



2012 NEGOTIATED RULEMAKING TEAM II - LOANS

Summary of Week #1 – January 9 – 12, 2012

The first round of Negotiated Rulemaking – Loans session concluded after productive deliberations of the agenda of issues. This first week of negotiations was spent on reaching agreement on the protocols, identifying and formalizing the agenda of issues to be negotiated, and a “workshop-style” review of the issues. As previously reported, the Department of Education had identified 22 agenda items and the non-federal negotiators requested approximately 22 additional issues. After committee discussion of the requests and further review by the Department, most of the proposals were not added to the agenda due to either the Department not having the statutory authority to make the requested changes, or it was outside of the scope of the Loans Group of negotiations. However, the Department did accept a few additional issues for the agenda and agreed to include other submitted proposals as an expansion of existing agenda issues.

The final agenda consists of 25 issues, below is a very brief overview of each:

1. Changes to the Income Contingent Repayment (ICR) Plan

To implement the President’s “Pay As You Earn” student loan repayment initiative that caps the annual payments for new borrowers on or after 2008 that also received a new loan in 2012 or after and who repay under the ICR plan at 10% discretionary income, and reduces the maximum repayment period to 20 years. Any loan amount after 20 years will be forgiven. The loan committee requested that regulations clarify the loan forgiveness process for the borrower and the lender. In addition the terms “new borrower” and “new loan” must be defined.

2. Changes to the Income-Based Repayment (IBR) Plan

To incorporate SAFRA Act changes to the IBR plan (reducing to 10% the percentage used in the formula for determining partial financial hardship and reducing to 20 years the maximum repayment period). The loan committee requested that regulations clarify the loan forgiveness process for the borrower and the lender.

3. FFEL Lender Repayment Disclosures: Borrowers Who Are Having Difficulty Making Payments and Borrowers Who Are 60-Days Delinquent

In the case of disclosure requirements to borrowers who are having difficulty making payments, the committee will examine the timing and triggering mechanism for this disclosure when borrower contact has already addressed the borrower’s repayment difficulty. For borrowers who are 60-days delinquent, the regulations requires a notice be sent five calendar days after the 60th day of delinquency. However many systems only generate disclosures on business days so the committee will examine changing 5 calendar days to 5 business days.

4. Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits

A forbearance must be granted to FFEL and Direct Loan borrowers who are eligible for and will receive partial repayment on his/her FFEL or Direct loans under the Department of Defense (DOD) repayment benefit program. Currently this mandatory forbearance is reflected in the FFEL regulations but not in the Direct Loan forbearance regulations. The committee will examine adding this forbearance provision to the Direct Loan forbearance regulations and to borrowers receiving student loan repayment benefits under other DOD student loan repayment programs.



5. Borrowers Who Are Delinquent When Authorized Forbearance is Granted

Under the Direct Loan program the Department may grant administrative forbearance without requiring documentation from the borrower under such circumstances as (not inclusive), periods of delinquency that exist when a borrower enters a period of authorized deferment. The committee will examine adding a provision to allow FFEL lenders to grant administrative forbearance to FFEL borrowers under the same circumstances as granted to Direct Loan borrowers.

6. Forbearance for Post-270 Day Defaulted Loan Borrowers Prior to Lender Claim Payment or Transfer to ED Default Collections

Currently under the FFEL program when a borrower reaches 270 days delinquent and seeks to eliminate the default, to assist the borrower, the lender may grant a deferment or forbearance before the FFEL lender submits a default claim to the guaranty agency. As part of the forbearance agreement the borrower must sign a new agreement to repay the debt (reaffirm his/her obligation to repay). In the Direct Loan program, the reaffirmation of debt agreement is not required in writing. The committee will examine if both programs should accept oral reaffirmations of debt or if both programs should require written reaffirmation. The Department is working to gather more information before making a determination.

7. Minimum Loan Period for Transfer Students in Non-Term and Certain Non-Standard Term Programs

The committee will examine the exception to the minimum loan period rule for transfer students in non-term and certain non-standard term programs to determine if the scope of the exception could be expanded to facilitate a student's ability to transfer schools.

8. "Reasonable and Affordable" Payment Standard for Rehabilitation of Defaulted Direct Loan and FFEL Program Loans

Loan rehabilitation programs for borrowers who have defaulted on FFEL and/or Direct Loans provide that the borrower must make nine voluntary, reasonable and affordable payments within 20 days of the scheduled due date during 10 consecutive months. FFEL regulations are prescriptive as to "reasonable and affordable" payments where the Direct Loan regulations do not address factors that the Department must consider when determining what constitutes reasonable and affordable. The committee will discuss if the IBR repayment formula can be used to determine reasonable and affordable payments for loan rehabilitation purposes under both loan programs. The committee will determine if a zero payment, which is allowable under IBR, is acceptable for loan rehabilitation purposes.

9. Rehabilitation of Defaulted Direct Loan and FFEL Program Loans: Treatment of Borrowers Subject to Administrative Wage Garnishment

Under the loan rehabilitation programs for Direct Loan and FFEL, payments made through administrative wage garnishment (AWG) are not considered voluntary payments. A borrower that is subject to AWG that attempts to rehabilitate a loan must make nine voluntary payments in addition to the AWG payments. The committee will examine whether this practice should continue or to allow for the cessation or decrease of the AWG payment during some point in the rehabilitation period.

10. Participation Rate Index Appeal for Single Cohort Default Rate Loss of Eligibility to Participate in the Direct Loan Program

The discussion will focus on whether the participation rate index (PRI) that exists under the two-year cohort default rate should be adjusted to reflect the increased PRI under the three year cohort default rate.

11. Repeal of Unnecessary FFEL Program Regulations

This issue will focus on the elimination of such obsolete FFEL provisions as: school as lender, institutional eligibility for FFEL, and FFEL originations and disbursements. In addition there will be clarifying language in the deferment sections and will strike language related to FISL loans.



12. Modification of Direct Loan Program Regulations

This issue will discuss creating stand-alone Direct Loan regulations that do not reference back to FFEL lender and guaranty agency regulations. It will also update outdated loan origination rules and deferment language that references FFEL program rules.

13. Total and Permanent Disability Discharge (TPD): Single Application Process

This issue will consider streamlining the TPD regulations by allowing the borrower to submit one TPD discharge application directly to the Department of Education and the Department would check NSLDS to ensure that all the borrower's loans that are eligible for discharge are included in the TPD discharge review process. The proposal does not include using the Social Security Administration determination of TPD for student loan discharge purposes.

14. Total and Permanent Disability Discharge: Borrower Notification of Denial

This issue will examine the content and timing of borrower notification of denial of a TPD discharge and to what extent it should be codified in regulation.

15. Total and Permanent Disability Discharge: Post-Discharge Monitoring of Employment Earnings

Under current TPD regulations, a borrower's income is subject to three-year post-discharge monitoring. A discharged loan may be reinstated if the borrower fails to provide the required documentation of employment earnings during this 3-year post-discharge monitoring period. The Department proposes modifying the 3-year post-discharge monitoring period to three complete calendar years in an attempt to make it easier for a borrower to provide the information rather than providing it for two partial calendar years and one full calendar year. Negotiators requested information on the number or percentage of borrowers that fail the monitoring period because they did not submit the income information or did not submit it correctly.

16. Title IV Closed School Loan Discharge

Under current regulations borrowers can have their loans discharged if they could not complete their program of study because their school closed while the borrower was enrolled, or the borrower withdrew from the school no more than 90 days before the school closed. The regulations also provide the Department the flexibility to extend the 90-day period under exceptional circumstances. The committee will discuss if the 90-day window should be expanded and if so, under what circumstances.

17. Satisfactory Repayment Arrangements on Defaulted Title IV Loans for Borrowers Who also Rehabilitate the Loan

A borrower may rehabilitate a defaulted loan by making nine reasonable and affordable payments within 20 days of the due date during 10 consecutive months. A borrower may regain eligibility for Title IV aid by making satisfactory repayment arrangements consisting of six consecutive on-time monthly payments. A borrower may only regain Title IV aid eligibility once, and a loan may only be rehabilitated once. Under Department of Education policy if a borrower re-defaults on a rehabilitated loan, the borrower is not considered to have lost his/her one-time opportunity for making satisfactory repayment arrangements for purposes of regaining Title IV eligibility. However this practice is not consistent across loan programs or servicers. Discussion of this issue will determine whether the six consecutive, on-time, monthly payments made as part of a rehabilitation agreement would count as satisfactory repayment arrangement payments only if the borrower and the loan holder agree that the payments are also intended to be satisfactory repayment arrangements to regain Title IV aid eligibility.

18. School Enrollment Status Reporting Requirements

Improvements in technology and with the NSLDS warrant updating regulations in FFEL, Perkins and Direct Loan programs to reflect current terminology, procedures, and practice and to create consistency across loan programs.



19. Federal Perkins Loan Graduate Fellowship Deferment Eligibility

Modify the Perkins Loan regulations in this area to reflect the regulations that are in the FFEL and Direct Loan programs to create consistency across all three loan programs.

20. Social Security Number Requirement for Assignment of Federal Perkins Loans to the Department of Education

Currently the Department of Education does not accept Perkins Loans for assignment without a Social Security Number. However in the early years of Perkins, borrowers were not required to provide their Social Security Number so schools often do not have them on their older Perkins loans. This committee will consider some relaxation for the Social Security Number requirement for the older Perkins Loans.

21. Federal Perkins Loan Cancellation Rate Progression Across Cancellation Categories

Committee members will examine whether a Perkins loan borrower that switches loan cancellation categories would have to start over at the first-year cancellation rate under the new cancellation category, and under what conditions and for which loan cancellation categories this would apply.

22. Federal Perkins Loan Economic Hardship Deferment Debt-to-Income Ratio Provision

This is a technical correction to remove from the Perkins Loan regulations a debt-to-income economic hardship deferment category that was eliminated under the College Cost Reduction and Access Act.

23. Federal Perkins Loan Program: Break in Cancellation Service Due to a Condition Covered Under the Family and Medical Leave Act

This issue will modify the Perkins Loan regulations to mirror those in the FFEL and Direct Loan programs for consistency across the three loan programs.

24. Standard for On-Time Rehabilitation Payments in the Federal Perkins Loan Program

This issue will adopt in the Perkins Loan program the standard for on-time rehabilitation payments that is currently used in the FFEL and Direct Loan programs.

25. FFEL Program Administrative Wage Garnishment (AWG) Hearings for Defaulted Borrowers

This issue will codify in regulations current sub-regulatory guidance provided to guaranty agencies on the conduct of AWG hearings and for guarantors' consideration of whether the rate or amount of the proposed garnishment would result in financial hardship to the borrower or the borrower's dependents.

The Department has posted the approved issue papers and agenda on its website:

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html>. The Department will consider the discussions held this first week when developing draft regulatory text that will be submitted to the negotiators for review at least one week prior to the next meeting which is scheduled for February 13 – 17, 2012.