To: U.S. Department of Education; Negotiated Rulemaking Committee
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Re: Married Borrowers

The Department has proposed to require married student loan borrowers to provide both spouses' income for REPAYE calculations, regardless of their tax filing status. Currently a borrower who files separately can exclude a spouse's income from all other income-driven repayment plan calculations. We oppose this proposal.

Removing the option for married borrowers to file their taxes separately and count only the borrower's AGI will substantially harm some of the most vulnerable borrowers and is antithetical to the President's goal of targeting struggling borrowers.

As described in detail below, there are many legitimate reasons why low-income taxpayers choose to file their taxes separately, often at great financial cost. Requiring these borrowers to provide their spouse's income to calculate their income-driven repayment amount will have disastrous effects, from the administrative nightmare of trying to determine an uncooperative spouse's income to potentially compromising the safety of survivors of domestic abuse.

Moreover, this "fix" is unnecessary. According to statements made by Department negotiators, roughly 4% of taxpayers file as married filing separately.[1] Yet, only 2% of borrowers in an income driven repayment plan file separately. This suggests that not only are people not choosing this filing status in greater numbers to avoid student loan payments, but in fact a disproportionately low number of people are choosing this option. As will be explained further, for most borrowers, filing separately and excluding a spouse's income from the student loan payment does not result in a financial gain. Although there may be a small number of borrowers for whom this option does provide a benefit, they represent a tiny fraction of student loan borrowers and should not dictate good student loan policy.

Therefore, we recommend that the Department use PAYE's existing regulatory language to calculate the repayment amount for married borrowers who file separately. We suggest that the Department promote consistency by excluding from its calculation of family size the spouses of married borrowers who file separately and exclude their spouses' income.

<u>There are Multiple, Legitimate Reasons for Low-Income Married Taxpayers to File Separately.</u>

Physically but Not Legally Separated

Under the tax code, married taxpayers who are not legally separated must file as married even though they are no longer living together.[2] However, depending on the state, obtaining a

[1] Statement by Brian Siegel, U.S. Department of Education, Negotiated Rulemaking, Session 1, Feb. 24, 2015.
[2] IRS, Publication 17 Filing Status (2014) http://www.irs.gov/publications/p17/ch02.html. The exception is taxpayers who qualify as head of household.

separate maintenance decree can be complicated and expensive. Few of our low-income clients have the resources to get legally separated.

Furthermore, for our clients experiencing domestic violence, obtaining a separate maintenance decree may not be possible due to safety concerns. These borrowers do not have access to their spouse's income, yet are married under the law. Calculating these borrowers' income-driven repayments amounts by including the income of a spouse with whom they are no longer living will impose an unnecessary hardship.

Spouse's Income is Unavailable

In order to file a return jointly, both spouses must agree and sign the tax return.[3] A spouse cannot be compelled to complete a joint return or to provide his or her income documentation to the other spouse. Where one spouse refuses to (or otherwise does not) provide income information, the other spouse must file separately.

Some of these taxpayers are in violent or otherwise abusive relationships. Other spouses simply maintain separate finances.

Requiring borrowers who do not access to their spouses' income to report this information will put these borrowers in an impossible situation. Neither the Department nor the borrower has the ability to compel a spouse who is not liable on a loan to disclose her income information.

Spouse's Income is Unreliable

When a taxpayer signs a tax return, she is responsible for any liability on that return, even if it is due to a spouse's mistake or omission.[4] Some married taxpayers choose to file separately because they do not trust the veracity of the spouse's reported income. This situation can arise in situations where one spouse has nontraditional, inconsistent, or cash-based employment. Like the situation described above, these borrowers will be in an impossible situation if required to provide their spouses' income. All Department of Education forms are signed under penalty of perjury. A borrower who has reason to believe that her spouse's stated income is inaccurate cannot legally provide it to calculate his or her payment amount.

<u>Negative Tax Consequences Already Deter Student Loan Debtors From Filing Separately Except When Unavoidable.</u>

The Department has expressed concern that married borrowers will choose to file their taxes separately in order to reduce their student loan payments. An examination of the tax consequences of filing separately shows that this fear is unfounded.

[3] IRS, Publication 17 Filing Status (2014) http://www.irs.gov/publications/p17/ch02.html.
[4] Center for Economic Progress, Tax Relief for Divorced and Separated Taxpayers, http://www.economicprogress.org/sites/economicprogress.org/files/divorced_separated.pdf

According to the IRS, taxpayers generally pay more combined tax on separate returns than they would on a joint return.[5] This is because many tax benefits and credits are not available to married taxpayers who file separately. Consequences of filing separately include:[6]

- The tax rate generally is higher than on a joint return.
- Neither spouse can take the credit for child and dependent care expenses in most cases.
- Neither spouse can take the earned income credit.
- Neither spouse can take the education credits (the American opportunity credit and lifetime learning credit), the deduction for student loan interest, or the tuition and fees deduction.

The following examples show the effect of filing separately for five different income levels. These examples show the total amount paid through student loans and the amount paid in taxes depending on tax filing status. In each example, only one spouse has a student loan. The balance on the student loan is $30,000,[7] and the loan has a 5% interest rate. Where the spouses' incomes differ, the loan belongs to the spouse with the lower income. Each family has two children, one requiring full time childcare. In all scenarios, the standard deduction is taken along with the applicable interest rate deduction (interest rates calculated based upon second year of repayment) and childcare expenses. **In all scenarios, the negative tax consequences of filing separately are greater than any savings on the student loan payments.**

Examples

Scenario 1

In this scenario, both spouses have $10,000 in income. Due to their low income, they qualify for a full childcare voucher and did not make payments on their student loan interest.

	Tax liability[8]	Required student loan payments[9]
Joint	-$7,460 (refund)	$0
Separate	-$1,050 (refund)	$0
Difference	**-$6410** (refund)	**$0**

[5] IRS, Publication 501, Exemptions, Standard Deductions, and Filing Information (2014), http://www.irs.gov/publications/p501/ar02.html.

[6] For a full list of the tax consequences of filing separately see: IRS, Publication 501, Exemptions, Standard Deductions, and Filing Information (2014) *Special Rules, http://www.irs.gov/publications/p501/ar02.html#en_US_2014_publink1000220768.

[7] According to the Brookings Institute, less than 75% of borrowers have more than $29,000 of student loan debt. The average student loan debt of graduation seniors is $29,400. Rounding those number to $30,000, we assume will provide the best picture for most student loan borrowers.
Beth Akers, Brookings Institute, Typical Household Student Loan Debt (July 2014), http://www.brookings.edu/research/papers/2014/06/19-typical-student-loan-debt-akers; TICAS, Quick Facts About Student Debt (March 2014) http://ticas.org/sites/default/files/legacy/files/pub/Debt_Facts_and_Sources.pdf.

[8] Calculated using H & R Block, Tax Return Calculator & Estimator, http://www.hrblock.com/get-answers/tax-calculators.html.

[9] Calculated using U.S. Department of Education, Federal Student Aid, Repayment Estimator, https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action.

This family will lose $6410 by filing separately and gain no student loan benefit.

Scenario 2

In this scenario, both spouses have $20,000 in income. Due to their moderately low income, they qualify for a partial childcare voucher and paid $1000 in childcare expenses. Based upon the size of the loan payment, the loan is negatively amortizing and all of the payments ($360) went towards interest.

	Tax liability	Required student loan payments
Joint	-$2,964 (refund)	$360
Separate	-$781 (refund)	$0
Difference	**-$2,183**	**$360**

This family will lose $1,823 by filing separately.

Scenario 3

In this scenario, one spouse has $30,000 in income while the other spouse has $10,000 in income. Due to their moderately low income, they qualify for a partial childcare voucher and paid $1000 in childcare expenses. Based upon the size of the loan payment, the loan is negatively amortizing and all of the payments ($360) went towards interest.

	Tax liability	Required student loan payments
Joint	-$ 2,964 (refund)	$360
Separate	-$661 (refund)	$0
Difference	**-$2,303**	**$360**

This family will lose $1,943 by filing separately.

Scenario 4

In this scenario, one spouse has $120,000 in income while the other spouse has $30,000 in income. Due to their high income, they do not qualify for a childcare voucher and will claim the maximum possible childcare expense, $6000. Based upon the size of the loan payment (for filing jointly), approximately $1350 will have been paid toward student loan interest in the second year of repayment.

	Tax liability	Required student loan payments
Joint	$20,850	$3,816 ($318 monthly)
Separate	$25,764	$0
Difference	**$4,914**	**$3,816**

This family will lose $1,098 by filing separately.

Scenario 5

In this scenario, one spouse has $70,000 in income while the other spouse has $50,000 in income. Due to their high income, they do not qualify for a childcare voucher and will claim the maximum possible childcare expense, $6000. Based upon the size of the loan payment (for filing jointly), approximately $1350 will have been paid towards student loan interest in the second year of repayment.

	Tax liability	Required student loan payments
Joint	$11,575	$3,816 ($318 monthly)
Separate	$13,413	$1992 ($166 monthly)
Difference	**$1,838**	**$1,824**

This family will lose $14 by filing separately.

<u>The Department Should Use Procedures Currently in Place for Married Borrowers Filing Separately.</u>

For the reasons reviewed in this memo, we ask the Department to remove the burdensome restrictions it proposed for married borrowers filing separately, while excluding spouses of married borrowers filing separately from its calculation of family size. While we appreciate the Department's suggestion of an application to help handle some of the additional hardship that would ensue for victims of domestic violence, we believe that such a solution would be inadvisable and insufficient. First, it would only address a subset of vulnerable borrowers who would be harmed by the Department's proposed change. Second, operationalizing a definition of domestic violence would be nearly impossible.[10] We believe that such an application would pose an additional burden on and potentially revictimize some of the most vulnerable borrowers. A separate application would also impose additional delays, and would put servicers and the Department in the position of evaluating and adjudicating difficult and deeply personal circumstances of individual borrowers.

[10] The Department of Justice defines domestic violence as domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. U.S. Dep't of Justice, Office of Violence Against Women, Domestic Violence (July 23, 2014), http://www.justice.gov/ovw/domestic-violence.