as of April 30, 2024.

§ 30.91(d) Process for Additional Relief

Borrowers would benefit from any waivers granted by the Secretary under proposed § 30.91(d)'s pathway for additional relief based upon a holistic assessment of information already in the Secretary's possession or submitted by the borrower through an application process, or both in conjunction, to determine whether: (i) the borrower is highly likely to be in default or to experience similarly severe and persistent negative circumstances, and (ii) other payment relief options would not sufficiently address the borrower's persistent hardship. As further described in this NPRM's preamble, such waivers would address challenges that these borrowers face while trying to repay their loans. While this approach would provide overall financial benefits, the specific benefits for borrowers who receive a waiver would vary depending on the nature of their qualifying hardship. Waivers granted under proposed § 30.91(d) would also create administrative costs for the Department to implement, which are discussed at the end of this subsection of the RIA.

Consider several examples of borrowers who may receive waivers based on a holistic assessment of the factors in proposed § 30.91(b). For example, a borrower whose qualifying hardship is a result of advanced age, having an old loan, and no longer working would benefit from no longer having to manage a loan payment in their final years of life. If they were in default, they could also potentially see an increase in the total amount of Social Security benefits they could retain since they would not be at risk of having amounts offset. By comparison, a borrower who is facing hardship due to having extensive expenses caring for an elderly relative could also accrue benefits, but in a different form, such as being able to better afford necessary care for that individual, including potentially paying for better services for that relative. Since the precise facts that support waiver under proposed § 30.91(d) would vary across individual borrowers' circumstances based on a holistic assessment of their factors in proposed § 30.91(b), the specific benefits of waiver would vary. But in general, to the extent that the hardship results in the borrower being overburdened by necessary expenses, the waiver would help a borrower better afford those expenses while maintaining basic financial security and also greatly reduce or eliminate their risk of experiencing the substantial harms of default, or other similarly severe negative and persistent circumstances.

Waivers granted under proposed § 30.91(d) would create costs to the government in the form of transfers to student loan borrowers. These costs would also accrue to taxpayers. However, we believe the benefits would exceed these costs. As discussed, the Secretary may provide a waiver under

proposed § 30.91(d) only after determining: (i) the borrower has experienced, or is experiencing, hardship such that the borrower is highly likely to be in default or to experience similarly severe and persistent negative circumstances, and (ii) other payment relief options do not sufficiently address the borrower's persistent hardship. Therefore, borrowers who may receive waivers are those with lower-than-expected repayments who are highly likely to struggle with repaying their loans. By contrast, as described above, the benefits to borrowers could be significant. And such waivers could provide benefits to the government as well. The Department would no longer pay to collect on or service loans that are highly unlikely to be repaid. And to the extent borrowers are facing hardship while receiving other Federal benefits, such as Social Security, no longer having those amounts at risk of being offset would allow broader Federal benefits to better achieve their intended purposes, such as keeping senior citizens out of poverty.

Estimating the number of borrowers who could, at the Secretary's discretion, be approved for relief under proposed § 30.91(d) depends on assumptions about: (1) the number of borrowers who have characteristics that are likely to make them eligible for relief based on the Department's holistic assessment of their circumstances, and (2) the share of borrowers who are potentially eligible who would actually apply. At the end of this section, to inform the estimates of administrative costs, we discuss further assumptions about the number of borrowers who would apply, but who we would expect would not be approved for discretionary relief. In the sections below, we describe the information the Department considered to reach estimates used in this NPRM. Recognizing data limitations and that there are no perfect historical analogs that could inform estimates with perfect precision, we included a directed question that solicits feedback and input from the public about other data or information that could be used to improve and refine estimates.

First, we consulted available Department data on borrowers and national survey data related to student debt holders to inform the number of borrowers who have characteristics that are likely to make them eligible for relief based on the Department's holistic assessment of their circumstances. These borrowers would need to have indicators that show they are highly likely to be in default or experience similarly severe negative and persistent circumstances, that would not be sufficiently addressed by other options for payment relief. In addition, the Department anticipates that proposed § 30.91(c) would, at the Secretary's discretion, be implemented first and that such relief would likely be sufficient to address the hardship of a borrower who receives such relief. Therefore, because we do not want to double count borrowers, the estimate for proposed § 30.91(d) discussed below does not include borrowers who would be expected to receive full relief under proposed § 30.91(c).

As a starting point the Department consulted economic studies of individuals experiencing poverty. We believe estimates of persistent poverty provide an important perspective on borrowers who may have enduring negative economic conditions, even if it is not the perfect comparison. Poverty by itself may not lead to relief under proposed § 30.91(d), but people in poverty often face challenges such as not being able to afford necessary expenses. In addition, other available payment relief options might address episodic spells of poverty. As described earlier, the Department expects that a borrower would need to have indicators showing a high likelihood of persistent hardship rather than a short-term hardship to receive relief under this provision. On the other hand, it is also possible that borrowers could be facing persistent hardship and receive relief, even if they are not considered in poverty. Even acknowledging these limitations, we believe estimates of persistent poverty are a reasonable consideration for estimates under proposed § 30.91(d).

Studies suggest that a meaningful, but small, share of the population experience persistent poverty, defined in many studies as having an income below the Federal Poverty Level. For example, longitudinal studies of families experiencing poverty, using the Panel Study of Income Dynamics suggest that between about 3 to 5 percent of adults are exposed to instances of poverty that last five years or more across their adult lifetimes.[93] Therefore, if we applied the persistent poverty rate of 3 percent to 5 percent to the number of ED-managed borrowers in the current portfolio, we might expect somewhere between 1 and 2 million borrowers in the current portfolio to experience persistent economic hardship at some point in their adulthood that would meet the eligibility requirements under § 30.91(d).

This range of 1 to 2 million borrowers from the current portfolio is corroborated through other data sources. In Department data, as of December 2023, there were about 9 million borrowers who were recorded as past due in their payments.[94] Solely being behind on student loan payments would not lead to eligibility for a waiver under § 30.91(d). Therefore, the Department also reviewed information that was reported in the Federal Reserve Board's Survey of Household Economics and Decisionmaking (SHED).[95] The SHED provides information about borrowers and their personal finances, and indicates whether borrowers who were behind on student loan payments also reported some other condition that could indicate hardship, such as being unemployed or underemployed due to a health or medical limitation or a disability or living with parents or adult children to provide help with child or medical care.[96] Those data indicate that about 13 to 25 percent of borrowers who are behind on student loan payments also reported one of these other indicators. Applying those percentages to the current portfolio of borrowers implies that between 1 to 2 million borrowers may be experiencing some

[93] Other estimates suggest a rate of 10 to 15 percent over three years, and that rates can vary by education level, age, and other characteristics. See, for a review, Cellini, S.R., McKernan, S.M., & Ratcliffe, C. (2008). The dynamics of poverty in the United States: A review of data, methods, and findings. Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management, 27(3), 577–605, as well as evidence from Sandoval, D.A., Rank, M.R., & Hirschl, T.A. (2009). The increasing risk of poverty across the American life course. Demography, 46, 717–737. and from Hoynes, H.W., Page, M.E., & Stevens, A.H. (2006). Poverty in America: Trends and Explanations. The Journal of Economic Perspectives, 20(1), 47–68. *http://www.jstor.org/stable/30033633*.

[94] *https://blog.ed.gov/2024/04/an-update-on-the-first-months-of-the-return-to-repayment/*. This does not include borrowers in default. This figure is likely to be a high-water mark, given the challenges and policy context of returning to repayment after the pandemic, and would be expected to decline in the future.

[95] For the analyses of SHED data, we stacked five years of SHED surveys (2018 to 2022) and used survey weights. We include data only for those who report student debt but are not currently enrolled in school. The SHED data likely undercounts borrowers who only hold Parent PLUS loans, and the survey does not distinguish between Federal student loans specifically and other types of student loans.

[96] In the SHED survey, roughly 18 percent of those with education debt indicated being behind on payments. Among all borrowers who are behind on student payments, about 25 percent of borrowers report being unemployed or underemployed due to a health or medical limitation or a disability, and 13 percent of borrowers live with parents or adult children to provide help with child or medical care. These forms of hardship are indicative of the types of circumstances that may make borrowers eligible to apply for a waiver under § 30.91(d).

substantial economic hardship and report being behind on payments. We would expect that borrowers reporting a greater number of economic challenges in survey data might be more indicative of the type of hardship that would qualify for a waiver under § 30.91(d). In the SHED data, about 40 percent of the student loan borrowers who are behind on payments experience both conditions described above, which would imply an estimate of the number of borrowers in the current portfolio in the range of 0.4 to 0.8 million borrowers. These ranges are based on a single point in time. Under § 30.91(d), borrowers would need to face hardship consistently in order qualify for a waiver, so estimates based on an isolated observation likely overestimates the number of borrowers who are facing persistent challenges on these factors. On the other hand, a point in time observation would not count borrowers who may experience struggles in the future, even if not showing such markers at the time of the survey.

For our base assumptions, we take the high end of the range suggested by available evidence and assume that about 2 million borrowers from the current portfolio would potentially have characteristics that might make them highly likely to be in default or experience similarly severe negative and persistent circumstances at some point in their remaining repayment. As we discuss later, other payment relief options might sufficiently address the hardship for some of these borrowers, not all borrowers who might be eligible will apply for relief, and most borrowers will not have sufficient data already in the Department's possession that would be necessary for any non-application-based relief.

We assume a take up rate of 75 percent among the 2 million borrowers from the current portfolio that we estimate would be potentially eligible for relief. This take up rate is blended across borrowers who might meet the standard for relief under proposed § 30.91(d), described above, based on the Department conducting holistic assessments that may either rely on data already in the Secretary's possession, data submitted by the borrower through an application, or a combination of both. This borrower estimate assumes that, as noted above, the Department would need to expand or refine data elements in the future to provide relief to borrowers under proposed § 30.91(d) without an application because, at the time of preparing this NPRM, the Department does not have sufficient data available to determine whether a borrower meets the eligibility standard. Borrowers for whom the Department possesses sufficient information to conduct the holistic review without data acquired from an application would not need to apply (implying a take up rate of 100 percent), but the Department anticipates that the number of such borrowers based on future data matches or data collections would be small. Ample evidence suggests that borrowers do not always apply for benefits for which they are eligible for many reasons, including because of the burden associated with application and lack of knowledge about the benefits. Evidence from other settings—none being perfect analogies—including from SNAP, the Earned Income Tax Credit (EITC), and Unemployment Insurance, suggest a range of take-up rates that differ across benefit amounts, salience, and eligible populations.[97] Many of the programs with high take-up rates, such as SNAP and EITC, which have take-up rates at or above 80 percent, are well known and have been around for a long time, and some programs have infrastructures that help beneficiaries apply. Other researchers have reported take up of Unemployment Insurance of 42 percent to 55 percent.[98] There are reasons to believe that the take-up rate for forgiveness proposed under § 30.91(d) could be lower than those for SNAP or EITC, since this would be a new program, benefits would be uncertain, and many borrowers do not engage with student loan programs that can be beneficial to them. In sensitivity analyses below, we assume a lower take-up rate.

We also assume that about one-third of these remaining borrowers would benefit from other payment relief options that could sufficiently address their hardship. Some estimates suggest that payment relief options available from the Department can benefit large swaths of borrowers;[99] however, not all borrowers who benefit from existing payment relief options will have their hardship sufficiently addressed.

This leads to an estimate of 1 million borrowers, or about 2.5 percent of the current portfolio, who we expect could, at the Secretary's discretion, be approved for relief under proposed § 30.91(d) in the period after this regulation is implemented and throughout the remainder of the borrowers' repayment periods. We also estimate that an additional 1 million borrowers who could, at the Secretary's discretion, be approved among the next 10 cohorts of borrowers. To arrive at estimates of borrowers who would be affected in the next ten future cohorts, we assume that 5 percent of each cohort could, at the Secretary's discretion, be approved for a waiver under proposed § 30.91(d) at some point in their repayment. This is double the share of borrowers estimated in the current portfolio because borrowers in the current portfolio would receive waivers on a one-time basis under proposed § 30.91(c), whereas borrowers in future cohorts would not. Using an assumption of roughly 2 million new borrowers each year for the next ten years, this leads to an estimate of roughly 100,000 borrowers per cohort, and 1 million borrowers over these cohorts.

In addition to our primary estimate, we include low and high estimates to bound the range of reasonable possible waivers under proposed § 30.91(d). Our low estimate assumes that the take-up of application-based relief is 50 percent (instead of 75 percent), but still assumes that one-third of eligible borrowers benefit from other payment relief options. This results in a total of 1.33 million borrowers who could, at the Secretary's discretion, be approved for relief, 0.67 million among the current portfolio, and 0.67 million from future borrower cohorts. In our high estimate, we assume a larger share of borrowers would qualify for relief. Specifically, we assume that 10 percent of borrowers in the current portfolio could be approved for a waiver under proposed § 30.91(d). This larger share aligns with estimates from research suggesting that 10 percent of adults experience spells of poverty that last at least three years, whereas the 5 percent in our base estimate was based on five-year spells.[100] Similar to our

[97] *See, e.g.,* U.S. Government Accountability Office. College Closures: Many Impacted Borrowers Struggled Despite Being Financially Eligible for Loan Discharges. (September 2021). Accessed at *https://www.gao.gov/products/gao-21-105373.* See the review in Ko & Moffit (2022). Take-up of Social Benefits. *NBER Working Paper 30148.* Also see various articles in ''Administrative Burdens and Inequality in Policy Implementation'' Part I and Part II in *RSF: The Russell Sage Foundation Journal of the Social Sciences,* volume 9, issues 4 and 5, 2023 and Currie, Janet (2006). The Take-up of Social Benefits. In *Public Policy and the Income Distribution.* Russell Sage Foundation. Herd & Moynihan (2018). *Administrative Burdens.*

[98] Kuka and Stuart (2022). Racial Inequality in Unemployment Insurance Receipt and Take Up. NBER Working Paper 29595.

[99] For example, see *https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/income-driven-repayment-modeling-take-up-rates.*

[100] Rates can vary by education level, age, and other characteristics. See, for a review, Cellini, S.R., McKernan, S.M., & Ratcliffe, C. (2008). The dynamics of poverty in the United States: A review of data, methods, and findings. Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management, 27(3), 577–605, as well as evidence from Sandoval, D.A., Rank, M.R., & Hirschl, T.A. (2009). The increasing risk of poverty across the

Continued

base case, we assume a take-up rate of 75 percent and that ⅓ of borrowers get relief through another option. In this high scenario, we estimate that 2 million borrowers in the current portfolio, and 2 million borrowers in future cohorts would qualify. We note that overall estimates could be reduced once they account for other, anticipated regulatory actions that provide relief to borrowers with education debt.

We also consider the possibility that the Department could potentially use data aligned with the factors listed in § 30.91(b) that was not obtained through an application (*e.g.* from additional or refined data to which the Department has access in the future). In such potential cases, a borrower could receive a waiver if the Department's holistic review of the borrower's data satisfied the same stringent standard that the Department would apply for application-based relief under proposed § 30.91(d) (*e.g.,* the borrower must be highly likely to be in default or experience similarly severe and persistent negative circumstances, and other payment relief options would not sufficiently address the borrower's persistent hardship). Such cases would be considered rare since the data that the Department may possess would have to sufficiently establish eligibility, sufficiently show that other options for payment relief did not address the borrower's hardship, and sufficiently distinguish such borrowers from otherwise similar borrowers who would not be deemed to qualify for relief.

We interpret the potential for such waivers to occur on the margin of the take-up rate that we have built into our overall estimates. Changes to the assumptions about the total number of borrowers who could be approved because of the potential for non-application waivers would not be due to differences in the applicable eligibility standard, but rather assumptions about the precision with which various data sources could identify borrowers who were experiencing hardship that could qualify under the standard for relief in proposed § 30.91(d). Our base case assumption includes a 75 percent take-up rate, and we believe this already generously incorporates a high implied take-up rate for a small share of borrowers who might receive waivers under proposed § 30.91(d) without an application. However, we consider the possibility that there could be a higher take-up rate, for example, 80 percent. We also consider that a greater number of borrowers could potentially be approved. Assuming that 5 percent more borrowers could be approved, and a take-up rate of 80 percent, our primary estimates of who would receive relief under proposed § 30.91(d) would increase from 1 million borrowers in the current portfolio to about 1.1 million. We do not formally run a new budget scenario below with these different assumptions, as we believe those estimates would be below the high scenario already discussed above.

The Department also considered how to estimate how many applications it would receive, and the rate at which an application for waiver would be likely to be approved at the Secretary's discretion. As with the discussion above, there is no perfect comparison on which to rely. However, considering that some borrowers who are ineligible will apply, and that for other borrowers, other options for payment relief would sufficiently address the borrower's hardship, we assume that for every borrower who is approved at the Secretary's discretion, there would be one that is rejected, *i.e.,* we assume an approval rate of 50 percent.

For estimating the potential application rates, the Department considered situations that might be closely analogous to the application-based approach contemplated by proposed § 30.91(d), whereby the Secretary would conduct a holistic assessment of the borrower's factors indicating hardship to determine if the borrower met the standard for waiver described in proposed § 30.91(d). We identified few comparative situations. Applications similar to the ones for IDR, Public Service Loan Forgiveness, or the prior pandemic-related student debt relief plan under the HEROES Act were not closely relevant for this estimation, because they generally only involve completing straightforward background questions and checking certain boxes, and there is no meaningful open response required from the borrower. By contrast, the Department expects that the application for relief under proposed § 30.91(d) would solicit a range of qualitative and quantitative information from the borrower to inform the Department's determination of whether the borrower satisfies the hardship standard.

We also considered using the rate of approvals when borrowers submit applications to use a different payment amount when seeking to rehabilitate their loans, but that information is not readily tracked by the Department's contractor. Even if an approval rate were available, that form may still not be an appropriate comparison, since it only affects borrowers in default and those borrowers have particular characteristics in terms of postsecondary completion, type of institution, and debt balance that might be different than the broader population of borrowers. Another approval rate we considered was borrower defense to repayment. Borrower defense also is not a perfect comparison because it tends to have disproportionate numbers of applications from borrowers who attended private for-profit colleges than might be expected to occur here, and there are significant differences between the factors that justify borrower defense to repayment and the waivers proposed here.

Unless specified otherwise in the above discussion, estimates of borrowers who would be eligible for relief under proposed § 30.91(d) do not account for potential overlap with relief that may be provided by any other proposed regulations that are not yet final as of the publication of the NPRM, or of waivers through other provisions that were not yet implemented as of April 30, 2024.

We invite feedback from the public about how to refine these estimates.

Administrative Costs

The proposed regulations could result in significant administrative costs for the Department. These costs would be relatively small for immediate relief granted under proposed § 30.91(c). For that type of relief, the Department would expend one-time resources on developing the predictive assessment contemplated in proposed § 30.91(c) that would predict the likelihood that a borrower will be in default within two years after the publication of these proposed regulations. But the Department would not need to expend significant further resources to apply the predictive assessment to a borrower's information and would not need to expend any resources developing an application, disseminating the application, and reviewing and processing the application.

For relief granted under the application-based pathway described in proposed § 30.91(d), however, the Department would incur significant costs to create, disseminate, and process applications to complete a holistic assessment of the information submitted by the borrower related to hardship. The Department would need to either repurpose or hire additional staff for this purpose. This would create expenses for systems to accept and track the status of applications as well as call-

American life course. Demography, 46, 717–737. and from Hoynes, H.W., Page, M.E., & Stevens, A.H. (2006). Poverty in America: Trends and Explanations. The Journal of Economic Perspectives, 20(1), 47–68. *http://www.jstor.org/stable/30033633.*

center staffing costs to address inquiries related to the application process. The degree of these costs would vary based upon the number of applications the Department has the capacity to process in a year. Increasing the Department's capacity to holistically assess applications would require hiring more staff, either directly or through subcontractors. Greater initial costs for staff could result in lower long-term costs, however, as we anticipate that most borrowers who are initially interested in the application-based process would do so soon after such process is available. We anticipate that future applications would come from newer borrowers or those with a significant change in their circumstances such that they have now decided to seek a hardship waiver.

The Department has developed estimates of the administrative costs for the application-based pathway specified in proposed § 30.91(d) by considering existing analogous administrative processes, particularly the costs related to reviewing applications for borrower defense to repayment. Those processes share some similarities, particularly that borrowers submit applications that may reveal information and evidence that is not otherwise available to the Department and must be reviewed. There are also some key differences. First, borrower defense requires conducting fact-finding related to an institution. That can be a significant upfront investment of time, but any findings from that work can then be applied to multiple applications. Second, the review of borrower defense applications is generally carried out by attorneys. This reflects the legal standards used for borrower defense approvals, which often include making determinations about the nature of misrepresentations and meeting certain evidentiary bars that are grounded in concepts similar to those used by States in their unfair and deceptive acts and practices (UDAP) laws.

The proposed application-based approach for hardship waivers under proposed § 30.91(d) would be different. First, we do not anticipate that the fact-finding related to institutional conduct would apply to the Department's review of applications under proposed § 30.91(d). Second, we do not anticipate that the individuals reviewing hardship applications would need to be attorneys. That means the typical staffing cost could be lower than it is for borrower defense.

Based upon these considerations, the Department modeled the possible administrative costs of the application-based pathway described in proposed § 30.91(d) in the following manner. First, we assumed that the cost per hour to review was $50. This is based on the current hourly rate used by subcontractors for the Office of Federal Student Aid in the Department of Education, which is roughly half the hourly rate were Department staff hired for the same process. We then assumed that it would take each reviewer on average 30 minutes to review an application and render a recommended decision to the Secretary. The 30-minute estimate is similar to how long Department contractors typically take to review a form where borrowers submit detailed income and expense information when seeking to rehabilitate a defaulted loan (information collection 1845–0120). We expect that some applications would be faster while others that include significant additional information might take longer. The overall administrative cost would then depend on how many applications the Department anticipates receiving annually as well as how many we anticipate being able to review in a year. The number would also be higher or lower depending on the number of applications processed each year, the total number of anticipated applications, and the average time to review the application. If we expect a total of 4 million applications, at the current hourly rate and expected review time, the personnel costs for application review is estimated at about $100 million. We will continue to refine these estimates based upon comments received from the public.

In addition to staffing costs, the Department also anticipates incurring some administrative costs for updating and maintaining data systems to process the intake of applications from borrowers seeking hardship waivers, staffing call centers for questions, and costs to train system users. We estimate this amount to be approximately $9 million in the first year, and an additional $1.7 million each year thereafter.

4. Net Budget Impact

Table 4.1 provides an estimate of the net Federal budget impact of these proposed regulations that are summarized in Table 2.1 of this RIA. This includes both costs of a modification to existing loan cohorts and costs for loan cohorts from 2025 to 2034. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Federal Credit Reform Act of 1990 (FCRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The baseline for estimating the cost of these final regulations is the President's Budget for 2025 (PB2025) as modified for changes to debt management policies. The baseline[101] does not include any changes related to the student debt relief provisions described in the NPRM published April 17, 2024.[102] Should such debt relief provisions be finalized as proposed in the April NPRM and should the Department provide waivers under such provisions, the Department expects that the estimated costs of these regulations would decrease.

[101] The Department notes that the baseline also includes the existence of the final regulations published in July 2023 that made various changes to the Department's pre-existing income contingent repayment plan (known as the Revised Pay As You Earn, or REPAYE, plan) and to the Department's other income contingent repayment plans. Those regulations also changed the name of the REPAYE plan to the Saving on a Valuable Education (SAVE) plan. *See* 88 FR 43820. Several states have challenged the SAVE regulations as part of ongoing litigation. *See generally Missouri* v. *Biden,* No. 24–2332 (8th Cir.); *Alaska* v. *Department of Education,* Nos. 24–3089, 24–3094 (10th Cir.). Because the SAVE regulations have not been permanently enjoined, it is appropriate to include them in the baseline. The Department recognizes that if the SAVE regulations are permanently enjoined, this could increase the estimated costs for these regulations because there may be more borrowers who are eligible for relief. For example, in the absence of provisions under SAVE or other ICR plans, the Department expects there would be more borrowers eligible for relief under proposed § 30.91(d) since more borrowers would be likely to be in default or experience similarly severe negative and persistent circumstances, and existing payment relief options would not sufficiently address their persistent hardship. The Department notes that even if the estimated costs increased in such a manner, the Department believes the benefits of these proposed regulations would still outweigh the costs since the proposed regulations would authorize providing waivers to borrowers who are unlikely to fully repay their loans and, relatedly, the waivers would discharge debt that the Department is unlikely to fully collect in a reasonable period of time.

[102] 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra,* a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri* v. *Biden,* No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

TABLE 4.1—ESTIMATED NET BUDGET IMPACT OF THE NPRM FOR DIRECT LOANS AND ED-HELD LOANS

[$ in millions]

Section	Description	Modification score (1994–2024)	Outyear score (2025–2034)	Total (1994–2034)
§ 30.91(c)	Immediate relief for borrowers likely to be in default	70,200		70,200
§ 30.91(d)	Application-based relief for borrowers experiencing hardship.	29,600	12,100	41,700

It is possible that a borrower who is eligible for immediate relief under proposed § 30.91(c) may also be inclined to apply for relief under proposed § 30.91(d). For budgeting purposes, however, we assume that all relief would be full relief, and that if a borrower qualifies for and receives a waiver under proposed § 30.91(c) then they would not also receive a waiver under proposed § 30.91(d). Accordingly, the primary budget estimate stacks the scores in the order shown on the assumption that immediate relief under proposed § 30.91(c) would be provided to eligible borrowers prior to any additional relief under proposed § 30.91(d) to different borrowers. The Department believes this stacked estimation is appropriate for the primary estimates of the proposed regulations.

Methodology for Budget Impact

The Department estimated the budget impact of the proposed provisions in this NPRM through changes to the Department's Death, Disability, and Bankruptcy (DDB) assumption that handles a broad range of loan discharges or adjustments, the collections assumption to reflect balance changes on loans that ever defaulted, and the IDR assumption for effects on borrowers in those repayment plans. The DDB assumption is used in the Student Loan Model (SLM) to determine the rate and timing of loan discharges due to the death, disability, bankruptcy, or other discharge of the borrowers (this model is not the same as the predictive assessment that is described for determining whether a borrower may be eligible for a waiver under proposed § 30.91(c)). The SLM is designed to calculate cash flow estimates for the Department's Federal postsecondary student loan programs in compliance with the FCRA and all relevant Federal guidance. The SLM calculates student loan net cost estimates for loan cohorts where a cohort consists of the loans originated in a given budget (fiscal) year. The model operates with input data obtained from historical experience and other relevant data sources. The SLM cash flow components range from origination fees through scheduled principal and interest payments, defaults, collections, recoveries, and fees. The cash flow time period begins with the fiscal year of first disbursement and ends with the fiscal year of the events at the end of the life of the loan: repayment, discharge, or forgiveness.

For each loan cohort, the SLM contains separate DDB rates by loan program, population (Non-Consolidated, Consolidated Not From Default, and Consolidated From Default), loan type, and budget risk group (Two-Year Proprietary, Two-Year Public and Not-for-Profit, Four-Year Freshman and Sophomore of all institution types, Four-Year Junior and Senior of all institution types, and Graduate Student of all institution types). The DDB rate is the sum of several component rates that reflect underlying claims data and assumptions about the effect of policy changes and updated data on future claims activity. In general, DDB claims are aggregated as the numerator by fiscal year of origination and population, program, loan type, risk group, and years from origination until the DDB claims. Zeros are used for any missing categories in the numerator. Net loan amounts are aggregated as the denominator by fiscal year of origination and population, program loan type, and risk group. The DDB rate is simply the ratio of the numerator to the denominator. Because the SLM only allows for DDB rates to be specified up to 30 years from origination, DDB claims occurring more than 30 years after origination are included in the year 30 rate. DDB rates for future cohorts are forecasted using weighted averages of prior year rates and have a number of additions and adjustment factors built into them to capture policies or anticipated discharges that are not reflected in the processed discharge data yet, including adjustments for anticipated increased borrower defense and closed school activity.

For estimates related to waivers granted to borrowers enrolled in IDR repayment plans, the Department has a borrower and loan type level submodel that generates representative cashflows for use in the SLM. This IDR submodel contains information about borrowers' time in repayment, the use of deferments and forbearances, estimated incomes and filing statuses, and annual balances. Therefore, we are able to identify or assign the borrowers in the IDR submodel who would be eligible for one of the waivers in proposed § 30.91 and incorporate that effect by ending the payment cycle for borrowers who would be eligible to receive a waiver under proposed § 30.91(c) or (d).

The estimated cost of waivers under proposed § 30.91(c) or (d) varies depending on whether the borrower is in IDR, as well as whether the waiver is a full or partial discharge of the loan. Partial waiver of balances for borrowers already modeled to be on an IDR plan could have three different effects depending upon whether the borrower was expected to get IDR forgiveness prior to these waivers, and whether the waiver changes that anticipated outcome. These potential effects would be:

1. Before and after the waiver is applied, borrowers are expected to receive some IDR forgiveness at the end of their repayment term. For these borrowers, the waivers would affect the amount ultimately forgiven, but because payments are based upon income and the amount of time borrowers would be expected to repay is unchanged, there would be no effect on the amount of anticipated future payments.

2. The borrower was expected to receive IDR forgiveness before the waiver's application, but afterward is now expected to pay off their balance before receiving IDR forgiveness. Because these borrowers would now be expected to repay in less time, there would be some reduction in the amount of anticipated future payments.

3. Before applying the waiver, the borrower was expected to retire their loan balance prior to receiving IDR forgiveness, but as a result of the policy would now be expected to retire their balance sooner. Because these borrowers would now be expected to repay in less time, there would be some reduction in the amount of anticipated future payments.

Generally, we project that most partial waivers for borrowers modeled to be on IDR would end up in the first group. Since these borrowers would not see a change in the amount they pay before receiving forgiveness, we do not assign a cost to the waivers for these borrowers. Any costs for waivers granted to borrowers who are modeled to be on IDR come from either full waivers or the minority of borrowers in the second and third groups, for whom the waivers would reduce the number of payments needed to fully repay their loan.

For estimates related to the effects of the proposed waiver provisions on borrowers with loans not in IDR plans, the Department's approach would be to: (1) estimate the potential waiver amounts borrowers would be eligible for and aggregate them by loan cohort, loan type, and budget risk group used in the SLM; (2) add the waiver amounts for non-defaulted, non-IDR borrowers to the Department's baseline DDB assumption in FY 2025; and (3) remove the amounts associated with the waiver provisions from defaulted, non-IDR borrowers from the baseline collections assumption. The revised IDR, DDB and collections groups are run in a SLM scenario for each provision to generate the estimates in Table 4.1. To produce the potential waiver amounts in Step 1 of this process, the Department developed a loan-level file based on the FY2023 sample of NSLDS information used for preparing budget estimates, with balance information supplemented by redrawing key loan information as of June 13, 2024, to account for the discharges and waivers that occurred in FY2024 and reduced borrower's balances to zero. Information from this file would allow the evaluation of times in repayment that would qualify for one of the provisions and anticipated future balances for use in calculating the amount that the Secretary might waive for borrowers who have experienced changes in balance.

These estimates are all based on the same random sample of borrowers that the Department uses for all other budget estimation activity related to Federal student loans. Currently, the most recent sample available is from the end of FY2023, which is the best currently available data that maintains the Department's consistent scoring practices.

The Department followed two different approaches for modeling the estimated cost of the provisions in proposed § 30.91(c) and (d). For proposed § 30.91(c), the Department considered the output of the model developed to project the likelihood that a borrower would be in default within two years. We used that model to estimate the number of borrowers by risk group as well as repayment status (*e.g.,* in default or in repayment) and estimated the cost of forgiving those loans. For the outyear cohorts, we randomly assigned borrowers to default based on default rates by cohort, risk group and loan type assumed in the President's Budget for FY2025 baseline. This approach reflects that under proposed § 30.91(c), the Secretary may identify borrowers eligible for relief based on a predictive assessment, without requiring any action by those borrowers.

The Department took a different approach for proposed § 30.91(d). That proposed provision describes an application-based pathway for relief whereby the Secretary may conduct a holistic assessment of the borrower's factors indicating hardship based on information obtained through an application process in addition to potentially supplementing that data with information already in the Department's possession. To model this approach, the Department generated assumptions of the number of borrowers who would be eligible for a waiver. Of this number of assumed eligible applicants, we then calculated the distribution of borrowers across risk group (*e.g.,* 2-year proprietary, graduate borrowers, and 4-year nonprofit or public institutions), and by cohort year. We describe this process in greater detail below.

First, as described earlier, the Department considered multiple potentially comparable situations it has dealt with in the past to estimate the number of applications from borrowers seeking proposed waivers related to hardship. We examined the volume associated with borrowers on IDR plans, those who applied for student debt relief under the HEROES Act, and those who applied for economic deferment or hardship from a period prior to the payment pause. With no perfect analog but based on the best available data, we use a base estimate that about 1 million borrowers in the current portfolio would be approved for relief. The estimate of borrowers who would be affected in future cohorts over the next ten years is 1 million.

To reduce the possibility in the net budget impact estimate that borrowers who might be otherwise captured under proposed § 30.91(c) and could potentially be double counted in both proposed § 30.91(c) and proposed § 30.91(d), we estimated the cost of the waivers proposed in proposed § 30.91(d) after accounting for the cost of proposed § 30.91(c) and only allowed borrowers to receive a waiver under one of the proposed provisions. The Department seeks feedback about the assumed number of borrowers who would be approved for a waiver under proposed § 30.91(d), and we will continue to refine this estimate.

Next, to estimate the distribution of approved applicants across risk group and cohort year, the Department consulted the closest past situations that might operate similarly to the proposed waivers. This included looking at the distribution of borrowers across risk group and cohort year who submitted applications for relief under the HEROES Act Plan that was announced in August 2022, borrowers who ever defaulted on loans based on Department data, and borrowers who had a qualifying economic hardship forbearance or deferment. While not exact corollaries, these data nonetheless provide useful information on which types of borrowers might choose to apply. We believe these are better comparisons for thinking about the distribution of approved borrowers than other types of existing information. For instance, we do not think closed school loan discharges would be a good comparison, because those borrowers only come from colleges that closed, which would largely exclude public institutions. We also chose not to use borrowers who documented income and expense information when seeking a loan rehabilitation, because these borrowers are disproportionately likely to have not finished their postsecondary programs, whereas the hardship applications could come from borrowers who graduated but who are struggling on their loans in ways beyond just being in default.

Specifically, to estimate the distribution of approved applicants across cohort years, the Department equally weighted the distributions observed under submitted applications for relief under the HEROES Act Plan that was announced in August 2022 and borrowers who ever defaulted on loans based on Department data. To calculate the distribution of borrowers across risk groups, the Department equally weighted the distributions observed under submitted applications for relief under the HEROES Act Plan that was announced in August 2022 and borrowers who had a qualifying hardship forbearance or deferment. If a cell reached 100 percent of sampling in current Department data, the excess approved applicants were distributed within the respective cohort range row by weight. The resulting estimated

distribution of approved applicants is shown in Table 4.2.

TABLE 4.2—ESTIMATED PERCENTAGE DISTRIBUTION OF APPROVED APPLICANTS BY COHORT AND RISK GROUP

	Non-consolidated	Consolidated non-default	Consolidated default	Total				
				2-Yr Proprietary	2-Yr Public	4-Yr PubPri FrSo	4-Yr PubPri JrSr	Grad
1994–2004	0.6	0.2	1.3	1.3	1.4	3.5	0.9	9.1
2005–2009	0.7	0.7	2.1	3.2	1.6	2.5	0.6	11.5
2010–2014	2.3	2.4	6.9	10.5	5.1	8.3	2.1	37.4
2015–2019	1.8	1.8	5.2	7.9	3.8	6.3	0.9	27.6
2020–2024	0.9	0.9	2.8	4.2	2.0	3.3	0.1	14.3
Total	6.3	6.0	18.2	27.1	13.8	23.9	4.6	100.0

Next, we randomly identified non-defaulted, non-IDR borrowers within each risk group and cohort year cell, based on the percentages shown in Table 4.2, to be in the approved applicant pool. We then waived the assumed future balances in the sample to generate the estimated increase in DDB claims or reduction in collections associated with the hardship application provisions. To provide a maximally conservative budget estimate, we assumed all of these approvals would result in full relief. Lesser amounts of relief would reduce the estimated cost.

Table 4.3 shows the outstanding loan balances by risk group for approved borrowers from existing cohorts that entered repayment by 2024.

TABLE 4.3—OUTSTANDING LOAN BALANCES BY RISK GROUP

[$ Millions]

Risk group	Outstanding loan balances
2-Yr Proprietary	835
2-Yr Public	1,103
4-Yr PubPri FrSo	6,099
4-Yr PubPri JrSr	5,680
Grad	5,034
Consol	7,523
Total	26,275

The sampling process described above generated the estimated forgiveness for borrowers from existing cohorts for loans that entered repayment by 2024. For future cohorts and loans that enter repayment in 2025 and later from existing cohorts, we calculated the percent of net volume that was associated with borrowers that entered repayment by 2024 assigned to receive forgiveness by origination cohort, consolidation status, budget risk group, and time to receiving hardship forgiveness from entering repayment (offset). We then took the average forgiveness percentage of volume across origination cohorts by risk group, consolidation status, and offset to estimate the percent of volume that will enter repayment from 2025 and out that we estimate will receive hardship forgiveness. As we expect it will take borrowers some years in repayment to demonstrate persistent hardship, we have distributed forgiveness in the outyears evenly from years 5 to 15 in repayment. This estimated forgiveness is then summarized by origination cohort, consolidation status, budget risk group, loan type, and offset and added to the baseline estimate for the discharge assumption to generate the cost of § 30.91(d).

The Department also considered how to estimate how many applications it would receive, and the rate at which an application for waiver would be likely to be approved.

As described previously, we assume that for every two borrowers who are eligible, there is one that is rejected because their needs are met via other Department payment relief options, such as IDR plans. We also assume that there would be borrowers who apply but do not meet the standard. On net, we assume that for every eligible applicant, there is also one ineligible applicant, for an effective approval rate of 50 percent. The Department seeks feedback about these assumed approval rates, and we will continue to refine this estimate.

5. Accounting Statement

As discussed in OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. Table 5.1 provides our best estimate of the changes in annual monetized transfers that may result from these proposed regulations.

Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

TABLE 5.1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Reduction in loans that are unlikely to be repaid in full in a reasonable period	
Increased ability for borrowers to repay loans on which they have or are experiencing hardship	
Reduced administrative burden for Department due to reduced servicing, default, and collection costs	
Category:	
Paperwork Reduction Act burden on borrowers to complete applications	$11.14
Administrative costs to Federal government to update systems and contracts to implement the proposed regulations	$2.5
Administrative costs of staff reviews	$12.1
Reduced transfers from borrowers due to waivers:	2%
Based on high likelihood of being in default	$7,657
Based on applications	$4,432

6. Alternatives Considered

The Department considered the option of not proposing these regulations, as the Secretary has existing waiver authority under sections 432(a)(6) and 468(2) of the HEA. However, we believe these regulations are important to inform the public about how the Secretary would exercise this longstanding discretionary waiver authority in a consistent and transparent manner. The Department believes that foregoing these proposed regulations would reduce transparency about the Secretary's discretionary use of waiver. For all the reasons detailed above, hardship waivers would produce substantial, critical benefits for borrowers and the Department. Overall, as discussed above in the context of the relevant Executive Orders, the Department's analysis suggests that the benefits of the proposed regulations will outweigh their costs.

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, legal assistance organizations, consumer advocacy organizations, student loan borrowers, civil rights organizations, State officials, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.*

Because the negotiators reached consensus on the proposed regulations in this NPRM, the Department did not consider alternative regulations in the drafting of this NPRM. We did, however, consider some alternatives during the negotiated rulemaking process.

The Department considered including the issue of borrowers affected by servicer errors as a potential sign of hardship. However, we decided not to explicitly include that as a factor under proposed § 30.91(b) because the Department has existing procedures to address administrative errors without needing these specific regulations for them.

The Department also considered using an exclusive list of factors indicating hardship in proposed § 30.91(b) but concluded that a non-exhaustive list would provide necessary flexibility to consider unanticipated factors indicating hardship and to incorporate new types of data as they become available.

As noted above, the Committee reached consensus on the regulatory language proposed in this NPRM.

7. Regulatory Flexibility Act

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final regulatory action would not have a significant economic impact on a substantial number of "small entities."

These regulations will not have a significant impact on a substantial number of small entities because they are focused on arrangements between the borrower and the Department. They do not affect institutions of higher education in any way, and those entities are typically the focus on the Regulatory Flexibility Act analysis. As noted in the Paperwork Reduction Act section, burden related to the final regulations will be assessed in a separate information collection process and that burden is expected to involve individuals.

8. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps make certain that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed § 30.91 in this NPRM contains information collection requirements. Under the PRA, the Department would, at the required time, submit a copy of these sections and an Information Collections Request to the Office of Management and Budget (OMB) for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 30.91—Waiver due to likely impairment of borrower ability to repay or undue costs of collection.

Requirements: The NPRM proposes to add a new § 30.91 to 34 CFR part 30 in which the Secretary would consider granting a waiver for borrowers experiencing hardship. To implement proposed § 30.91(d), the Department would use an "additional relief" process using a holistic assessment approach, where the Department would consider information provided by a borrower through an application, based on a non-exclusive list of factors in proposed § 30.91(b), indicating that they are experiencing hardship. Information would include items such as a borrower's household income and assets, payments on debt relative to household income, and exceptional amounts of costs for caretaking.

While some of the information in proposed § 30.91(b) could be obtained from the Department's administrative data, other information must be obtained from the borrowers themselves through an application. The information collected on the application would be used to assess eligibility for a hardship determination. The Department expects that the application for relief under proposed § 30.91(d) would solicit a range of qualitative and quantitative information from the borrower to inform the Department's determination of whether the borrower satisfies the hardship standard.

Burden Calculations:

§ 30.91 *Waiver due to likely impairment of borrower ability to repay or undue costs of collection.*

The proposed regulatory changes would add burden to borrowers and would require a new information collection. As discussed in the net budget impact section, we estimate that between 2.67 million and 8 million borrowers would submit hardship applications. The costs are estimated using the median hourly wage of $23.11 reported by the Bureau of Labor Statistics for all occupations.[103] We estimated the number of hours needed to complete the proposed application based upon discussions with Department staff that have worked on similar processes in the past. Through those conversations, we estimate that it

[103] *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

would take a typical borrower 1 hour to complete the application form to indicate they want to pursue the application-based process. The Department's two closest analogous types of application forms are the one that borrowers submit when filing a borrower defense to repayment application and the one that borrowers fill out to document their income and expenses when seeking to rehabilitate a defaulted loan. For borrower defense forms, the Department estimates that it takes a borrower 30 minutes (0.5 hours) to complete, while the rehabilitation form takes an estimated 60 minutes (1 hour) per borrower. We anticipate that the application form for the proposed hardship waiver would likely take as long as the rehabilitation form to fill out. We came to this conclusion because borrowers who want to provide information about indicators of hardship from their finances or assets may need to provide supplemental financial information. Applicants may have to put together documentation related to high essential expenses, such as health care or dependent care costs. They may also need to provide information about how they are experiencing hardship as a result of the items identified and why it is likely to persist.

Because we do not want to double count borrowers who may qualify for and receive relief under proposed § 30.91(c), the estimate for proposed § 30.91(d) illustrated below does not include borrowers who would be expected to receive full relief under proposed § 30.91(c).

These figures and considerations are the basis for the following estimations.

§ 30.91 Hardship Application—OMB Control Number 1845–NEW

Affected entity	Applications	Burden hours	Cost $22.31 per hour
Individual low scenario	2,667,000	2,667,000	59,500,770
Individual medium scenario	4,000,000	4,000,000	89,240,000
Individual high scenario	8,000,000	8,000,000	178,480,000
Average Total	4,889,000	4,889,000	109,073,590

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department would submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for borrowers using wage data was developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, $23.11 per hour according to BLS.[104]

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost $23.11 per hour
§ 30.91	Would allow the Secretary to receive applications that provide information for the Secretary to conduct hardship determinations..	1845–NEW 4,889,000 average hours.	$109,073,590
Total		1845–NEW 4,889,000	109,073,590

If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the Information Collection Request, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this notification. This proposed collection is identified as proposed collection 1845–NEW.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use.
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions.
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, definitions, and selection criteria. Therefore, to make certain that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by December 2, 2024.

9. Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

[104] *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

This document provides early notification of our specific plans and actions for this program.

10. Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

11. Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations do not have Federalism implications.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Miguel Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to revise part 30 of title 34 of the Code of Federal Regulations as follows:

List of Subjects in 34 CFR Part 30

Claims, Income taxes.

For the reasons discussed in the preamble, the Department of Education proposes to amend 34 CFR part 30 to read as follows:

PART 30—DEBT COLLECTION

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

■ 2. Add subpart G, consisting of § 30.91 to read as follows:

Subpart G—Waiver of Federal Student Loan Debts

§ 30.91 Waiver due to likely impairment of borrower ability to repay or undue costs of collection.

(a) *Standard for waiver due to hardship.* The Secretary may waive up to the outstanding balance of a loan owed to the Department arising under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D, of the HEA, the Federal Perkins Loan Program authorized under title IV, part E, of the HEA, and the Health Education Assistance Loan Program authorized by sections 701–720 of the Public Health Service Act, 42 U.S.C. 292–292o, when the Secretary determines that a borrower has experienced or is experiencing hardship related to such a loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

(b) *Factors that substantiate hardship.* In determining whether a borrower meets the conditions described in paragraph (a) of this section, the Secretary may consider any indicators of hardship related to the borrower, including but not limited to—

(1) Household income;

(2) Assets;

(3) Type of loans and total debt balance owed for loans described in paragraph (a) of this section, including those not owed to the Department;

(4) Current repayment status and other repayment history information;

(5) Student loan total debt balances and required payments, relative to household income;

(6) Total debt balances and required payments, relative to household income;

(7) Receipt of a Pell Grant and other information from the FAFSA form;

(8) Type and level of institution attended;

(9) Typical student outcomes associated with a program or programs attended;

(10) Whether the borrower has completed any postsecondary certificate or degree program for which they received title IV, HEA financial assistance;

(11) Age;

(12) Disability;

(13) Age of the borrower's loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan;

(14) Receipt of means-tested public benefits;

(15) High-cost burdens for essential expenses, such as healthcare, caretaking, and housing;

(16) The extent to which hardship is likely to persist; and

(17) Any other indicators of hardship identified by the Secretary.

(c) *Immediate relief for borrowers likely to default.* The Secretary may consider any indicators of hardship related to the borrower, including but not limited to the factors described in paragraph (b) of this section to waive all or part of the federally held student loans of borrowers who the Secretary determines based on data in the Secretary's possession have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the next two years after October 31, 2024.

(d) *Process for additional relief.* In exercising the authority described in paragraph (a) of this section, the Secretary may rely on data in the Secretary's possession that may have been acquired through an application or any other means to provide relief, including automated relief, based on criteria demonstrating the conditions described in paragraph (a) of this section.

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