On Thursday, July 9, 2015, the U.S. Department of Education released a Notice of Proposed Rulemaking for a new income-driven repayment plan, Revised Pay As You Earn (REPAYE). The proposed rules also expand the circumstances under which an institution may challenge or appeal a draft or official cohort default rate calculation based on the institution’s participation rate index (PRI), make it easier for FFEL loan holders to identify borrowers’ active duty military status, clarify guaranty agencies’ responsibilities related to loan rehabilitation and active duty servicemembers’ interest rates, and extend the definition of “qualifying payments” for the PSLF program to include Department of Defense lump payments.

The Revised Pay As You Earn (REPAYE) plan builds off the current Pay As You Earn (PAYE) plan but extends the plan to all student borrowers. Payments under REPAYE would be based off the adjusted gross income of the borrower and the borrower’s spouse, including those who are married but file separately. For borrowers in negative amortization, the amount of interest charged to the borrower would be capped at 50 percent of the remaining accrued interest, with borrowers of subsidized loans only being responsible for unpaid interest only after three years. Students with loans only borrowed for undergraduate study may have their debt forgiven after 20 years of qualifying payments. The repayment period extends to 25 years if the student borrows at least one graduate loan.

The rules modify the existing cohort default rate (CDR) appeals process in an attempt to remove pressure from institutions with low borrowing rates and default rates near or above 30 percent. A PRI is calculated by dividing the total number of borrowers in a 12-month period by the total number of enrolled or accepted credential-seeking students, and multiplying the result by the school’s cohort default rate. Only students who were enrolled on at least a half-time may be included in the calculation. Under a participation rate index appeal, an institution claims that it should not lose eligibility because an insubstantial number of students participate in the federal loan program. The current regulations only allow an appeal if the institution is subject to a loss of eligibility and if:

- The CDR is 30 percent or greater and the PRI is .0625 or less, or
- The CDR is 40 percent or greater and the PRI is .0832 or less.

An institution may also submit a PRI appeal if it is subject to provisional certification based on two out of three most recent CDRs are 30 percent or greater and the PRI is .0625 or less.

The new regulations allow an institution to submit a PRI challenge at any time, provided the institution’s CDR is between 30 and 40 percent for any of the three most recently calculated fiscal years, including draft rates. The .0832 threshold is maintained for rates of 40 percent or greater. Additionally, institutions will not be placed on provisional certification if their CDR meets or exceeds 30 percent in two of the three preceding years and the PRI is .0625 or less, so long as an appeal is submitted in a timely manner and the institution has previously not lost eligibility or been placed on provisional certification. The rules state that a successful PRI challenge on a CDR draft may prevent the institution from being placed on provisional status or
losing eligibility in subsequent years as long as the official CDR is less than or equal to the draft rate.

The rules also outline procedures for guaranty agencies in relation to rehabilitated defaulters, active duty military members, and veterans. The regulations require guaranty agencies of Federal Family Educational Loan Program (FFELP) borrowers to provide additional information on repayment plan options and enrollment procedures to the borrower before the loan rehabilitation is complete. The regulations also modify the cap on collection costs that may be added to a rehabilitated loan.

In addition, guaranty agencies may now access the DoD database to identify borrowers who are active duty servicemembers who are eligible for the Servicemembers Civil Relief Act (SCRA) interest rate limits. Finally, the regulations also allow lump sum payments made under programs administered by the Department of Defense (DoD) to count as qualifying payments under the Public Service Loan Forgiveness (PSLF) program.

Comments on the NPRM must be submitted by August 10, 2015.