

Issue Paper 9
Session 1: January 12-14, 2016

Issue: Provide Technical Changes to the REPAYE Plan regulations to (1) specify that a borrower's monthly payment amount is not adjusted to take into account the student loan debt of the borrower's spouse if only the borrower's income is used to calculate the payment amount, and (2) remove an incorrect reference to loss of partial financial hardship status.

Statutory cite: §455(e) of the Higher Education Act of 1965, as amended

Regulatory cite: 34 CFR 685.209(c)(2)(ii)(B) and (c)(2)(v)

Summary of issue:

Under the REPAYE, PAYE, and IBR plans, the regulations provide for an adjustment of the monthly payment amount for a married borrower if the borrower's spouse also has eligible loans. Specifically, the calculated monthly payment is multiplied by each borrower's percentage of the couple's total eligible loan debt. This adjustment results in a reduction of the borrower's required monthly payment amount if the spouse also has eligible loans. Under the PAYE and IBR plans, this adjustment is made only when the borrower's monthly payment amount was calculated based on the combined income of the borrower and spouse. In contrast, the current REPAYE Plan regulations provide for the spousal loan debt adjustment even when the borrower's monthly payment amount was calculated based solely on the borrower's individual income. This inconsistency with the PAYE and IBR regulations is the result of a technical error in the drafting of the REPAYE Plan regulations. For all three plans, the intent of the spousal loan debt adjustment is to ensure that in cases where both the borrower and spouse have eligible loans *and* the joint income of both individuals was used to calculate the borrower's monthly payment amount, the borrower is required to make a payment that is proportionate to his or her percentage of the couple's combined loan debt.

To accurately reflect the intent of the regulations, current 34 CFR 685.209(c)(2)(ii)(B) should be revised to clarify that the adjustment of a married borrower's REPAYE Plan payment amount based on spousal loan debt is not made if the borrower and spouse filed separate federal income tax returns, and the borrower is separated from his or her spouse, or cannot reasonably access the spouse's income information (i.e., there would be no adjustment based on spousal loan debt if the spouse's income was not considered in the calculation of the borrower's monthly payment amount).

In addition to the change discussed above, the current REPAYE Plan regulations contain an incorrect reference to partial financial hardship in §685.209(c)(2)(v). This should be removed, since partial financial hardship is not relevant for purposes of the REPAYE Plan.