#	Subject	Summary of Change to *Common Manual*	Type of Update	Effective Date
1118	FFELP Teacher Loan Forgiveness Request	**2.3.C** **Common Forms** **13.9.B** **Teacher Loan Forgiveness Program** Adds information to the Manual regarding the FFELP Teacher Loan Forgiveness Request form which a lender may use to request payment on eligible loans due to discharge for Teacher Loan Forgiveness. Adds a new figure to the Manual to help a lender determine what loan information must be provided on the form.	Guarantor	Lenders may have begun using the FFELP Teacher Loan Forgiveness Request form upon the applicable publication date.
1119	Income-Based Repayment Option	**2.1.B** **Types of Loans Available** **4.4.D** **Exit Counseling** **6.14.A** **Subsidized Stafford Loans** **7.6.B** **Income-Sensitive Repayment Disclosure Requirements** **10.6.B** **Length of Repayment Period** **10.6.D** **Minimum Payment Requirements** **10.8** **Establishing a Repayment Schedule** **10.8.A** **Standard Repayment Schedule** **10.8.D** **Extended Repayment Schedule** **10.9** **Interest Charges** **10.10.B** **Capitalization Frequency** **10.11.A** **Applying Regular Borrower Payments** **10.11.B** **Applying Prepayments** **11.21.J** **Late Notification of Out-of-School Dates** **Figure11-2** **Forbearance Eligibility Chart** **12.4.A** **Due Diligence Requirements for Loans with Monthly Repayment Obligations** **12.4.B** **Due Diligence Requirements for Loans with Repayment Obligations Less Frequent Than Monthly** **13.7** **Rehabilitation of Defaulted FFELP Loans** **13.9** **Forgiveness** **15.3.A** **Providing Consolidation Loan Information** **15.5** **Repayment** **15.5.F** **Delinquency, Claim**	Federal	The provisions of the income-based repayment (IBR) plan are effective July 1, 2009. IBR loan forgiveness may not occur prior to July 1, 2034.

		<u>Filing, Loan Forgiveness, and Discharge</u> **<u>15.6</u>** **<u>Interest Benefits and Special Allowance</u>** **<u>A.1.B</u>** **<u>When Federal Interest Benefits Will Be Paid</u>** **<u>A.2.A</u>** **<u>Special Allowance and Excess Interest Rates</u>** **<u>Appendix G</u>** Adds information to the Manual regarding the new income-based repayment (IBR) plan, addressing the following lender/servicer activities with regard to IBR: • Determination of partial financial hardship for a borrower who selects IBR. • Calculation of a borrower's minimum monthly payment amount under IBR. • Recalculation of a borrower's monthly payment amount under the IBR-defined permanent-standard if the borrower ceases to have a PFH, chooses not to make PFH payments but remains in IBR, or the borrower fails to renew consent for income verification. • Recalculation of a borrower's monthly payment amount under the IBR-defined expedited-standard if the borrower leaves IBR. • Application of borrower payments and prepayments. • Frequency of capitalization. • Federal interest benefits and special allowance payments. • Disclosure requirements for lenders. • IBR and loan rehabilitation. • Loan forgiveness. • Administrative forbearance to collect and process documentation for forgiveness. Updates Figure 11-2, "Forbearance Eligibility Chart," to include IBR.		
1120	Rebuttable Presumption	**<u>3.4.C</u>** **<u>Permitted and Prohibited Activities</u>** **<u>18.1</u>** **<u>Actions to Limit, Suspend, or Terminate Participation</u>** Includes the use of rebuttable presumption by the Department in administrative actions against lenders that involve violations of the prohibited inducement provisions.	Federal	Effective for administrative actions against lenders on or after July 1, 2008.
1121	Competitive Loan Auction Pilot Program for PLUS Loans **Withdrawn and**	**<u>Chapter 3</u>** **<u>Lender Participation</u>** Adds information regarding the Competitive Loan Auction Pilot Program for PLUS loans.	Federal	Parent PLUS loans for new borrowers originated on or after July 1, 2009.

	moved to Radar			
1122	Program Participation Agreement (PPA)	**<u>4.1.A</u>** **<u>Establishing Eligibility</u>** **<u>Appendix G</u>** Adds the requirement that as part of a school's Program Participation Agreement (PPA), a school may not request or accept funds from a lender for private education loans, including opportunity pool loans, in exchange for FFELP loan volume or a preferred lender arrangement. Adds new subsection 4.4.E which incorporates the requirement that a school's PPA requires that the school to develop, publish, administer and enforce a code of conduct. The policy also outlines the prohibitions that must be included in the school's code of conduct. Updates Appendix G with definitions of "institutional-affiliated organization", "opportunity pool loans", and "preferred lender arrangement".	Federal	School participating in a Title IV loan program on or after August 14, 2008.
1123	Permissible and Prohibited Assistance Provided to Schools **Deferred for additional research**	**<u>4.1</u>** **<u>Institutional Eligibility</u>** Adds information on the permissible and prohibited assistance schools receive from lenders and guarantors as outlined in regulations and HEOA.	Federal	Assistance provided to a school by a lender or guarantor on or after August 14, 2008.
1124	Ability to Benefit	**<u>5.9</u>** **<u>Required High School Diploma or Equivalent</u>** **<u>5.10</u>** **<u>Ability-to-Benefit Provisions</u>** **<u>Appendix G</u>** Expands the ability to benefit criteria and allows a student without a high school diploma or its equivalent to become eligible to receive Title IV funding upon satisfactory completion of six credit hours or equivalent coursework that is applicable toward a degree or certificate offered by the school.	Federal	Awards of Title IV aid made on or after August 14, 2008.
1092	Academic Year Categories for the Purpose of Determining the Frequency of Stafford Annual Loan Limits	**<u>6.1.B</u>** **<u>Academic Year Categories</u>** **<u>Figure 6-2</u>** **<u>Frequency of Stafford Annual Loan Limits</u>** **<u>Appendix G</u>** Incorporates various changes made in the Volume 3 of the 08-09 FSA Handbook regarding academic year categories, including the adoption of the abbreviation for programs with nonstandard terms that are substantially equal and at least nine weeks of instructional time in length (SE9W), and the FSA Handbook standard for identifying the different BBAY categories that apply to different types of academic	Federal	Publication date of Volume 3 of the 08-09 FSA Handbook, unless implemented by the school on or after November 1, 2007.

		programs: BBAY1, BBAY2, and BBAY3. Revises Figure 6-2 with corresponding changes. Adds a new Appendix G definition for the acronym "SE9W" relative to a non-standard term-based credit-hour program. Revises the current Appendix G definition of the acronym "BBAY", as well as the definition of "Borrower-Based Academic Year."		
1125	Independent Student Definition	**<u>6.8</u>** **<u>Determining the Student's Dependency Status</u>** Incorporates the changes made to the definition of independent student by CCRAA, as well as incorporates the clarifications made to that definition through HEOA. Although the specific HEOA changes are not effective until July 1, 2010, the Department has updated the 2009-2010 FAFSA to reflect the changes. As a result, the *Common Manual* is being updated to reflect the HEOA clarifications.	Federal	For dependency determinations beginning with the 2009-2010 award year.
1095	Proration of Stafford Annual Loan Limits	**<u>6.11.F</u>** **<u>Prorated Loan Limits</u>** **<u>Appendix G</u>** Incorporates several new and existing clarifications found in the FSA Handbook concerning prorating a borrower's Stafford annual loan limit. Incorporates information regarding when a school is not required to prorate the Stafford annual loan limit and in some instances, the school is not permitted to prorate the borrower's Stafford annual loan limit. Adds a definition of "self-paced program."	Federal	Publication date of Volume 3 of the 08-09 FSA Handbook for the following in a credit-hour program that uses nonstandard terms that are substantially equal and at least nine instructional weeks in length (SE9W): • Determining the final period of study for an undergraduate borrower. • Exempting from proration an undergraduate borrower who is enrolled less than half time for a term(s) during a final period of study that contains the number of terms in the program's academic year. Publication date of Volume 3 of the 07-08 FSA Handbook for exempting from proration an

				undergraduate borrower who is enrolled in a standard term-based credit-hour program and enrolled less than half time for a term(s) during a final period of study that contains the number of terms in the program's academic year. Publication date of Volume 3 of the 05-06 FSA Handbook for the following: • Clarifying that a school must prorate the Stafford annual loan limit when the school knows in advance that an undergraduate borrower will enroll in a program that is shorter than an academic year or, for a program that is equal to or longer than an academic year, the borrower will enroll in a final period of study that is shorter than an academic year. • Exempting from proration an undergraduate borrower who is enrolled at least half time but less than full time or enrolled for a period of less than a full academic year that is not a final period of study. Publication date of Volume 3 of the 04-05 FSA Handbook for using the school's academic

				year for the program to determine whether a final period of study is shorter than an academic year.
1126	Certifying Unsubsidized Stafford Loans	**6.8** **Dependency Overrides** **6.15.B** **Stafford Loan Certification** Includes new authority for an FAA to certify an unsubsidized Stafford loan for a dependent student if the student's parent(s) has ended financial support and refuses to file the FAFSA.	Federal	Loans certified for loan periods that begin on or after August 14, 2008, or include that date.
1127	Disclosure Changes for PLUS and Unsubsidized Stafford Loans **Moved to considered. Text incorporated into Policy proposal 1109 in Batch 158.**	**7.6.A** **General Initial Disclosure Requirements** Permits the lender in its initial disclosure to provide to a PLUS or unsubsidized Stafford borrower sample monthly payment amounts that assume different levels of borrowing. If the lender provides sample projections, the lender must also include information on the cost of capitalizing accrued interest versus paying the interest during the student's in-school status. Previously, the lender was required to include in that disclosure projected monthly payment amounts or information sufficient to permit a borrower to estimate those monthly payment amounts.	Federal	Initial disclosures provided by the lender to the borrower on or after August 14, 2008.
1128	Pre-repayment Disclosures	**10.7** **Disclosing Repayment Terms** Includes new disclosure requirements that relate to the new income-based repayment plan.	Federal	Disclosures made on or after July 1, 2009.
1129	Required Lender Disclosures During Repayment	**Chapter 10** **Loan Servicing** Incorporates provisions of the HEOA regarding lender disclosure requirements during repayment. This includes disclosures to a borrower who notifies the lender that he or she is having difficulty making scheduled payments.	Federal	Required lender disclosures made for loans with first payments due on or after July 1, 2009.
1130	Disclosures When Granting Deferments on Unsubsidized Stafford Loans	**11.1** **Authorized Deferment** Incorporates provisions of the HEOA regarding lender disclosure requirements when granting a deferment on an unsubsidized Stafford loan.	Federal	In-school, graduate fellowship, unemployment, military, and economic hardship deferments on unsubsidized Stafford loans granted on or after August 14, 2008.
1131	Providing Forbearance Information to the Borrower or Endorser	**11.20.I** **Borrower Contact During Forbearance** **11.23** **Mandatory Administrative Forbearance11.24.B** Incorporates provisions of the HEOA that	Federal	Forbearance granted by the lender on or after August 14, 2008.

		requires a lender to send a notice to the borrower or endorser when it grants a forbearance to assist the borrower or endorser, as applicable, in understanding the effect that interest capitalization has on the loan's principal balance and the amount of interest that may be paid over the life of the loan. Requires that the lender contact the borrower or endorser not less than every 180 days during the forbearance period, and the notice must include the additional requirements put in place by the HEOA. Removes the exception regarding notices for the internship and residency forbearance, and adds a cross-reference to the appropriate subsection of the Manual that describes the standard borrower notice and notification requirements. Amends the required notifications for mandatory forbearance.		
1132	New Administrative Forbearance for Repayment Plan Change	**11.21.** **Administrative Forbearance** Adds new subsection 11.21.T to incorporate the October 2008 final rules change that permits a lender to grant an administrative forbearance to cover a period of delinquency that exists at the time a borrower chooses a different repayment plan.	Federal	Repayment plan changes granted by the lender on or after July 1, 2009.
1133	Total and Permanent Disability Discharge Requests Based on Veterans Administration Determinations	**13.8.G** **Total and Permanent Disability** Adds information regarding a borrower's eligibility for loan discharge due to total and permanent disability if the borrower provides documentation from the U.S. Department of Veterans Affairs (VA) showing that the VA has determined the borrower to be unemployable due to a service-connected condition.	Federal	Total and permanent disability discharge requests received by the lender on or after August 14, 2008, that are based on U.S. Department of Veterans Affairs determinations.
1134	Eligible Not-for-Profit Holder	**A.2.A** **Special Allowance and Excess Interest Rates** **Appendix G** Incorporates changes from the October 23, 2008 Final Rules relating the definition of "eligible not-for-profit holder."	Federal	July 1, 2009.

COMMON MANUAL - GUARANTOR POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **FFELP Teacher Loan Forgiveness Request**

AFFECTED SECTIONS: **2.3.C Common Forms**
13.9.B Teacher Loan Forgiveness Program

POLICY INFORMATION: **1118/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Lenders may have begun using the FFELP Teacher Loan Forgiveness Request form upon the applicable publication date.

BASIS:
None.

CURRENT POLICY:
Current policy states that a lender must submit to the guarantor a loan discharge application completed by the borrower along with any supporting documentation to request payment for loans that are eligible for teacher loan forgiveness on all or a portion of the balance due.

REVISED POLICY:
Revised policy adds information about the FFELP Teacher Loan Forgiveness Request form, which a lender may use to request payment on eligible loans due to teacher loan forgiveness. A new figure has been added to the Manual that will help a lender determine what loan information must be provided on this form. Detailed descriptions of the items included in this figure are located in the Instructions for Completing the FFELP Teacher Loan Forgiveness Request located on the FFELP Teacher Loan Forgiveness Request form.

REASON FOR CHANGE:
This change is being made to convey that a lender may use the FFELP Teacher Loan Forgiveness Request form to request a loan forgiveness payment from the guarantor.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 2.3.C, page 14, column 1, by adding a 4th bullet under the subheading “Claim Forms”, as follows:

Note: Subsection 2.3.C is also being updated as part of Proposal 1080 in Batch 156.

- Claim Form
- Supplemental Claim Form
- Request for Reimbursement Due to Partial Discharge of a Federal Consolidation Loan
- FFELP Teacher Loan Forgiveness Request Form

Revise Subsection 13.9.B, page 58, column 2, by adding a new paragraph 4, as follows:

Note: Subsection 13.9.B was renumbered as Subsection 13.9.A as part of Proposal 1080 in Batch 156.

FFELP Teacher Loan Forgiveness Request Form

The FFELP Teacher Loan Forgiveness Request form is designed to be used by a lender to request payment for all or a portion of the balance on a Stafford loan or a Consolidation loan with an eligible underlying Stafford loan(s) that is eligible for teacher loan forgiveness.

FFELP Teacher Loan Forgiveness Request Form Instructions

Figure 13-5 helps a lender determine what information must be provided on the FFELP Teacher Loan Forgiveness Request form. Detailed descriptions of these items are located in the Instructions for Completing the FFELP Teacher Loan Forgiveness Request form.

Revise Subsection 13.9.B, page 58, by adding a new figure at the end of the page, as follows:

See attached chart.

PROPOSED LANGUAGE - COMMON BULLETIN:
FFELP Teacher Loan Forgiveness Request
The *Common Manual* has been revised by adding text describing the use of the National Council of Higher Education Loan Program's (NCHELP) FFELP Teacher Loan Forgiveness Request form. A lender may use the form to request payment for all or a portion of the balance on a Stafford loan or a Consolidation loan with an eligible underlying Stafford loan(s) that is eligible for discharge due to teacher loan forgiveness. A new figure has been added to the Manual that will help a lender determine what loan information must be provided on this form. Detailed descriptions of the items included in this figure are located in the Instructions for Completing the FFELP Teacher Loan Forgiveness Request form.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
None.

School:
None.

Lender/Servicer:
A lender may benefit by using the FFELP Teacher Loan Forgiveness Request form to submit consistent loan information to the guarantor for payment.

Guarantor:
A guarantor may benefit from receiving consistent and uniformly formatted loan information via the FFELP Teacher Loan Forgiveness Request form submitted as the lender's request for payment.

U.S. Department of Education:
None.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
Default Aversion and Claims Standardization Subcommittee (DACS)

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 4, 2007

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received from:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, USA Funds, UHEAA, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:

One commenter suggested the phrase “in conjunction with the Teacher Loan Forgiveness Application” be added to the Revised Policy to clarify that the FFELP Teacher Loan Forgiveness Request form supplements rather than supplants the Teacher Loan Forgiveness Application, as follows:

> “Revised policy adds information about the FFELP Teacher Loan Forgiveness Request form which a lender may use in conjunction with the Teacher Loan Forgiveness Application to request payment on eligible loans due to discharge for Teacher Loan Forgiveness.”

Response:

The Committee feels that the FFELP Teacher Loan Forgiveness Request form would be used by the lender as a request for payment not as a supplement to the form. The lender is not required to use this form to designate the loans eligible for discharge due to Teacher Loan Forgiveness.

Change:

None.

COMMENT:

One commenter suggested the phrase “request a loan forgiveness payment from” be added to the Reason for Change to clarify that referring to a teacher loan forgiveness payment as a claim is inaccurate, since a loan is not purchased nor is the promissory note transferred to the guarantor. The language would read as follows:

> “This change is being made to convey that lenders may use the FFELP Teacher Loan Forgiveness Request form to request a loan forgiveness payment from the guarantor.”

Response:

The Committee agrees.

Change:

The phrase “request a loan forgiveness payment from” has been added to the Reason for Change.

COMMENT:

One commenter suggested the following new sentence be added to the language in the new paragraph in Subsection 13.9.B to clarify that the final determination of borrower eligibility resides with the guarantor:

> “The information on this form, along with the borrower’s Teacher Loan Forgiveness Application, may assist the guarantor in making a determination of the borrower’s eligibility for forgiveness.”

Response:

The Committee agrees that the guarantor makes the final determination of a borrower’s eligibility. However, the FFELP Teacher Loan Forgiveness Request form is used to indicate which loans are eligible for payment and not used to determine the borrower’s eligibility.

Change:

None.

COMMENT:

One commenter suggested the title of the new Figure 13-5 be revised to clarify that the form is to be completed by the lender as follows:

> “Information To Be Provided By The Lender On The FFELP Teacher Loan Forgiveness Request Form”

Response:

The Committee understands the commenter’s concern that the form would be completed by the lender or holder of the loan(s). However, the footnote for Figure 13-5 clearly states that the information on the form must be provided by the holder of the loan(s).

Change:
None.

COMMENT:
One commenter suggested several item descriptions in Figure 13-5 be revised.

Response:
The Committee agrees.

Change:
The following item descriptions in the new Figure 13-5 have been revised as follows:

> "Servicer's six-digit servicer ID assigned by the Department <u>(if serviced)</u>."
> "Date of first disbursement <u>for each loan</u>."
> "Current principal balance <u>for each loan</u> (for Consolidation loans, only include the outstanding portion of the loan that was used to repay the eligible Stafford loans)."
> "Current interest rate <u>for each loan</u>."
> "Date through which interest was last paid <u>for each loan</u>."

COMMENT:
One commenter noted that all items in Figure 13-5 are required other than the first one. The commenter suggested eliminating the required column and add a note that states "All items are required unless otherwise noted."

Response:
The Committee understands the commenter's concern that if all fields are required, it shouldn't be necessary to have a column that states which fields are required. However, the formatting of Figure 13-5 is consistent with other figures in the Manual concerning NCHELP forms.

Change:
The phrase "Sections A, B, and C" has been moved and is now included in the title of the column heading as follows "Item Description, Sections A, B, and C"; this is consistent with other figures in the Manual concerning NCHELP forms.

SEA/edited - rl

Information to Be Provided on the FFELP Teacher Loan Forgiveness Request Form **Figure 13-5**

Item Description, Sections A, B, and C	**Required**[1]
Date form is completed.	•
Servicer's name (if no servicer, provide lender name).	•
Lender's six-digit lender ID assigned by the Department.	•
Servicer's six-digit servicer ID assigned by the Department (if serviced).	•
The name of the guarantor of the loan.	•
Borrower's Social Security number (SSN).	•
Borrower's date of birth.	•
Borrower's name.	•
Date the Teacher Loan Forgiveness Application was received from the borrower.	•
Loan type for each loan included in request (e.g., SF=Subsidized Stafford, SU=Unsubsidized Stafford, CL=Consolidation).	•
Loan ID for each loan identified on the form (e.g., the loan identifier code, file number, guarantee date, or amount, as indicated by the guarantor).	•
Date of the first disbursement of each loan.	•
Current principal balance of each loan (for Consolidation loans, include only the outstanding portion of the loan that was used to repay an eligible Stafford loans).	•
Current interest rate of each loan.	•
Date through which interest was last paid for each loan.	•
Name of the person or unit responsible for answering questions relating to the information provided on the form.	•
Date completed.	•
Telephone number of person or unit.	•

[1] Refers to information that the holder of the loan must provide on the Teacher Loan Forgiveness Request Form.

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Income-Based Repayment Option**

AFFECTED SECTIONS:

2.1.B Types of Loans Available
4.4.D Exit Counseling
6.14.A Subsidized Stafford Loans
7.6.B Income-Sensitive Repayment Disclosure Requirements
10.6.B Length of the Repayment Period
10.6.D Minimum Payment Requirements
10.8 Establishing a Repayment Schedule
10.8.A Standard Repayment Schedule
10.8.D Extended Repayment Schedule
10.9 Interest Charges
10.10.B Capitalization Frequency
10.11.A Applying Regular Borrower Payments
10.11.B Applying Prepayments
11.21.J Late Notification of Out-of-School Dates
Figure11-2 Forbearance Eligibility Chart
12.4.A Due Diligence Requirements for Loans with Monthly Repayment Obligations
12.4.B Due Diligence Requirements for Loans with Repayment Obligations Less Frequent Than Monthly
13.7 Rehabilitation of Defaulted FFELP Loans
13.9 Loan Forgiveness under Income-Based Repayment
15.3.A Providing Consolidation Loan Information
15.5 Repayment
15.5.F Delinquency, Claim Filing, Loan Forgiveness, and Discharge
15.6 Interest Benefits and Special Allowance
A.1.B When Federal Interest Benefits Will Be Paid
A.2.A Special Allowance and Excess Interest Rates
Appendix G

POLICY INFORMATION: **1119/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: The provisions of the income-based repayment (IBR) plan are effective July 1, 2009. IBR loan forgiveness may not occur prior to July 1, 2034.

BASIS:
§682.205(h); §682.209(a) and (b);§682.215;§682.300(b); §682.302(a); §682.304(d)(2); §682.411(d)(1); §682.604(g)(2); and the *Federal Register*, Vol. 72 No. 206, October 23, 2008, pp. 63236 - 63240.

CURRENT POLICY:
Current policy does not address income-based repayment (IBR) or loan forgiveness under IBR.

REVISED POLICY:
Revised policy addresses the following lender/servicer activities with regard to IBR:

- Determination of partial financial hardship (PFH) for a borrower who selects IBR.
- Calculation of a borrower's minimum monthly payment amount under IBR.
- Recalculation of a borrower's monthly payment amount under the IBR-defined permanent-standard if the borrower ceases to have a PFH, chooses not to make PFH payments but remains in IBR, or fails to renew consent for income verification.

- Recalculation of a borrower's monthly payment amount under the IBR-defined expedited-standard if the borrower chooses to leave IBR.
- Application of borrower payments and prepayments.
- Frequency of capitalization.
- Federal interest benefits and special allowance payments.
- Disclosure requirements for lenders.
- IBR and loan rehabilitation.
- Loan forgiveness.
- Administrative forbearance to collect and process documentation for loan forgiveness.

Revised policy also makes changes to Figure 11-2, "Forbearance Eligibility Chart," to include IBR.

REASON FOR CHANGE:
These changes are necessary to comply with the IBR final rules in the *Federal Register*, Vol. 72 No. 206, dated October 23, 2008.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 2.1.B, page 1, column 2, paragraph 2, bullet 1, as follows:

2.1.B
Types of Loans Available

...

There are several types of education loans currently offered by lenders under the FFELP:

- A **subsidized Federal Stafford loan** is available to an eligible student attending a participating postsecondary school. A student who demonstrates financial need is eligible to have the federal government pay the interest on the loan to the lender until repayment of the loan begins and during any deferment periods. The student is allowed a grace period (usually six months) after leaving school or dropping below half-time enrollment before repayment begins. Repayment of ~~the~~ <u>a Stafford </u>loan is scheduled over a maximum period of 10 years<u>. However, the repayment period may be longer than 10 years under an income-based repayment plan. For a borrower eligible for an extended repayment schedule, the maximum repayment period is</u>~~, or~~ 25 years ~~for borrowers eligible for an extended repayment schedule~~.(See Section 10.8).

- ...

- A **Federal PLUS loan** is available to an eligible parent of a dependent undergraduate student attending a participating postsecondary school and to an eligible graduate or professional student enrolled in an eligible graduate or professional program at a participating school. A PLUS loan borrower must not have adverse credit or must obtain a creditworthy endorser to be eligible for the loan. The borrower is responsible for paying to the lender the interest that accrues on the loan from the time the loan is disbursed until it is paid in full. Repayment of ~~the~~ <u>a PLUS </u>loan is scheduled over a maximum period of 10 years<u>. However, the repayment period on a Grad PLUS loan may be longer than 10 years under an income-based repayment plan. For a borrower eligible for an extended repayment schedule, the maximum repayment period is</u>,~~ or~~ 25 years ~~for borrowers eligible for an extended repayment schedule~~. (See Section 10.8).

Revise Subsection 4.4.D, page 24, column 1, paragraph 2, as follows:

Note: Subsection 4.4.D is also being updated as part of Proposal 1091 in Batch 157.

The school must ensure the information on the following subjects is provided to the student borrower during exit counseling:

- ...

- Available repayment options including standard, graduated, extended, ~~and~~ income-sensitive, and income-based repayment plans and loan consolidation, including a description of the different features of the repayment options and the difference in interest paid and total payments under each.
  [HEA §485(b)(1)(A)(I); §682.604(g)(2)(ii)]

Revise Subsection 6.14.A, page 32, column 2, paragraph 3, as follows:

6.14.A
Subsidized Stafford Loans

A subsidized Stafford loan made for the certified amount or less—subject to the applicable Stafford annual and aggregate loan limits—is eligible for federal interest subsidy. The Department pays accruing interest on behalf of the borrower to the lender on a subsidized Stafford loan during the student's in-school, grace, deferment, and, if applicable, post-deferment grace periods (see Appendix A). The borrower is generally responsible for paying the interest that accrues during all other periods. However, if a borrower qualifies for income-based repayment (IBR) and the monthly payment amount during the period of the borrower's partial financial hardship (PFH) is not sufficient to pay the interest accruing on a subsidized Stafford loan, the Department pays the accrued interest that exceeds the scheduled monthly PFH payment during a consecutive 3-year period beginning on the established repayment period start date when each loan enters IBR. This 3-year period excludes any period during which the borrower receives an economic hardship deferment.
[§683.315(b)(4); §682.300(b)(1)]

Revise Subsection 7.6.B, page 11, column 1, paragraph 2, as follows:

7.6.B
Income-Sensitive and Income-Based Repayment Disclosure Requirements

The lender must also provide the borrower, in a written or electronic format, the initial disclosure information on the availability of income-sensitive repayment and, except for a parent PLUS borrower or for a Consolidation borrower whose Consolidation loan paid one or more parent PLUS loans, the availability of income-based repayment. By providing the borrower with the promissory note and associated materials approved by the Department, the lender meets the requirements to disclose the following information (issued together or separately):

- A statement that the borrower is eligible, including through loan consolidation, for income-sensitive repayment, and may be eligible for income-based repayment~~, including through loan consolidation~~.

- Procedures by which the borrower may choose income-sensitive or income-based repayment.

- Where and how the borrower may obtain more information on income-sensitive and income-based repayment.
  [§682.205(h)]

Revise Subsection 10.6.B, page 10, column 1, paragraph 4, as follows:

10.6.B
Length of the Repayment Period

The maximum allowable repayment period is calculated from the date on which the first payment is due. Generally, a borrower is allowed at least 5 but no more than 10 years from the date the first payment is due to repay each Stafford, SLS, and PLUS loan. However, the

repayment period on a Stafford, SLS, or Grad PLUS loan may be greater than 10 years under an income-based repayment (IBR) plan. For a Consolidation loan, the repayment period may not exceed 30 years depending on the initial balance of the loan (see Subsection 15.5.C for information on Consolidation loan repayment provisions). In addition, a "new borrower" on or after October 7, 1998, may select an extended repayment schedule that allows for a repayment period of up to 25 years (see Subsection 10.8.D).
[§682.200; §682.209(a); §682.215(b)(8)]

Revise Subsection 10.6.D, page 11, column 1, paragraph 4, as follows:

10.6.D
Minimum Payment Requirements

Federal regulations outline specific requirements for the minimum annual amount the borrower must pay on a loan. Unlike the maximum repayment period, which is loan-specific, a minimum annual payment amount applies to all of a borrower's loans. The ~~M~~minimum annual payment amount~~s vary~~ varies according to when the loan was first disbursed or the repayment schedule that the borrower selects:

- ...

- ...

- For loans in repayment on or after July 1, 2009, the minimum annual payment amount under an income-based repayment (IBR) plan by a borrower with a partial financial hardship (PFH) is $0 (see Subsection 10.8.D for additional information regarding the loans that qualify and borrower eligibility criteria for IBR).

Because minimum annual payment amounts apply to a borrower instead of to each loan, a lender may prorate a minimum payment across all of a borrower's loans. As a result, the monthly payment on an individual loan may be less than $50 or $30 (the monthly equivalent of the $600 and $360 annual minimums, respectively). Except in the case of payment under IBR, t~~T~~he lender may round the borrower's payment(s) to the next highest whole dollar amount that is a multiple of $5 (when the payment amount is not a multiple of $5). For information on the $5-and $10-rule under IBR, see Subsection 10.8.D.
[§682.209(a)(8)]

Payments Smaller Than Minimum

A lender may permit a borrower to make smaller payments than otherwise required if the reduced scheduled monthly payment amount equals at least the amount of interest due on the loan. This option may be provided only on a short-term basis, and a lender should ensure that the reduced payments do not cause subsequent repayment schedules to require any single payment amount to exceed any other payment amount by more than three times in cases where this is prohibited (see subheading "Three-Times Rule" later in this subsection). In the case of IBR, a payment may be less than the monthly accruing interest.

If the borrower and lender agree, the borrower may pay less than the minimum annual amount as long as the loan(s) will be repaid fully within the maximum repayment period. The lender must document the terms and conditions of the revised agreement in the borrower's file or servicing history. If the reduced payment amount will result in the repayment period extending beyond the allowable maximum, the lender must grant a reduced-payment forbearance and obtain the borrower's signature on the forbearance agreement (see Subsection 11.22.A).
[HEA §428(b)(1)(L)(I)]

Three-Times Rule

In all cases where a graduated or income-sensitive repayment schedule is established, federal regulations require that no single installment be more than three times greater than

any other installment (the “three-times rule”). When a lender establishes the minimum payment amount on a loan under an income-sensitive repayment schedule, a lender must consider the borrower’s ability to pay, without violating the “three-times rule.” In the case of IBR, the three-times rule does not apply.
[§682.209(a)(6)(ii)]

Interest Payments

For loans that are repaid under a graduated, income-sensitive, income-based, or extended repayment schedule, the $360 and $600 annual payment requirements do not apply. ~~However~~Except in the case of an IBR plan, in no instance may the payment amount be less than the amount of interest due and payable. Under an IBR plan, the borrower’s monthly payment amount may be insufficient to pay accrued interest and principal due or to repay the loan within the 25-year repayment period for loan forgiveness.
[HEA §428(b)(1)(l)(i); §682.209(a)(6)(iv) and (c)]

Revise Section 10.8, page 14, column 2, paragraph 5, as follows:

10.8
Establishing a Repayment Schedule

If the borrower elects to repay the loan through regular installments (see Subsection 10.6.C for repayment options), the lender must offer the borrower a choice of the following:

- A standard repayment schedule.
- A graduated repayment schedule.
- An income-sensitive repayment (ISR) schedule.
- An income-based repayment (IBR) schedule.
- An extended repayment schedule, if applicable.

Lenders must offer all borrowers their choice of ~~a standard, graduated, or income-sensitive~~ repayment schedule no more than 6 months before the first payment due date. ~~In addition, lenders must offer an extended repayment schedule to borrowers who are considered “new borrower” on or after October 7, 1998, and who have more than $30,000 in outstanding principal and interest in FFELP loans. This extended repayment schedule must provide a repayment schedule of no more than 25 years~~. Details regarding repayment schedule options are outlined in Subsection 10.8.A through ~~10.8.D~~ 10.8.E. For more information on Consolidation loan repayment, see Section 15.5.

A borrower must select a repayment schedule within 45 days of the lender’s notification and advise the lender of that choice. If a borrower does not respond within 45 days—or selects an ~~income-sensitive repayment schedule~~ ISR or an IBR schedule but does not provide the required documentation—the lender must establish a standard repayment schedule. A borrower also may request a change in his or her repayment schedule. A lender must comply with an eligible borrower’s request to revise his or her choice of repayment schedule at least once ~~every 12 months~~ annually, except that a borrower may request IBR at any time.

...

Revise Subsection 10.8.A, page 15, column 2, paragraph 1, as follows:

The lender must require the borrower to repay the loan under a standard repayment schedule if the borrower meets either of the following criteria:

- The borrower does not select an income-sensitive, income-based, graduated, or extended (if applicable) repayment schedule within 45 days after being notified by the lender to choose a repayment schedule.

- The borrower chooses an income-sensitive repayment schedule or an income-based repayment schedule but does not provide the documentation requested by the lender within the time period specified by the lender.
[§682.209(a)(6)(v) and (vi)]

Revise Subsection 10.8.D, page 16, column 1, paragraph 3, as follows:

10.8.D
Income-Based Repayment Schedule

Beginning on July 1, 2009, a borrower may request to repay an eligible loan under an income-based repayment (IBR) plan. Eligible FFELP and Direct loans include the outstanding balances on all loans except:

- A defaulted loan.

- A FFELP or Direct parent PLUS loan.

- A FFELP or Direct Consolidation loan that repaid a FFELP or Direct parent PLUS loan.

If a borrower selects IBR, the lender must determine if the borrower has a partial financial hardship (PFH) for the initial year and annually for each subsequent year that the borrower selects this repayment plan. A PFH exists if the borrower has an annual payment amount, calculated under a standard repayment schedule and based on a 10-year repayment period on all eligible FFELP and Direct loans outstanding when the borrower initially entered repayment on each loan (a.k.a. *standard-standard*), that exceeds 15% of the difference between the borrower's adjusted gross income (AGI) and 150% of the poverty guideline for the borrower's family size. The poverty guideline refers to the income by state and family size as published annually by the U.S. Department of Health and Human Services (DHHS). If a borrower is not a resident of a state listed in the poverty guidelines, the lender uses the DHHS poverty guideline for the 48 contiguous states.

To enable the lender to make this determination, the borrower must provide the lender with written consent for the disclosure of the applicable adjusted gross income and other tax return information from the Internal Revenue Service. The borrower provides this consent by signing a consent form and returning the form to the lender. For a married borrower filing jointly, adjusted gross income includes both the borrower's and the spouse's income. For a married borrower filing separately, adjusted gross income includes only the borrower's income. However, if the borrower's adjusted gross income is not available or if the lender believes that the borrower's adjusted gross income does not reflect the borrower's current income, the lender may use other documentation, provided by the borrower, to verify income.

The borrower must provide a self-certification of family size to the lender. If the borrower fails to certify family size, the lender must assume a family size of one. Family size includes the following:

- The borrower and the borrower's spouse.

- The borrower's children, including unborn children who will be born during the year for which the borrower certifies family size, if the borrower provides more than half of the children's support.

- Other individuals who, at the time the borrower certifies family size, live with the borrower and receive more than half of their support from the borrower and will continue to receive this support from the borrower for the year being certified.

Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

Payment Amount Calculation

The borrower's maximum annual payment to determine PFH is limited to no more than 15% of the amount by which the borrower's annual adjusted gross income exceeds 150% of the DHHS poverty guideline for the borrower's family size. The result is divided by 12 to obtain the monthly payment amount.

PFH Eligibility and Payment Amount Calculation Example:

A borrower has an AGI of $50,000, a family size of 5, total loans of $25,000, and is a resident of Virginia.

Step 1: Obtain the DHHS poverty guideline for the family size and state. For this example, the applicable U.S. Department of Health and Human Services poverty guideline is $25,790.

Step 2: Multiply the DHHS poverty guideline by 150% or $25,790 x 1.5 = $38,685.

Step 3: Subtract the result in step 2 from the borrower's AGI or $50,000 - $38,685 = $11,315.

Step 4: Calculate the borrower's maximum annual payment amount by multiplying the result of step 3 by 15% or $11,315 x .15 = $1,697.25.

Step 5: Determine the annual payment amount on the total of the borrower's loans based on a standard 10-year repayment schedule and the applicable interest rate. In this example, the borrower's total loan amount is $25,000 at an interest rate of 6.8% which results in an annual payment amount of $3,452.40.

Step 6: Since the annual payment amount in Step 5, $3,452.40, is greater than the maximum annual payment amount in Step 4, $1,697.25, the borrower has a partial financial hardship.

Step 7: To calculate the borrower's monthly payment amount, divide the result of Step 4 by 12 or $1,697.25/12 = $141.44.

If the lender does not hold all of the borrower's eligible loans, the borrower's monthly PFH payment amount is multiplied by the percentage of the borrower's total outstanding principal amount of eligible loans that are held by the lender making the determination of eligibility. For this calculation, the lender may access NSLDS to determine the outstanding principal amount of the borrower's eligible loans that are held by other lenders. If the result of this calculation is less than $5.00 at the lender level, then the borrower's monthly PFH payment amount is $0. If the result of the calculation is equal to or greater than $5.00 but less than $10.00 at the lender level, then the borrower's monthly PFH payment amount is $10.00.

If a borrower selects an IBR plan, the lender must—unless the borrower requests otherwise—require that all eligible loans held by the lender be repaid under the IBR plan. If the borrower has multiple lenders and wants to repay all eligible loans under the IBR plan, the borrower must request IBR from each lender.

The lender must recalculate the monthly payment amount for a borrower when any of the following occurs:

- The borrower ceases to have a PFH or chooses not to make PFH payments but remains in the IBR plan.

- The borrower fails to renew or withdraws consent for income verification from the Internal Revenue Service.

To recalculate the borrower's monthly payment amount under either of the two preceding bullets, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.

If a borrower chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining up to a maximum of 30 years. (See Subsection 15.5.C for information on applicable repayment periods.)

10.8.E
Extended Repayment Schedule

Revise Section 10.9, page 16, column 2, paragraph 1, as follows:

10.9
Interest Charges

If a borrower's loan is a subsidized Stafford loan, the federal government pays the interest that accrues during the in-school, grace, and authorized deferment periods. If a borrower's monthly partial financial hardship (PFH) payment amount under an income-based repayment (IBR) plan is not sufficient to pay the interest accruing on a subsidized Stafford loan, the Department pays the accrued interest that exceeds the scheduled monthly PFH payment amount during a consecutive 3-year period beginning with the repayment period start date when each loan enters IBR. This 3-year period excludes any period during which the borrower receives an economic hardship deferment.
[§682.215(b)(4)]

If the loan is an unsubsidized or a nonsubsidized Stafford loan, a PLUS loan, or an SLS loan, the borrower is responsible for paying all interest that accrues on the loan from the first disbursement date—including interest that accrues during deferment period. For information on the interest charges applicable to Consolidation loans, see Subsection 15.3.D and Section 15.6.
[§682.202; §682.300]

Revise Subsection 10.10.B, page 18, column 1, paragraph 1, as follows:

10.10.B
Capitalization Frequency

To determine when the lender may capitalize interest, the lender should refer to the following instructions.

For a loan in repayment under an income-based repayment (IBR) plan, unpaid interest is capitalized if the borrower ceases to have a partial financial hardship (PFH) or leaves IBR and is placed on the expedited-standard repayment schedule.
[§682.215(b)(5)]

Subsidized and Unsubsidized Stafford Loans First Disbursed on or after July 1, 2000

The lender may capitalize unpaid interest only as follows:

- ...

- ...
- ...
- ...

Revise Subsection 10.11.A, page 19, column 1, paragraph 5, as follows:

10.11.A
Applying Regular Borrower Payments

Except for payments made under an income-based repayment (IBR) plan, a~~A~~ lender may apply a payment received first to any accrued late charges or permissible collection costs, then to outstanding interest, and finally to outstanding principal. Under IBR, a lender must apply a payment received first to accrued interest, then to collection costs and late charges, and finally to outstanding principal. Permissible collection costs may include charges incurred by the lender in collecting a missed payment, including court costs and attorneys' fees. The lender may not apply a borrower's payment to "normal" collection costs, such as those associated with preparing and mailing notices and letters, personal contacts, and telephone calls.

Regardless of how these monies are applied with respect to principal, interest, late charges, or collection costs, any payment received during a period when a borrower is required to make payments that equal or exceed the borrower's scheduled payment amount must be used to advance the borrower's due date. Under an IBR plan, a borrower may have a monthly payment amount of zero. Even though the borrower is not required to make a payment, the lender acknowledges that the borrower is fulfilling the monthly payment obligation by advancing the due date to the next month. If a borrower with a payment amount of zero pays an amount greater than zero, the lender acknowledges that the borrower is fulfilling a single monthly payment obligation by advancing the due date to the next month. For example, a borrower has a monthly payment amount of $0 and a due date of the 15th. Each month on the 15th, the borrower's payment is deemed to be satisfied. When appropriate, any amount (except a payment that exceeds a monthly payment amount of $0 under an IBR plan) that exceeds the borrower's scheduled payment amount should be applied as a prepayment, as outlined in Subsection 10.11.B.
[§682.209(b); §682.215(c)]

...

10.11.B
Applying Prepayments

A borrower may prepay his or her loan in full or in part at any time, without penalty and without liability for unearned interest. The lender may credit the entire prepayment amount first to any late charges accrued or collection costs, then to an outstanding interest, and then to outstanding principal. However, if the prepayment amount is intended for a loan being repaid under an income-based repayment (IBR) plan, the lender must apply the prepayment received first to accrued interest, then to collection costs and late charges, and finally to outstanding principal.
[§682.209(b); §682.215(c)]

...

...

Unless the borrower requests otherwise, a prepayment received during a period when regular payments are due must be applied to future installments if the payment received equals or exceeds the regularly scheduled payment amount. A prepayment received on a loan being repaid under an IBR plan with a monthly payment amount of $0 must not be applied to future installments. The lender must notify the borrower that the prepayment has been used to satisfy future installments in one of the following ways:

- Notifying the borrower *in advance* using a prominent statement in the borrower's coupon book or billing statement that any additional full payment amounts submitted to the lender without instructions will be applied to advance the due date on the loan.

- Notifying the borrower *after* the prepayment has been applied of how the payment was applied and the borrower's next scheduled payment due date.

Revise Figure 11-2, "Forbearance Eligibility Chart," page 31, as follows:

Note: Figure 11-2 is also being updated as part of Proposals 1080 in Batch 156 and 1101 in Batch 157.

See attached chart.

Revise Subsection 11.21.J, page 34, column 2, paragraph 2, as follows:

11.21.J
Forgiveness under Income-Based Repayment (IBR)

The lender may grant a forbearance for a period not to exceed 60 days in order to collect and process documentation in order to determine a borrower is eligible for loan forgiveness under the income-based repayment plan. If so granted, the lender must notify the borrower that the requirement to make payments on the loan(s) for which forgiveness was requested has been suspended pending approval of forgiveness by the guarantor on each loan. For information on forgiveness under IBR, see Subsection 13.9.D.
[§682.211(f)(13)]

11.21.K
Late Notification of Out-of-School Dates

...

~~11.21.K~~11.21.L
Loan Sale or Transfer

...

~~11.21.L~~11.21.M
Natural Disasters, Local or National Emergency, or Military Mobilization

...

~~11.21.M~~11.21.N
New Out-of-School Dates after Conversion to Repayment

...

~~11.21.N~~11.21.O
Repayment Alignment

...

...

...

~~11.21.O~~11.21.P

Repurchase of a Non-Bankruptcy Claim

...

~~11.21.P~~11.21.Q
Spouses and Parents of September 11, 2001, Victims

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...

...

~~11.21.Q~~11.21.R
Total and Permanent Disability

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~~11.21.R~~11.21.S
Unpaid Refund Discharge

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...

...

Revise Subsection 12.4.A, page 5, column 2, paragraph 1, bullet 2, as follows:

16-180 days delinquent

If there is no rolling delinquency and no special occurrences exist on the account, the lender must perform the following activities:

- ...
- Send the borrower at least four written notices or collection letters informing the borrower of the delinquency and urging the borrower to make payments. The required notices or collection letters sent during this period must include, at a minimum, information regarding deferment, forbearance, income-sensitive repayment, income-based repayment, loan consolidation, and other available options to avoid default. At least two of the collection letters must warn the borrower that if the loan is not paid...

Revise Subsection 12.4.B, page 11, column 2, paragraph 1, bullet 2, as follows:

16-240 days delinquent

If there is no rolling delinquency and no special occurrences exist on the account, the lender must perform the following activities:

- ...
- Send the borrower at least four written notices or collection letters informing the borrower of the delinquency and urging the borrower to make payments. The

required notices or collection letters sent during this period must include, at a minimum, information regarding deferment, forbearance, income-sensitive repayment, income-based repayment, loan consolidation, and other available options to avoid default. At least two of the collection letters must warn the borrower that if the loan is not paid...

Revise Section 13.7, page 15, column 2, paragraph 2, as follows:

Note: Section 13.7 is also being updated as part of Proposals 1103 in Batch 157, and 1111 and 1112 in Batch 158.

A lender that purchases a rehabilitated loan must immediately establish a repayment schedule with the borrower that meets the requirements applicable to other FFELP loans of the same type. The lender must permit the borrower to choose any repayment schedule available, including the income-based repayment (IBR) plan. The schedule must be sent to the borrower no more than 60 days, and the first payment due date must be no more than 75 days after the lender considers the repurchase to be complete (e.g., the date the repurchase check is sent to the guarantor, the date the lender receives the loan file from the guarantor, or the date the lender receives collateral from the guarantor).
[§682.405(b)(4)]

Except for IBR, ~~T~~ the lender must consider the first payment made under the nine monthly payments required for rehabilitation as the first payment under the applicable maximum repayment period for the loan type (for example, a borrower would have a maximum repayment period of 9 years and 3 months remaining on a loan with a 10-year repayment period, and a Consolidation loan borrower with a balance greater than $60,000 would have a maximum repayment period of 29 years and 3 months, because the nine monthly payments are considered the first 9 months of a repayment term). Under IBR, the nine monthly payments under a rehabilitation plan are considered payments on a defaulted loan and, therefore, are not qualifying payments toward the 25-year IBR forgiveness period. If a borrower was repaying under IBR before default and if the borrower qualifies for partial financial hardship after rehabilitation, the rehabilitated loan may return to IBR and would resume the 25-year period; i.e. only pre-default payments plus the payments made after rehabilitation are considered qualifying payments toward IBR forgiveness.
[§682.405(b)(4); §682.215(f)(5)]

When establishing the maximum repayment period on a rehabilitated Consolidation loan, the lender must use the loan's balance at the time the loan is rehabilitated (i.e., the amount paid to the guarantor to purchase the loan). The initial repayment schedule for each rehabilitated loan must provide for monthly payments that are greater than or equal to the average of the nine monthly payments received by the guarantor.
[§682.405(b)(4)]

Revise Section 13.9, page 54, column 1, paragraph 1, as follows:

Note: Section 13.9 is also being updated as part of Proposals 1080 and 1088 in Batch 156.

13.9
Forgiveness

Loan forgiveness is the release of a borrower's or any comaker's, as applicable, obligation to repay his or her loan, either in whole or in part~~, as a result of public service provided by the borrower or comaker~~. Congress has authorized two programs that provide loan forgiveness, as a result of public service, to qualified FFELP borrowers. Both of these programs and their corresponding borrower eligibility criteria are outlined in ~~this~~ Subsections 13.9.A and 13.9.B. Subsection 13.9.C provides eligibility criteria regarding loan repayment for civil legal assistance attorneys. Subsection 13.9.D outlines eligibility criteria and lender activities with regard to loan forgiveness under income-based repayment (IBR).
[§682.215(f)]

Revise Chapter 13, by adding a new subsection after 13.9.C as follows:

Note: Subsection 13.9.C is being added to the Manual as part of Proposal 1089 in Batch 156.

13.9.D
Loan Forgiveness under the Income-Based Repayment (IBR) Schedule

Under IBR, a borrower who meets all eligibility requirements may have his or her outstanding principal balance and accrued interest forgiven on a qualifying FFELP loan. To be eligible for IBR loan forgiveness after 25 years, the borrower must have participated in the IBR plan and have made at least 300 monthly qualifying payments or equivalents on or after July 1, 2009, by satisfying any of the following conditions:

- Made monthly loan payments, equal to or greater than $0 dollars, based on a partial financial hardship (PFH).

- Made monthly loan payments under any repayment plan that were equal to or greater than the amount required under the standard repayment schedule with a 10-year repayment period (*standard-standard*).

- Made monthly loan payments, after the borrower no longer had a partial financial hardship or after the borrower stopped making income-based payments, under the standard repayment schedule based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan (*permanent-standard*).

- Received an economic hardship deferment on eligible loans.

[§682.215(f)(1) and (2)]

The beginning date for the 25-year repayment period for forgiveness for a borrower with a PFH is the date that the borrower makes a qualifying payment or receives an economic hardship deferment on an eligible FFELP loan(s). A borrower may have loans with different beginning dates for the 25-year repayment period for loan forgiveness. Although the "begin" date(s) may be prior to the date(s) that the borrower qualified for the IBR plan, a "begin" date must not be prior to July 1, 2009. If a borrower satisfies the loan forgiveness requirements, the Department pays the outstanding balance and accrued interest on any eligible FFELP loan, including a rehabilitated loan for which the borrower qualified or re-qualified for IBR (see Section 13.7).
[§682.215(f)(3)and(4)]

Requirements Pertaining to Request for Payment

The lender must request payment from the guarantor not later than 60 days after the lender determines that a borrower qualifies for loan forgiveness. If the lender requests payment later than 60 days after determining that a borrower qualifies for IBR forgiveness, the lender must repay all interest and special allowance received on the forgiven loan amount for periods after the expiration of the 60-day filing period. The lender is prohibited from collecting this interest from the borrower.
[§682.215(g)(1) and (2)]

Borrower Notification Requirements

Within 30 days after notification by the guarantor that the borrower is eligible for IBR forgiveness, the lender must notify the borrower of the determination. The lender must also advise the borrower that the repayment obligation on the loan(s) for which IBR forgiveness was requested has been satisfied. The lender must also provide the borrower with information on the required processing of the amount forgiven. This includes information on the lender's understanding of the current tax treatment of the forgiven amount. The lender is also encouraged to refer the borrower to the Internal Revenue Service for additional information.

[§682.215(g)(4); *Federal Register* dated October 23, 2008]

Processing an Approved Forgiveness

If the guarantor determines that a borrower is eligible for IBR forgiveness, the lender must apply the proceeds of the forgiveness amount to satisfy the outstanding balance on the loan(s) for which IBR forgiveness was requested. If the forgiveness amount exceeds the outstanding balance on the eligible loan(s), the lender must refund the excess amount to the guarantor. The lender must promptly return to the sender any payment received on a loan after the guarantor pays the lender the amount of loan forgiveness.
[§682.215(g)(5) and (7)]

Denying Forgiveness

If the guarantor determines that the borrower is not eligible for IBR forgiveness, the lender may grant an administrative forbearance from the date that the borrower's repayment obligation was suspended until a new payment due date is established. The lender may capitalize any accrued or unpaid interest at the end of the forbearance, unless the denial of the request for payment resulted from a lender error.
[§682.215(g)(6)]

Revise Subsection 15.3.A, page 6, column 2, paragraph 1, as follows:

Worksheet or Web Page
A federal Consolidation loan worksheet or Web page can help the borrower:

- ...
- ...
- ...
- ...
- Calculate estimated monthly payments under standard, graduated, extended, ~~and~~ income-sensitive, and income-based repayment schedules.
- ...
- ...

Revise Section 15.5, page 11, column 1, paragraph 2, as follows:

15.5
Repayment

A Federal Consolidation loan enters repayment on the date the loan is disbursed. When establishing the repayment terms for a Consolidation loan, the lender must consider the borrower's financial ability to repay the loan and ensure that the terms meet the requirements described in this section.
[§682.102(e)(5); §682.209(a)(1); §682.209(h)(1)]

Lenders must offer Consolidation loan borrowers the choice of a standard, graduated, income-sensitive, income-based or, if applicable, an extended repayment schedule. See Section 10.7 and Subsection 10.6.D for more information on these repayment schedules and minimum payment requirements.
[§682.209(a)(6)]

Revise Subsection 15.5.F, page 13, column 2, paragraph 1, as follows:

15.5.F
Delinquency, Claim Filing, Loan Forgiveness, and Discharge

The due diligence, and default and bankruptcy claim filing requirements for a Federal Consolidation loan are identical to those applicable for other FFELP loans. Loan forgiveness and discharge provisions, and discharge claim filing requirements, however, may be different for a Consolidation loan, as follows:

- For Consolidation loan discharge provisions due to closed school and false certification, see Subsection 13.8.B and 13.8.D, respectively.

- For Consolidation loan forgiveness due to teacher loan forgiveness, the Consolidation loan must not include a FFELP or FDLP loan that was first disbursed before October 1, 1998. See Subsection 13.9.B for teacher loan forgiveness provisions for Consolidation loans.

- For Consolidation loan forgiveness under the income-based repayment (IBR) plan, the Consolidation loan must not include a FFELP or Direct parent PLUS loan. See Subsection 13.9.D for information on loan forgiveness under IBR for Consolidation loans.

- ...

Revise Section 15.6, page 14, column 1, paragraph 5, as follows:

15.6
Interest Benefits and Special Allowance

Interest Benefits

...

...

A Federal Consolidation loan made from an application received by the lender on or after November 13, 1997, is eligible for interest subsidy during authorized periods of deferment on any portion of the Consolidation loan that paid an underlying subsidized FFELP loan or an underlying subsidized Direct loan. The borrower is responsible for interest payment during periods of authorized deferment on all other portions of a Consolidation loan. [§682.301(a)(3)(iii)]

On or after July 1, 2009, the subsidized portion of a Consolidation loan is eligible for federal interest benefits to pay accruing interest during a consecutive 3-year period if the borrower's scheduled monthly partial financial hardship (PFH) payment amount under the income-based repayment (IBR) plan is less than such accruing interest. This consecutive 3-year period begins on the established repayment period start date when each loan enters IBR and excludes any period during which the borrower receives an economic hardship deferment. [§682.215(b)(4); §682.300(b)(1)(iv)]

See Appendix A for more information on interest benefits.

Revise Subsection A.1.B, page 2, column 2, paragraph 3, as follows:

For a subsidized Consolidation loan or any portion of a Consolidation loan that is subsidized, the lender may begin billing the Department for interest benefits on the first date the borrower qualifies for a deferment, except for an initial unemployment deferment based on the borrower's self certification of eligibility. In this deferment situation, the lender may begin billing the Department for interest benefits on the later of:
[§682.300(b)(1)(ii)]

- ...

- ...

- ...

For a subsidized Stafford loan or any portion of a Consolidation loan that is subsidized, the lender may bill the Department for interest benefits during a consecutive 3-year period if the

borrower's scheduled monthly partial financial hardship payment amount under the income-based repayment (IBR) plan is not sufficient to pay the accruing interest. This consecutive 3-year period begins on the established repayment period start date when each loan enters IBR and excludes any period during which the borrower receives an economic hardship deferment.
[§682.300(b)(1)(iv)]

Ending Date

The Department's obligation to pay federal interest benefits ends on the earliest of the following dates, as applicable:

- ...
- ...
- ...
- ...
- ...
- ...
- ...
- ...
- ...
- The earlier of the date that the borrower's monthly payment amount under the IBR plan is sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation loan or the end of the consecutive 3-year period.

Revise Subsection A.2.A, page 4, column 1, paragraph 3, as follows:

Note: Subsection A.2.A is also being updated as part of Proposal 1134 in Batch 159.

A.2.A
Special Allowance and Excess Interest Rates

Special Allowance Rates

Generally, ~~T~~the amount of special allowance that is payable on an eligible loan is determined by multiplying the average daily balance of principal and capitalized interest on the loan by the applicable special allowance rate. However, the lender also receives a special allowance payment based on the average daily balance of the unpaid accrued interest for a loan on which the borrower has a partial financial hardship (PFH) as determined under the income-based repayment (IBR) plan.
[§682.302(a)]

Special allowance rates are calculated and published quarterly by the Department. The formulas used to calculate these rates are exhibited on the following pages. The following factors are considered in the calculation of special allowance rates for a loan:

- ...
- ...

- ...
- The applicable statutory interest rate for the loan. However, the applicable interest rate for the unpaid accrued interest on a loan subject to IBR is zero. This rate is subtracted from the sum of the appropriate factor and the applicable T-bill rate or 3-month commercial paper rate.

Revise Appendix G, page 8, column 1, by adding a new paragraph 5, as follows:

Expected Family Contribution: ...

Expedited-Standard: The repayment schedule available to a borrower who chooses to leave the income-based repayment (IBR) plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding balance on the loan when the borrower discontinues paying under an IBR plan.
- The time remaining under a 10-year repayment period for Stafford, SLS, and Grad PLUS loans or under the applicable repayment period (between 10 and 30 years according to the original loan balance) for a Consolidation loan.

Revise Appendix G, page 11, column 1, by adding a new paragraph 5, as follows:

Incarcerat ed: ...

Income-Based Repayment (IBR) Schedule: A repayment plan available to a borrower who has a partial financial hardship (PFH) or is paying a permanent-standard payment amount after qualifying for PFH. If a lender determines that a borrower has a PFH, the borrower's monthly payment amount on eligible loans is limited to 15% of the amount by which the borrower's annual adjusted gross income exceeds 150% of the U.S. Department of Health and Human Services poverty guideline for the borrower's family size. Eligible FFELP and Direct loans include the outstanding balances on all loans except a defaulted loan, a FFELP or Direct parent PLUS loan, and a FFELP or Direct Consolidation loan that repaid a FFELP or Direct parent PLUS loan. The Department repays the outstanding balance and accrued interest on eligible FFELP and Direct loans after 25 years and a combination of 300 months covered by qualifying payments and/or economic hardship deferments, beginning no earlier than July 1, 2009.

See Partial Financial Hardship.

Income-Contingent Repayment Schedule: ...

Revise Appendix G, page 14, column 2, by adding a new paragraph 8, as follows:

Partial Cancellation: ...

Partial Financial Hardship (PFH): A borrower has a partial financial hardship if the annual payment amount, calculated under a standard repayment schedule and based on a 10-year repayment period on all eligible FFELP and Direct loans outstanding when the borrower initially entered repayment on each loan, exceeds 15% of the difference between the borrower's adjusted gross income and 150% of the U.S. Department of Health and Human Services poverty guideline applicable to the borrower's family size. Eligible FFELP and Direct loans include the outstanding balances on all loans except a defaulted loan, a FFELP or Direct parent PLUS loan, and a FFELP or Direct Consolidation loan that repaid a FFELP or Direct parent PLUS loan. If a lender determines that a borrower has a PFH, the borrower is eligible for the income-based repayment (IBR) plan.

See Income-Based Repayment Schedule.

Participating School: ...

Revise Appendix G, page 15, column 1, by adding a new paragraph 4, as follows:

Permanent Resident of the United States: ...

Permanent-Standard: A repayment schedule available to a borrower under the income-based repayment plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding loan balance when the borrower begins repayment under an IBR plan.

- A 10-year repayment period.

Revise Appendix G, page 19, column 1, as follows:

Standard-Standard: A repayment schedule available to a borrower under the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding loan balance when the borrower initially entered repayment on the loan.

- A 10-year repayment period.

PROPOSED LANGUAGE - COMMON BULLETIN:

Income-Based Repayment Option

The Manual was revised to include the income-based repayment (IBR) plan and loan forgiveness under IBR.

Eligibility

Beginning on July 1, 2009, a borrower may request to repay an eligible loan under an IBR plan. Eligible FFELP and Direct loans include the outstanding balances on all loans except:

- A defaulted loan.

- A FFELP or Direct parent PLUS loan.

- A FFELP or Direct Consolidation loan that repaid a FFELP or Direct parent PLUS loan.

If a borrower selects IBR, the lender must determine if the borrower has a partial financial hardship (PFH) for the initial year and annually for each subsequent year that the borrower selects IBR. A PFH exists if the borrower has an annual payment amount, calculated under a standard repayment schedule and based on a 10-year repayment period on all eligible FFELP and Direct loans outstanding when the borrower initially entered repayment on each loan (a.k.a. *standard-standard*), that exceeds 15% of the difference between the borrower's adjusted gross income and 150% of the U.S. Department of Health and Human Services (DHHS) poverty guideline for the borrower's family size.

Payment Amount Calculation

The borrower's maximum annual payment to determine PFH is limited to no more than 15% of the amount by which the borrower's annual adjusted gross income exceeds 150% of the DHHS poverty guideline for the borrower's applicable family size. The result is divided by 12 to obtain the monthly payment amount. If the lender does not hold all of the borrower's eligible loans, the borrower's monthly loan payment is multiplied by the percentage of the borrower's total outstanding principal amount of eligible loans that are held by the lender making the determination of eligibility. For this calculation, the lender may access NSLDS to determine the outstanding principal amount of the borrower's eligible loans that are held by other lenders. If the result of this calculation is less than $5.00 at the lender level, then the borrower's monthly payment amount is $0. If the result of the calculation is equal to or greater than $5.00 but less than $10.00 at the lender level, then the borrower's monthly payment amount is $10.00.

If a borrower selects an IBR plan, the lender must—unless the borrower requests otherwise—require that all eligible loans held by the lender be repaid under the IBR plan. If the borrower has multiple lenders and wants to repay all eligible loans under the IBR plan, the borrower must request IBR from each lender.

Applying Payments and Prepayments
Under IBR, a lender must apply a payment received first to accrued interest, then to collection costs and late charges, and finally to outstanding principal. Under IBR, a borrower may have a scheduled monthly payment amount of $0. Even though the borrower is not required to make a payment, the lender acknowledges that the borrower is fulfilling the monthly payment obligation by advancing the due date to the next month. If a borrower with a payment amount of $0 pays an amount greater than $0, the lender acknowledges that the borrower is fulfilling a single monthly payment obligation by advancing the due date to the next month. For example, a borrower has a payment amount of $0 and a due date of the 15th. Each month on the 15th, the borrower's payment is deemed to be satisfied.

Any prepayment is applied in the same order, i.e. first to accrued interest, then to collection costs and late charges, and finally to outstanding principal. A prepayment received on a loan being repaid under an IBR plan with a monthly payment amount of $0 must not be applied to future installments.

Federal Interest Benefits
Under IBR, the borrower's monthly payment amount may be insufficient to pay accrued interest and principal due or to repay the loan within the 25-year repayment period for loan forgiveness. If the borrower's scheduled monthly PFH payment amount under the income-based repayment (IBR) plan is not sufficient to pay the accruing interest on a subsidized Stafford loan or the subsidized portion of a Consolidation loan, the Department pays the accrued interest, that exceeds the scheduled monthly PFH payment amount, during a consecutive 3-year period that begins with the established repayment period start date when each loan enters IBR. This 3-year period excludes any period during which the borrower receives an economic hardship deferment. Federal interest benefits end on the earlier of the date that the borrower's monthly payment amount under IBR is sufficient to pay the accrued interest on the borrower's loan or the qualifying portion of the borrower's Consolidation loan or the end of the consecutive 3-year period.

Payment Amount Recalculations
If a borrower ceases to have a PFH, chooses not to make PFH payments but remains in IBR, or fails to renew or withdraws consent for income verification, the lender must recalculate monthly payments. To recalculate the borrower's monthly payment amount, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.

If a borrower chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave the IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining up to a maximum of 30 years.

Loan Forgiveness
To be eligible for loan forgiveness after 25 years, the borrower must have participated in the IBR plan and made at least 300 monthly qualifying payments or equivalents on or after July 1, 2009, by satisfying any of the following conditions:

- Made monthly loan payments, equal to or greater than zero dollars, based on a partial financial hardship (PFH).

- Made monthly loan payments under any repayment plan that were equal to or greater than the amount required under the standard repayment schedule with a 10-year repayment period (*standard-standard*).

- Made monthly loan payments, after the borrower no longer had a partial financial hardship or after the borrower stopped making income-based payments, under the standard repayment schedule based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan (*permanent-standard*).

- Received an economic hardship deferment on eligible loans.

The beginning date for the 25-year repayment period for forgiveness for a borrower with PFH is the date that the borrower makes a qualifying payment or receives an economic hardship deferment on an eligible FFELP loan(s). A borrower may have loans with different beginning dates for the 25-year repayment period for forgiveness. Although the "begin" date(s) may be prior to the date(s) that the borrower qualified for the IBR plan, a "begin" date must not be prior to July 1, 2009. If a borrower satisfies the loan forgiveness requirements, the Department pays the outstanding balance and accrued interest on any eligible FFELP loan, including a rehabilitated loan (see subsection below) for which the borrower qualified or re-qualified for IBR.

Administrative Forbearance
The lender may grant a forbearance for a period not to exceed 60 days in order to collect and process documentation supporting a borrower's eligibility for loan forgiveness under IBR. The lender must notify the borrower that the requirement to make payments on the loan(s) for which forgiveness was requested, has been suspended pending approval of forgiveness by the guarantor on each loan.

Requirements Pertaining to Request for Payment
The lender must request payment from the guarantor not later than 60 days after determining that a borrower qualifies for loan forgiveness. If the lender requests payment later than 60 days after determining that a borrower qualifies for IBR forgiveness, the lender must repay all interest and special allowance received on the forgiven loan amount for periods after the expiration of the 60-day filing period. The lender is prohibited from collecting this interest from the borrower.

Borrower Notification Requirements
Within 30 days after notification by the guarantor that the borrower is eligible for IBR forgiveness, the lender must notify the borrower of the determination. The lender must also advise the borrower that the repayment obligation on the loan(s) for which IBR forgiveness was requested has been satisfied. The lender must also provide the borrower with information on the required processing of the amount forgiven. This includes information on the lender's understanding of the current tax treatment of the forgiven amount. The lender is also encouraged to refer the borrower to the Internal Revenue Service for additional information.

Processing an Approved Forgiveness
If the guarantor determines that a borrower is eligible for IBR forgiveness, the lender must apply the proceeds of the forgiveness amount to satisfy the outstanding balance on the loan(s) for which IBR forgiveness was requested. If the forgiveness amount exceeds the outstanding balance on the eligible loan(s), the lender must refund the excess amount to the guarantor. After the loan(s) has been forgiven, the lender must promptly return any loan payment(s) to the sender.

When Forgiveness is Denied
If the guarantor determines that the borrower is not eligible for IBR forgiveness, the lender may grant an administrative forbearance from the date that the borrower's repayment obligation was suspended until a new payment due date is established. The lender may capitalize any accrued or unpaid interest at the end of the forbearance, unless the denial of the request for payment resulted from a lender error.

Special Allowance Payments
Special allowance is payable on loans in repayment under IBR. In addition to a special allowance payment determined by the average daily balance of principal and capitalized interest on the loan, the lender also receives a special allowance payment based on the average daily balance of the unpaid accrued interest for a loan on which the borrower has a PFH as determined under IBR. The applicable interest rate for unpaid accrued interest on a loan subject to IBR is zero.

Rehabilitated Loans and IBR
A lender must permit the borrower of a rehabilitated loan to choose any repayment schedule in statute, including IBR. If a borrower was repaying under IBR before default and if the borrower qualifies for partial financial hardship after rehabilitation, the rehabilitated loan may return to IBR and would resume the 25-year period but only pre-default payments plus the payments made after rehabilitation are considered qualifying payments toward IBR forgiveness. The nine monthly payments under a rehabilitation plan are considered

payments on a defaulted loan and, therefore, are not qualifying payments toward the 25-year repayment period for loan forgiveness.

Definitions
In addition to a definition for the "Income-Based Repayment Schedule" and for "Partial Financial Hardship," the following definitions are added to Appendix G:

Expedited-Standard: The repayment schedule available to a borrower who chooses to leave the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding balance on the loan when the borrower discontinues paying under an IBR plan.
- The time remaining under a 10-year repayment period for Stafford, SLS, and Grad PLUS loans or under the applicable repayment period (between 10 and 30 years according to the original loan balance) for a Consolidation loan.

Permanent-Standard: A repayment schedule available to a borrower under the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding loan balance when the borrower begins repayment under an IBR plan.
- A 10-year repayment period.

Standard-Standard: A repayment schedule available to a borrower under the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

- The borrower's outstanding loan balance when the borrower initially entered repayment on the loan.
- A 10-year repayment period.

Figure 11-2, "Forbearance Eligibility Chart," has also been updated to include IBR.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower is afforded an additional repayment and loan forgiveness option through IBR.

School:
A school may need to update counseling materials to include IBR.

Lender/Servicer:
A lender/servicer may need to revise its systems and procedures to comply with the provisions of IBR, including the tracking of the 25-year period for determining a borrower's eligibility for forgiveness and the processing of such forgiveness.

Guarantor:
A guarantor may need to revise program review criteria and to develop procedures for the rehabilitation of defaulted loans with applicable IBR history. Eventually, a guarantor will need to develop a process for reviewing and granting loan forgiveness under IBR.

U.S. Department of Education:
The Department may need to revise program review criteria. Eventually, the Department will be required to develop a process for reimbursing guarantors for the payment of IBR loan forgiveness.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 16, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives:

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds and VSAC.

Responses to Comments

Some of the commenters supported this proposal as written. Other commenters recommended wordsmithing, grammatical, or other non-substantive changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
Four commenters suggested that the term, “the Department of Health and Human Services poverty guidelines” should be used throughout the proposal instead of “poverty line income” or “poverty guidelines”. The rationale for the request is to provide consistency with regulatory language and to clearly define which poverty guidelines are being reference. The commenters also suggested that consistency of the phrase be reviewed throughout the Manual.

Another commenter recommended using the term, “poverty guideline”, rather than “poverty line” consistently throughout the proposal.

Response:
The Committee agrees with the suggestion to change the occurrences of the phrases, “poverty line income”, and “poverty guidelines” in this proposal to the phrase, “the U.S. Department of Health and Human Services poverty guidelines”. In addition, the Committee will review the suggestion to consider the same reference for other occurrences of “poverty line income” or “poverty guidelines” within the Manual.

Change:
Within the proposed language for the Manual and within the Common Bulletin text, the phrases “poverty line income” and “poverty guidelines” have been changed to the “U.S. Department of Health and Human Services poverty guideline(s)”.

COMMENT:
Five commenters requested that the effective date/trigger event be revised as follows:

> ~~Except for loan forgiveness, all~~ The provisions of the income-based repayment (IBR) plan are effective July 1, 2009. IBR loan forgiveness ~~provisions are effective on~~ may not occur prior to July 1, 2034.

The change is requested because the current text for the effective date/trigger event could be interpreted to mean that a lender does not need to be concerned about any provision that relates to IBR loan forgiveness until July 1, 2034. This would be an erroneous interpretation because lenders must begin counting eligible payments, economic hardship deferment months, and the 25-year period on July 1, 2009.

Another commenter requested that the effective date/trigger event be revised as follows:

> IBR loan forgiveness provisions are effective ~~on~~ July 1, 2034.

The rationale for the requested change is to provide consistency with the preceding sentence.

Response:
Since the Committee's objective is to use text that will not result in an erroneous interpretation by either a lender or school, the Committee agrees to change the effective date and trigger event.

Change:
In an effort to address the multiple requests, the Committee has changed the effective date/trigger event as follows:

> The provisions of the income-based repayment (IBR) plan are effective July 1, 2009. IBR loan forgiveness may not occur prior to July 1, 2034.

COMMENT:
One commenter suggested a revision to the paragraph addressing a subsidized Federal Stafford loan in Subsection 2.1.B as follows:

> However, the repayment period may be greater than 10 years under an income-based repayment plan or extended repayment plan. For borrowers eligible for an extended repayment schedule, the maximum repayment period is 25 years. (See Section 10.8).

Response:
The Committee understands that the repayment periods for both the income-based and the extended repayment plan may be greater than 10 years. However, the last sentence addresses the extended repayment schedule both in terms of a repayment period that may be greater than 10 years and in terms of a repayment period that will not exceed 25 years.

Change:
In order to a avoid duplication, there is no change.

COMMENT:
One commenter suggested a revision to the paragraph addressing a Federal PLUS loan in Subsection 2.1.B. The commenter noted that the new sentence is confusing when read with the preceding sentence. The commenter is not clear on the differences between Grad PLUS and parent PLUS loans.

Response:
Since the commenter did not offer any suggested text, the Committee will attempt to clarify the text.

Change:
The subject bullet has been revised as follows:

- A **Federal PLUS loan** is available to an eligible parent of a dependent undergraduate student attending a participating postsecondary school and to an eligible graduate or professional student enrolled in an eligible graduate or professional program at a participating school. A PLUS loan borrower must not have adverse credit or must obtain a creditworthy endorser to be eligible for the loan. The borrower is responsible for paying to the lender the interest that accrues on the loan from the time the loan is disbursed until it is paid in full. Repayment of ~~the~~ a PLUS loan is scheduled over a maximum period of 10 years. However, the repayment period on a Grad PLUS loan may be longer than 10 years under an income-based repayment plan. For a borrower eligible for an extended repayment schedule, the maximum repayment period is ~~, or~~ 25 years ~~for borrowers eligible for an extended repayment schedule~~. ~~However, the repayment period on a Grad PLUS loan may be greater than 10 years under an income-based repayment plan.~~ (See Section 10.8).

COMMENT:
One commenter requested the following revision to Subsection 7.6.B:

The lender must also provide the borrower, in a written or electronic format, the initial disclosure information on the availability of income-sensitive repayment and, except for a parent PLUS borrower or for a Consolidation loan borrower whose Consolidation loan paid one or more parent PLUS loans, the availability of income-based repayment. By providing the borrower with the promissory note and associated materials approved by the Department, the lender meets the requirements to disclose the following information (issued together or separately):

- A statement that the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment~~, including through loan consolidation~~.

The rationale for the change is to eliminate wording, which is a direct quote of the regulation, that is awkward and the meaning is unclear. The phase, “including through loan consolidation”, was meant to clarify that the income-sensitive repayment was also available on a Consolidation loan. IBR, however, may be available on any FFELP loan except a parent PLUS or a Consolidation loan that includes a parent PLUS loan and this information is adequately conveyed in the opening paragraph.

Response:
The Committee strives to present regulatory requirements in text that is clear and not awkward and concurs that the text could be more simply stated.

Change:
The Committee has revised the proposed text as follows:

The lender must also provide the borrower, in a written or electronic format, the initial disclosure information on the availability of income-sensitive repayment and, except for a parent PLUS borrower or for a Consolidation ~~loan~~ borrower whose Consolidation loan paid one or more parent PLUS loans, the availability of income-based repayment. By providing the borrower with the promissory note and associated materials approved by the Department, the lender meets the requirements to disclose the following information (issued together or separately):

- A statement that the borrower is eligible, including through loan consolidation, for income-sensitive repayment, and may be eligible for income-based repayment~~, including through loan consolidation~~.

COMMENT:
Two commenters requested that the proposed sentence in Subsection 10.6.B be revised as follows:

However, the repayment period on a Stafford, SLS l~~oan~~ or a Grad PLUS loan may be greater than 10 years under an income-based repayment (IBR) plan.

The commenters noted that any outstanding SLS loans will also be eligible for IBR.

Response:
Given that eligible loans include SLS, the Committee concurs with the request.

Change:
The subject sentence has been revised as follows:

However, the repayment period on a Stafford ~~loan~~, SLS, or Grad PLUS loan may be greater than 10 years under an income-based repayment (IBR) plan.

COMMENT:
Three commenters requested that the last sentence in Subsection 10.6.D be revised as follows:

Under an IBR plan, the borrower’s monthly payment may not be sufficient to pay accrued interest and principal due or to repay the loan within the ~~maximum~~ 25-year period before forgiveness eligibility.

The commenters noted that the 25-year period is a forgiveness period, not a maximum repayment period.

Another commenter suggested changing the phrase “may not be sufficient” to “may be less than the amount needed to pay” because “may not be sufficient” is often interpreted as “must not be sufficient”.

Response:
In the *Federal Register* dated October 23, 2008, the Department provides multiple references to the 25-years, e.g. the 25-year repayment period for forgiveness and the 25-year forgiveness period. Based on the first commenters’ request and the Department’s references, the Committee will refer to the period in question as the “25-year repayment period for forgiveness”.

In response to the last commenter, the Committee agrees to change the phrase”may not be sufficient” to “may be insufficient” in an effort to avoid misinterpretations.

Change:
The last sentence in Subsection 10.6.D and the same sentence in the Common Bulletin text has been revised as follows:

> Under an IBR plan, the borrower’s monthly payment amount may ~~not~~ be insufficient to pay accrued interest and principal due or to repay the loan within the ~~maximum~~ 25-year repayment period for loan forgiveness.

COMMENT:
One commenter requested that Section 10.7 of the Manual, page 12, column 2, paragraph 3, be revised as follows:

> A lender must offer the borrower a choice of a standard, graduate, income-sensitive, income-based, or, if applicable, an extended repayment schedule. The lender must also inform the borrower that he or she is eligible for income-sensitive repayment and, except for a parent PLUS borrower or for a Consolidation loan borrower whose Consolidation loan paid one or more parent PLUS loans, may be eligible for income-based repayment ~~(including through loan consolidation),~~ the procedures by which the borrower can choose income-sensitive or income-based repayment, and where and how more information on income-sensitive repayment may be obtained. If a lender chooses to include repayment choices with the repayment notification, the lender must ensure that the timing of this notice also meets the requirements of Subsection 10.7.A.

The rationale for the change is to include all sections of the Manual that address repayment options.

Response:
The Committee notes that Policy Proposal 1128 in Batch 159 addresses the subject revisions to Section 10.7.

Change:
None.

COMMENT:
Four commenters requested a change in the proposed last sentence in Section 10.8 as follows:

> A lender must comply with an eligible borrower’s request to revise his or her choice of repayment schedule at least once annually, except that a borrower may request IBR at any time.

The purpose for the change is to more precisely align the text in the Manual with regulatory intent.

Response:
The Committee concurs that a borrower may request IBR at any time

Change:
The last sentence in Section 10.8 has been revised as requested.

COMMENT:
One commenter requested the following change to the 4th proposed paragraph in Subsection 10.8.D:

The ~~lender receives the~~ borrower~~'s~~ must provide a self-certification of family size to the lender. If the borrower fails to certify family size, the lender must assume a family size of one. ~~which~~ Family size includes the following:

- The borrower and the borrower's spouse.
- The borrower's children, including unborn children who will be born during the year for which the borrower certifies family size, if the borrower provides more than half of the children's support.
- Other individuals who, at the time the borrower certifies family size, live with the borrower and receive more than half of their support from the borrower and will continue to receive this support from the borrower for the year being certified. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs. ~~If the borrower fails to certify family size, the lender must assume a family size of one~~.

The rationale for the request is to move the last sentence of the proposed third bullet to the introductory paragraph since the sentence addresses a general requirement for establishing family size. In addition, the change eliminates the passive voice in the first sentence.

Response:
The Committee concurs with the request.

Change:
The proposed text has been revised as requested.

COMMENT:
Three commenters requested the following revisions in the last two paragraphs of Subsection 10.8.D:

> To recalculate the borrower's monthly payment amount under the two scenarios above, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.
>
> If a borrower ~~leaves~~ chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining ~~up to a maximum of 30 years~~in the initial repayment period term when the Consolidation loan was made, and on the balance outstanding at the time the borrower exists IBR. If the lender determines that the borrower does not have any remaining time under their previous term, the borrower must remain in IBR. (See Subsection 15.5.C for information on applicable repayment periods.)

The rationale for the change in text with regard to a Consolidation loan is to provide the tentative guidance from the Department on the method for handling expedited-standard. In addition, a sentence was added to explain what should happen if the borrower requests expedited-standard but has no time remaining under his or her previous term.

Response:
The Committee concurs that the reference to the above two scenarios [i.e. (1) the borrower ceases to have a PFH or chooses not to make PFH payments but remains in the IBR plan or (2) the borrower fails to renew or withdraws consent for income verification from the Internal Revenue Service] provides clarification. The Committee also concurs that the borrower chooses to leave IBR. However, the Committee does not concur with the inclusion of the Department's tentative guidance for handling expedited-standard for Consolidation loans. If the Department provides further guidance to address the handling of expedited-standard for Consolidation loans, the Committee will consider a proposal to revise existing Manual text.

Change:

The subject paragraphs have been revised as follows:

> To recalculate the borrower's monthly payment amount under either of the two preceding bullets, a lender uses a standard repayment schedule for a 10-year repayment period based on the borrower's outstanding loan balance at the time that the borrower began repayment under the IBR plan. This monthly payment amount (a.k.a. *permanent-standard*) may result in a repayment period that exceeds 10 years.
>
> If a borrower ~~leaves~~ chooses to leave IBR, a lender recalculates the borrower's monthly payment amount by using a standard repayment schedule for the time remaining on a 10-year repayment period based on the borrower's outstanding loan balance at the time the borrower elects to leave IBR (a.k.a. *expedited-standard*). For a Consolidation loan, the monthly payment amount is recalculated, based on the time remaining up to a maximum of 30 years. (See Subsection 15.5.C for information on applicable repayment periods.)

COMMENT:
One commenter asked if the support listed in Subsection 10.8.D, paragraph 4, bullet 3, was all inclusive or not all inclusive.

Response:
The Committee is providing policy in the Manual. Implementation of that policy may expand upon the prescriptive or non-prescriptive definition of support.

Change:
None.

COMMENT:
One commenter requested that a third bullet, addressing recalculation of the payment amount when a borrower chooses to no longer pay under the IBR plan, be added to Subsection 10.8.D as follows:

> The lender must recalculate monthly payments for a borrower when any of the following occurs:
>
> - ...
> - The borrower fails to renew or withdraws consent for income verification from the Internal Revenue Service.
> - The borrower chooses to no longer pay under the IBR plan.

The rationale for the change is to locate all scenarios that require recalculation of the payment amount in one location within the Manual.

Response:
The Committee recognizes the logic of the request. However, the two proposed bullets address scenarios that require recalculation under the permanent-standard. The third bullet requested by the commenter requires recalculation under the expedited-standard. Due to the difference in repayment schedules, the Committee has addressed the recalculation of the payment amount in two consecutive paragraphs. In addition, the Committee has revised the text in the two paragraphs, based on the prior comment, to provide clarification.

Change:
None.

COMMENT:
One commenter noted that various terms are used within Subsection 10.8.D under the subheading "Payment Amount Calculation" and in the proposed text in Appendix G to describe the maximum annual payment amount for the purpose of determining PFH, including "annual payment," maximum annual loan repayment," "annual amount due," and "annual income-based repayment limit." The commenter recommends using one term to minimize confusion.

One commenter noted that in Subsection 10.8.D, Step 7, the term "monthly income-based payment", is used but is not defined nor used elsewhere. The commenter recommends removing the modifier "income based" for clarity.

Response:
The Committee appreciates the recommendations.

Change:
The phrase, "maximum annual loan repayment", used in Step 4 and the "annual income-based repayment limit" used in Step 6 within Subsection 10.8.D have been changed to the "maximum annual payment amount". The modifier, "income-based", has been deleted in Step 7. The phrase "annual payment amount" (without the modifier "minimum") has been used throughout the proposal to address the amount calculated under a standard repayment plan. Since "annual amount due" was used to address the borrower's annual payment amount under a standard repayment plan, it was replaced by "annual payment amount".

COMMENT:
Three commenters proposed the following revision to the first paragraph in Subsection 10.11.B:

> A borrower may prepay his or her loan in full or in part at any time, without penalty and without liability for unearned interest. The lender may credit the entire prepayment amount first to any late charges accrued or collection costs, then to an outstanding interest, and then to outstanding principal. However, if the prepayment amount is intended for a loan being repaid under an income-based repayment (IBR) plan ~~and the borrower's monthly payment amount is zero~~, the lender must apply the prepayment received first to accrued interest, then to collection costs and late charges, and finally to outstanding principal.

The rationale for the change is that any prepayment regardless as to the borrower's PFH payment, must be applied according to the IBR payment apportionment requirements under §682.215(c)(1). The text in §682.215(c)(4) was added in response to a question regarding zero payment under PFH.

Response:
The Committee concurs with the request.

Change:
The paragraph has been changed as requested. In addition, the Common Bulletin language has been revised to reflect the changes.

COMMENT:
One commenter suggested relocation of the proposed sentence in Subsection 10.11.B to a separate paragraph as follows:

> Unless the borrower requests otherwise, a prepayment received during a period when regular payments are due must be applied to future installments if the payment received equals or exceeds the regularly scheduled payment amount. The lender must notify the borrower that the prepayment has been used to satisfy future installments in one of the following ways:
>
> - ...
> - ...
>
> <u>A prepayment received on a loan being repaid under an IBR plan with a payment amount of zero must not be applied to future installments.</u>

The rationale for the request is the sentence is awkward if not moved to a separate paragraph.

Response:
Although the Committee concurs that the proposed location of the sentence, i.e. within the paragraph, may be considered awkward, it is a location that emphasis the policy with regard to prepayment on a loan being repaid under an IBR plan with a payment amount of zero.

Change:
None.

COMMENT:
Two commenters requested a revision of the proposed text in Section 13.7 as follows:

> Except for IBR, the lender must consider the first payment made under the nine monthly payments required for rehabilitation as the first payment under the applicable maximum repayment period for the loan type (for example, a borrower would have a maximum repayment period of 9 years and 3 months remaining on a loan with a 10-year repayment period, and a Consolidation loan borrower with a balance greater than $60,000 would have a maximum repayment period of 29 years and 3 months, because the nine monthly payments are considered the first 9 months of a repayment term). Under IBR, the nine monthly payments under a rehabilitation plan are considered payments on a defaulted loan and, therefore, are not qualifying payments toward the 25-year IBR forgiveness period. If a borrower was repaying under IBR before default, the rehabilitated loan may return to IBR if the borrower qualifies for partial financial hardship and would resume the 25-year period, i.e. only pre-default payments plus the payments made after rehabilitation are considered qualifying payments toward IBR forgiveness.

The rationale for the change is that the borrower must qualify for PFH after rehabilitation in order to return to IBR. The loan does not automatically return to IBR after rehab.

Response:
The Committee concurs with the request.

Change:
The subject paragraph in Section 13.7 has been changed as follows:

> Except for IBR, the lender must consider the first payment made under the nine monthly payments required for rehabilitation as the first payment under the applicable maximum repayment period for the loan type (for example, a borrower would have a maximum repayment period of 9 years and 3 months remaining on a loan with a 10-year repayment period, and a Consolidation loan borrower with a balance greater than $60,000 would have a maximum repayment period of 29 years and 3 months, because the nine monthly payments are considered the first 9 months of a repayment term). Under IBR, the nine monthly payments under a rehabilitation plan are considered payments on a defaulted loan and, therefore, are not qualifying payments toward the 25-year IBR forgiveness period. If a borrower was repaying under IBR before default and if the borrower qualifies for partial financial hardship after rehabilitation, the rehabilitated loan may return to IBR and would resume the 25-year period, i.e. only pre-default payments plus the payments made after rehabilitation are considered qualifying payments toward IBR forgiveness.

COMMENT:
Four commenters offered a revision to the first paragraph under Subsection 13.9.D as follows:

> Under IBR, a borrower who meets all eligibility requirements may have his or her outstanding principal balance and accrued interest forgiven on qualifying FFELP loans. To be eligible for loan forgiveness after 25 years, the borrower must have ~~made payments under an~~ participated in the IBR plan and made at least 300 monthly qualifying payments or equivalents on or after July 1, 2009, by satisfying any of the following conditions:

The rationale for the change is that the borrower does not have to be in IBR when forgiveness is granted.

Response:
The Committee concurs that the text of §682.215(f) requires the borrower to have participated in IBR.

Change:
The proposed text and the Common Bulletin text has been revised as requested.

COMMENT:
Three commenters offered a revision to the third bullet in the first paragraph under Subsection 13.9.D as

follows:

- Made monthly loan payments after the borrower no longer has a partial financial hardship under the standard repayment schedule based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan (*permanent-standard*).

The rationale for the change is to align the bullet with the regulatory language.

Response:
The Committee concurs that the permanent-standard is available, based on §682.215(f)(1)(ii) and on page 63238 in the October 23, 2008 *Federal Register*, to a borrower who selected IBR but no longer has a partial financial hardship or no longer wishes to make IBR based payment amounts.

Change:
The proposed text and the Common Bulletin text has been revised as follows:

- Made monthly loan payments, after the borrower no longer had a partial financial hardship or after the borrower stopped making income-based payments, under the standard repayment schedule based on a 10-year repayment period for the amount of the borrower's loans that were outstanding at the time the borrower selected the IBR plan (*permanent-standard*).

COMMENT:
Three commenters requested that the second paragraph in Subsection 13.9.D be revised as follows:

> The beginning date for the 25-year period for a borrower with PFH is the date that the borrower makes a qualifying payment or receives an economic hardship deferment on ~~one or more of~~ his or her eligible FFELP loans. Depending on the borrower's circumstances, a borrower may have loans with different beginning dates for the 25-year period. Although that date may be prior to the date that the borrower qualified for the IBR plan, ~~the~~ that date must not be prior to July 1, 2009. If a borrower satisfies the loan forgiveness requirements, the Department pays the outstanding balance and accrued interest on any eligible FFELP loan, including a rehabilitated loan ~~that returned to an IBR plan or~~ for which the borrower selected IBR (see Section 13.7).

The commenters noted that the Committee's proposed language would suggest that all of the borrower's loans have the same IBR begin date. The rationale for the deletion of the phrase, "that returned to an IBR plan or", is based upon the requirement that the borrower must again request and qualify for IBR after rehabilitation.

Response:
The Committee did not intend to suggest that all of a borrower's loans have the same IBR begin date. Since the proposed language resulted in that interpretation, the Committee will revise the language to state that the borrower may have loans with different "begin" dates for the 25-year repayment period for forgiveness. Additionally, the Committee did not intend to suggest that the borrower did not have to request and qualify for IBR after rehabilitation. As such, the Committee thanks the commenters for providing not only the suggested revisions but also an explanation for the suggested changes.

Change:
The subject paragraph has been revised as follows:

> The beginning date for the 25-year repayment period for forgiveness for a borrower with PFH is the date that the borrower makes a qualifying payment or receives an economic hardship deferment on an ~~one or more of his or her~~ eligible FFELP loan(s). A borrower may have loans with different beginning dates for the 25-year repayment period for forgiveness. Although ~~that~~ the "begin" date(s) may be prior to the date(s) that the borrower qualified for the IBR plan, ~~the~~ a "begin" date must not be prior to July 1, 2009. If a borrower satisfies the loan forgiveness requirements, the Department pays the outstanding balance and accrued interest on any eligible FFELP loan, including a rehabilitated loan ~~that returned to an IBR plan or~~ for which the borrower ~~selected~~ qualified or re-qualified for IBR (see Section 13.7).

COMMENT:
Two commenters suggested adding clarification on the citation in Subsection 13.9.D under the subheading, “Borrower Notification Requirements”, as follows:

> Within 30 days after notification by the guarantor that the borrower is eligible for IBR forgiveness, the lender must notify the borrower of the determination. The lender must also advise the borrower that the repayment obligation on the loan(s) for which IBR forgiveness was requested has been satisfied. The lender must also provide the borrower with information on the required processing of the amount forgiven. This includes information on the lender’s understanding of the current tax treatment of the forgiven amount. The lender is also encouraged to refer the borrower to the Internal Revenue Service for additional information.
> [§682.215(g)(4)<u>; preamble to Final Rule published October 23, 2008</u>]

The rationale for the addition of the preamble is because the last two sentences are not in the regulations but are addressed in the preamble to the final rule.

One commenter requested that the last two sentences be deleted because the language does not exist in the regulations. As such, the commenter advises that specific requirements for an event, that will not occur for many years, should not be included.

Response:
The Committee concurs with the request to add the *Federal Register* dated October 23, 2008 as a citation.

The Committee understands that forgiveness will not occur until 2034. However, the last two sentences have been included to retain the Department’s text from the preamble until the earlier of a change through statute/regulation/guidance or the effective date for forgiveness.

Change:
The *Federal Register* dated October 23, 2008 has been added as a citation for the subject paragraph.

COMMENT:
One commenter requested the following revision in Subsection 13.9.D:

> **Denying Forgiveness**
> ...The lender may capitalize any accrued or unpaid interest at the end of the forbearance, unless the denial of the ~~“claim”~~ <u>request for payment</u> resulted from a lender error.

Response:
The Committee concurs with the request.

Change:
The subject sentence has been revised as requested.

COMMENT:
Three commenters requested a revision to the regulatory cite in the last paragraph of Section 15.6 as follows:

> [§682.215(b)~~(1)(iv)~~<u>(4); §682.300(b)(1)(iv)</u>]

Response:
The Committee concurs.

Change:
The proposed text has been changed as requested.

COMMENT:
One commenter suggested revising the first sentence in the last paragraph of Section 15.6 as follows:

> On or after July 1, 2009, a Consolidation loan <u>being paid under an income-based repayment plan</u> is eligible for federal interest benefits to pay accruing interest on the subsidized portion of the Consolidation loan ~~because~~ <u>if</u> the borrower’s scheduled monthly partial financial hardship (PFH)

> payment amount~~,~~ under the income-based repayment plan~~,~~ is less than such accruing interest.

The rationale for the change is to add language clarifying that this is only available for loans being paid under IBR.

One commenter suggested revising the subject paragraph to provide text that is similar to the first proposed paragraph in Appendix A.

Response:
Although the Committee concurs with the first commenter's objective of clarifying that the text only applies to loans being paid under IBR, the Committee has to balance that request with the objective of avoiding text that is duplicative.

Having concurred with the request to add §682.300(b)(1)(iv) as a reference, the Committee will revise the subject paragraph to provide text that is similar to the first proposed paragraph in Appendix A.

Change:
The subject paragraph has been revised as follows:

> On or after July 1, 2009, the subsidized portion of a Consolidation loan is eligible for federal interest benefits to pay accruing interest ~~on the subsidized portion of the Consolidation loan because~~ during a consecutive 3-year period if the borrower's scheduled monthly partial financial hardship (PFH) payment amount~~,~~ under the income-based repayment plan~~,~~ is less than such accruing interest. ~~Federal interest benefits are limited to a~~ This consecutive 3-year period ~~that~~ begins on the established repayment period start date when each loan enters ~~under~~ IBR and ~~includes any period for which the Department has paid accruing interest due to insufficient PFH monthly payments on the underlying subsidized Stafford loans. This 3-year period~~ excludes any period during which the borrower ~~is on~~ receives an economic hardship deferment.

COMMENT:
Four commenters requested a revision to the proposed paragraph in Appendix A as follows:

> For a subsidized Stafford loan or any portion of a Consolidation loan that is subsidized, the lender may bill the Department for interest benefits during a consecutive 3-year period, if the borrower's monthly partial financial hardship payment amount under the income-based repayment (IBR) plan is not sufficient to pay the accruing interest. ~~The 3-year period begins on the established repayment period start date on each loan under the income-based repayment plan and excludes any period during which the borrower receives an economic hardship deferment.~~ Federal interest benefits are limited to a consecutive 3-year period that begins on the repayment period start date under IBR and includes any period for which the Department has paid accruing interest due to insufficient PFH monthly payments on the underlying subsidized Stafford loans. This 3-year period excludes any period during which the borrower is on an economic hardship deferment.
> [§682.215(b)(4); §682.300(b)(1)(iv)]

The rationale for the proposed change is to make the language consistent with the proposed language under Section 15.6. In addition, the revisions clarifies the requirement for any time spent on the underlying loans.

Response:
The Committee is concerned that the requested revision may inadvertently provide contradictory policy in that the 3-year period is both consecutive and includes any period for which the Department has paid accruing interest. In the preamble text on page 63237, the Department states its obligation "under the law is to pay only the amount of unpaid accrued interest that is not the borrower's obligation to pay" during this 3-year period.

Change:
The Committee has revised the subject paragraph as follows:

> For a subsidized Stafford loan or any portion of a Consolidation loan that is subsidized, the lender may bill the Department for interest benefits during a consecutive 3-year period, if the borrower's scheduled monthly partial financial hardship payment amount under the income-based repayment (IBR) plan is not sufficient to pay the accruing interest. ~~The~~ This consecutive 3-year period begins on

the established repayment period start date ~~on~~ when each loan ~~under the~~ enters IBR i~~income-based repayment plan~~, and excludes any period during which the borrower receives an economic hardship deferment.

COMMENT:
One commenter requested the following revision to the proposed bullet in Appendix A under “Ending Date”

- The earlier of the date that the borrower’s monthly payment amount under the income-based repayment plan is sufficient to pay the accrued interest on the borrower’s loan or the qualifying portion of the borrower’s Consolidation loan or the end of the consecutive 3-year period.

Another commenter suggested the following revision to the same bullet in Appendix A.

- For a loan in an income-based repayment plan, t~~T~~he earlier of the date that the borrower’s monthly payment amount is sufficient to pay the accrued interest on the borrower’s loan or the qualifying portion of the borrower’s Consolidation loan or the end of the consecutive 3-year period.

The rationale is to provide context.

Response:
The Committee appreciates and concurs with the request to provide context.

Change:
The subject sentence has been revised as follows:

- The earlier of the date that the borrower’s monthly payment amount under the income-based repayment plan is sufficient to pay the accrued interest on the borrower’s loan or on the qualifying portion of the borrower’s Consolidation loan or the end of the consecutive 3-year period.

COMMENT:
Five commenters requested a revision to the first paragraph in Appendix A, Subsection A..2.A as follows:

> Generally, the amount of special allowance that is payable on an eligible loan is determined by multiplying the average daily balance of principal and capitalized interest on the loan by the applicable special allowance rate. ~~However, the average daily balance~~ In addition, for a loan~~,~~ on which the borrower has a partial financial hardship (PFH) as determined under the income-based repayment (IBR) plan, ~~includes unpaid accrued interest in addition to principal and capitalized interest~~ the lender also receives special allowance based on the average daily balance of the unpaid accrued interest.

The rationale for the proposed change is to eliminate the proposed language suggesting that the two average daily balances are added together. The balances are two separate calculations that are reported separately on LaRS because the SAP is calculated based on two different interest rates.

Response:
Since the Committee did not intend to suggest that the two average daily balances are added together, the Committee will revise the text to eliminate the suggested interpretation.

Change:
The subject paragraph has been revised as follows:

> Generally, ~~T~~the amount of special allowance that is payable on an eligible loan is determined by multiplying the average daily balance of principal and capitalized interest on the loan by the applicable special allowance rate. However, the lender also receives a special allowance payment based on the average daily balance of the unpaid accrued interest for a loan, on which the borrower has a partial financial hardship (PFH) as determined under the income-based repayment (IBR) plan, ~~includes unpaid accrued interest in addition to principal and capitalized interest~~.

COMMENT:

Three commenters requested the following revision to the last sentence in the proposed definition for the Income-Based Repayment Schedule in Appendix G:

> The Department repays the outstanding balance and accrued interest on eligible FFELP and Direct loans after 25 years and a combination of 300 months covered by qualifying payments and/or economic hardship deferments, beginning no earlier than July 1, 2009.

The rationale for the proposed revision is to clarify that in order to qualify for forgiveness, the borrower has to have 300 months covered by either qualifying payment or economic hardship, or a combination of both. As worded, it could be read that the borrower has to have 300 qualifying payments in addition to 300 economic hardship deferments.

Response:
The Committee concurs with the request for clarity.

Change:
The subject sentence has been revised as requested.

COMMENT:
Five commenters requested the following revision to the proposed definition for Expedited-Standard in Appendix G:

> **Expedited-Standard:** ~~A~~ The repayment schedule available to a borrower ~~under~~ after exiting the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

The rationale for the change is to clarify that the expedited-standard is the only schedule that is available to the borrower when choosing to exit IBR and that it is not available under the umbrella of IBR.

Response:
The Committee concurs with the request for clarity.

Change:
The subject sentence has been revised as follows:

> **Expedited-Standard:** ~~A~~ The repayment schedule available to a borrower ~~under~~ who chooses to leave the Income-Based Repayment plan. The payment amount is calculated on the basis of both of the following:

COMMENT:
One commenter requested the following revisions to Appendix G:

> **Expedited-Standard:** The repayment schedule available to a borrower who chooses to leave the Income-Based Repayment plan. The payment amount is calculated ~~on the basis of both of the following~~by determining:
>
> - ~~T~~ the borrower's outstanding balance on the loan when the borrower discontinues paying under an IBR plan, and amortizing the monthly payment over the.
> - ~~The~~ time remaining under a 10-year repayment period for Stafford, SLS, and Grad PLUS loans or under the applicable repayment period (between 10 and 30 years according to the original loan balance) for a Consolidation loan.

Similar formatting suggestions were offered for the Permanent-Standard and the Standard-Standard.

Response:
The Committee notes that each bullet in a list completes the introductory sentence or phrase according to Manual convention. Convention also dictates that each bullet ends with a period and there is no usage of "and" or "or" at the end of a bullet.

Change:
None.

COMMENT:
One commenter noted that Income-Based Repayment is referred to as both a “plan” and a “schedule”. The commenter recommends using one term for consistency throughout the Manual.

Response:
The Committee has targeted the usage of the words ”plan” and “schedule” as a subject for discussion in terms of consistency throughout the Manual.

Change:
None.

ce/edited-rl

Forbearance Eligibility Chart — Figure 11-2

TYPE	LENGTH
Discretionary	
Financial difficulties due to personal problems when the borrower is unable to make regularly scheduled payments [1]	The period established in the terms of the forbearance agreement (not to exceed 12- month increments); no maximum
Reduced-Payment Forbearance [1]	
Mandatory	
Medical or Dental Internship/Residency [2,3]	12-month increments (or a lesser period equal to actual period during which the borrower is eligible); no maximum
Department of Defense Student Loan Repayment Programs [3]	
National Service [2,3]	
Child Care Provider Loan Forgiveness [2,9]—*Note: Contingent upon funding by Congress.*	Period while borrower maintains forgiveness eligibility. 12-month increments
Debt Exceeds Monthly Income [4,5]	12-month increments; 3 years maximum
Teacher Loan Forgiveness [2,3]	Period while borrower maintains forgiveness eligibility. 12-month increments
Mandatory Administrative	
Local or National Emergency [7]	Period specified by the Department or guarantor plus 30 days following the period
Military Mobilization [8]	
Designated Disaster Area [7]	
Repayment Accommodation	3-year maximum for variable interest rate; 5-year maximum for income-sensitive repayment
Death	Date lender receives reliable notification of death to date lender receives death certificate or other acceptable documentation, not to exceed 60 days
Teacher Loan Forgiveness [2,6]	The period while the lender is awaiting a completed loan forgiveness application, not to exceed 60 days
	Date lender receives a completed loan forgiveness application to date lender receives either a denial or the loan forgiveness amount from the guarantor
Administrative	
Borrower Ineligible for Deferment [6]	Beginning date to ending date of the ineligible deferment
Delinquency before a Deferment or Certain Forbearances [6]	First date of overdue payment to the day before the beginning date of deferment or other forbearance type
Forgiveness under Income-Based Repayment [6]	60 days for lender to collect and process documentation to determine a borrower's eligibility
Late Notification of Out-of-School Dates [6]	Date borrower should have entered repayment to date first or next payment was established
Bankruptcy Filing [6]	The earlier of the first date of overdue payment or receipt of reliable information that the borrower has filed bankruptcy to date of discharge determination or repurchase
Total and Permanent Disability [6]	Date lender receives physician's written request for additional time to date lender receives a complete, certified loan discharge application or other form(s) approved by the Department, if the borrower submits the certification to the lender within 90 days of the date the physician certified the application, not to exceed 60 days
	For a non-disabled comaker, the earlier of the date that the lender receives the loan discharge application or the date the lender receives notice from the guarantor that one comaker is totally and permanently disabled, to the date that the lender receives notice of the final discharge determination.

TYPE	LENGTH
Spouses and Parents of September 11, 2001, Victims [6]	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination
Repurchase of a Non-Bankruptcy Claim [6]	The period that the loan was held by the guarantor due to a claim purchase
Death	Date after mandatory administrative forbearance due to reliable notification of death ends to date lender receives death certificate or other acceptable documentation, not to exceed 60 days
Closed School	Period of unofficial closure notice as specified by guarantor
Closed School or False Certification [6]	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination
False Certification—Identity Theft [6]	Date eligibility requirements sent to individual to date request and documentation returned, not to exceed 60 days; and from date guarantor receives documentation to date of determination
Delinquency after Deferment or Mandatory Forbearance [6]	Deferment or mandatory forbearance end date to establishment of next payment due date
Documentation Collection and Processing [6]	Date borrower requests deferment, forbearance, change in repayment plan, or loan consolidation to date supporting documentation is processed by lender, not to exceed 60 days
Unpaid Refund Discharge	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination
	The period during guarantor review and ending on the date lender receives the guarantor's determination for a borrower who requests a review of a denial determination
Unpaid Refund [6]	End date of initial 60-day mandatory administrative forbearance to receipt of completed discharge request, and during period of determination of discharge eligibility
New Out-of-School Dates after Conversion [6]	Original repayment start date to adjusted start date
Loan Sale or Transfer [6]	First date of delinquency to date loan is sold or transferred, if the loan is less than 60 days delinquent
Ineligible Summer Bridge Extension [6]	Day after expiration of borrower's last in-school deferment to the 30th day after fall classes begin
Cure [6]	Date of earliest unexcused violation to date lender receives a full payment or new signed repayment agreement
Natural Disasters, Local or National Emergency, Military Mobilization [6]	From date borrower affected, not to exceed 3 months for each occurrence
Repayment Alignment-SLS/Stafford [4]	First payment due date to last day of the longest applicable Stafford loan grace period

Note: For detailed information about each forbearance situation, refer to the applicable subsection.

[1] Lender must document the borrower's request, the reason for the forbearance, and the terms of the forbearance agreement.

[2] For borrowers only.

[3] A request and supporting documentation from the authorized official(s) indicating the beginning and ending dates, and a verbal or written agreement are required.

[4] A request is required.

[5] A request and supporting documentation of monthly income and monthly payments on Title IV education loan obligations, and a verbal or written agreement are required.

[6] Lender must notify the borrower (or individual or endorser, if applicable) and document the beginning and ending dates and reason for the forbearance in borrower history record.

[7] Notice from the Department or guarantor is required.

[8] Documentation showing borrower is subject to a military mobilization is required.

[9] A request and a completed FFELP Child Care Provider Loan Forgiveness Forbearance Form are required.

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Rebuttable Presumption**

AFFECTED SECTIONS: **3.4.C Permitted and Prohibited Activities**
18.1 Actions to Limit, Suspend, or Terminate Participation

POLICY INFORMATION: **1120/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Effective for administrative actions against lenders on or after July 1, 2008.

BASIS:
§682.705(c); §682.706(d).

CURRENT POLICY:
Current policy does not address rebuttable presumption in actions by the Department to limit, suspend, or terminate a lender's eligibility to participate in the FFELP.

REVISED POLICY:
Revised policy includes the use of rebuttable presumption by the Department in administrative actions against lenders that involve violations of the prohibited inducement provisions.

REASON FOR CHANGE:
This change is necessary to comply with the final rules published in the November 1, 2007, *Federal Register*, Vol. 72, No. 211, pp. 61976, 61977, and 62009.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 3.4.C, page 11, column 2, paragraph 4, as follows:

Note: Subsection 3.4.C is also being updated as part of Proposal 1082 in Batch 156.

> If warranted, the Department or a guarantor will notify a lender that an action is pending to limit, suspend, or terminate its eligibility to participate in the FFELP. In any such action, if the Department, its designee, or Hearing Officer finds that the lender offered or provided payments or activities that violate the inducement provisions listed in this subsection under *Prohibited Activities*, the Department or the Hearing Officer will apply a rebuttable presumption that the payments or activities were offered or provided to secure FFELP loan applications or FFELP loan volume. To reverse this presumption, the lender must present evidence that the activities or payments in which the lender engaged were provided for a reason unrelated to securing FFELP loan applications or FFELP loan volume. ~~The lender will be given an opportunity to appeal such an action or to present evidence that the activities in which the lender was engaged were provided for a reason unrelated to securing application for FFELP loans or securing loan volume.~~ For more information on limitation, suspension, and termination actions, see Chapter 18.
> [§682.705(b) and (c); §682.706(a) and (d)~~; §682.707~~]

Revise Section 18.1, page 1, column 2, paragraph 1, as follows:

Note: Section 18.1 is also being updated as part of Proposal 1117 in Batch 158.

> In any LS&T action concerning a lender, if the Department, its designee, or a Hearing Officer finds that a lender provided or offered any of the payments or activities that violate the inducement provisions (see Subsection 3.4.C under *Prohibited Activities)*, the Department or

Hearing Officer will apply a rebuttable presumption that the payments or activities were offered or provided to secure FFELP loan applications or FFELP loan volume. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing FFELP loan applications or FFELP loan volume.

An LS&T action does not limit an entity's responsibility to comply with all requirements applicable to FFELP participation—nor does an LS&T action limit the entity's right, if any, to benefits or payments based on previous participation in the guarantor's programs.

If the Department restricts an entity's FFELP eligibility through an LS&T action or emergency action, federal law requires that guarantors impose the same restriction on the entity.

PROPOSED LANGUAGE - COMMON BULLETIN:

Rebuttable Presumption

The *Common Manual* has been revised by including the use of rebuttable presumption in any action to limit, suspend, or terminate a lender's eligibility to participate in the FFELP, if the Department, its designee, or a Hearing Officer finds that a lender violated the inducement provisions through payments or activities provided to secure FFELP loan applications or FFELP loan volume. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing FFELP loan applications or FFELP loan volume.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

None.

School:

None.

Lender/Servicer:

A lender needs to document its compliance with the inducement provisions. In a limitation, suspension, or termination action, the lender must be able to provide evidence that its actions did not violate the prohibited inducement provisions.

Guarantor:

None.

U.S. Department of Education:

The Department may need to amend its limitation, suspension, and termination processes with respect to lenders.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

November 14, 2007

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 9, 2009

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds and VSAC.

Responses to Comments

Most of the commenters supported this proposal as written. Other commenters recommended wordsmithing, grammatical, or other non-substantive changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter requested that the implication statement for a guarantor be changed from "none" to "a guarantor may need to amend its policies and procedures to ensure compliance. A guarantor may also need to revise program review procedures."

Response:
The Committee does not concur with the request because rebuttable presumption will be applied by the Department. The implications for the guarantor are to revise program review procedures with regard to the identification of inducements, i.e. prohibited activities, by a lender (see the implication statements for the guarantor in Policy Proposal 1082 in Batch 156). If a prohibited activity is identified or found, then the Department applies rebuttable presumption which requires the lender to show that its purpose for engaging in the activity was unrelated to securing FFELP loan applications or FFELP loan volume.

Change:
None.

ce/edited-rl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Program Participation Agreement (PPA)**

AFFECTED SECTIONS: **4.1.A Establishing Eligibility**
Appendix G

POLICY INFORMATION: **1122/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: School participating in a Title IV loan program on or after August 14, 2008.

BASIS:
HEA §151(5), §487(a)(25), and §487(e), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP-08-10.

CURRENT POLICY:
Current policy does not restrict a school from requesting or accepting funds from a lender for private education loans and does not require a school to have a code of conduct.

REVISED POLICY:
Revised policy adds, as part of a school's Program Participation Agreement (PPA), that a school may not request or accept funds from a lender for private education loans, including funds for opportunity pool loans, in exchange for FFELP loan volume or a preferred lender arrangement. Also, the PPA requires a school to develop, publish, administer, and enforce a code of conduct.

A school's code of conduct must prohibit school officers, employees, and agents from:

- Entering into revenue sharing arrangements.
- Receiving certain gifts.
- Accepting certain compensation.
- Assigning a lender to a first-time borrower.
- Delaying or refusing to certify a loan based on the borrower's choice of lender or guarantor.
- Requesting or accepting funds from a lender for private education loans in exchange for promises or concessions.
- Requesting or accepting certain staffing assistance from a lender.
- Receiving anything of value for service on any advisory board, commission, or group established by a lender or guarantor except for reimbursement of certain reasonable expenses.

Finally, the Glossary has been updated with the addition of the terms "institutional-affiliated organization," "opportunity pool loans," and "preferred lender arrangement."

REASON FOR CHANGE:
The change is necessary to incorporate provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 4.1.A, page 3, column 1, by adding new bullets under paragraph 1, as follows:

> By entering into a Program Participation Agreement (PPA), the school agrees to comply with all requirements specified in statute and federal regulations, including, but not limited to:
>
> ...
>
> - The school will not provide any commission, bonus, or other incentive payment to a

person or entity engaged in student recruitment or admission activities or in making decisions regarding the awarding of Title IV aid, based directly or indirectly upon the success of securing enrollments or financial aid. This prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Title IV aid. (See subheading "Permissible Incentive Compensation" later in this subsection for a list of permissible activities that do not violate this provision). [§668.14(b)(22)(i)]

- The school will not request or accept from any lender any offer of funds to be used for private education loans, including funds from an opportunity pool, to students in exchange for the school providing concessions or promises to the lender, including the following:

  - A specified number of FFELP loans made, insured, or guaranteed.

  - A specified volume of FFELP loans.

  - A preferred lender arrangement for FFELP loans.

  [HEA §487(e)(5)]

- The school will develop, publish, administer, and enforce a school code of conduct that meets the minimum requirements described in Subsection 4.1.E. The code of conduct will apply to the school's officers, employees, and agents, and each institution-affiliated organization that has a preferred lender arrangement for the purpose of offering FFELP or private education loans. The school, and any institution-affiliated organizations that has a Website, must publish the code prominently on its Website. Also, the school must annually inform any of its officers, employees, and agents who have responsibilities with respect to education loans of the code's provisions.
  [HEA §151(5); HEA §487(a)(25); DCL GEN-08-12/FP-08-10]

Revise Section 4.1, page 11, column 1, by adding a new Subsection 4.1.E, as follows:

4.1.E School Code of Conduct

As part of a Program Participation Agreement (PPA), the school that has a preferred lender arrangement for the purpose of offering FFELP or private education loans must develop, publish, administer, and enforce a code of conduct that applies to the officers, employees, and agents of the school.

The code of conduct must include the following:

- A ban on revenue-sharing arrangements. A school may not enter into a revenue-sharing arrangement with any lender. A revenue-sharing arrangement is defined as any arrangement between a school and a lender under which the lender makes Title IV loans to students attending the school (or to the families of those students), the school recommends the lender or the loan products of the lender and, in exchange, the lender pays a fee or provides other material benefits, including revenue or profit-sharing, to the school or to its officers, employees, or agents.
  [HEA §487(e)(1); DCL GEN-08-12/FP-08-10]

- A gift ban. An employee of a school financial aid office may not receive gifts from a lender, servicer, or guarantor. An officer, employee, or agent of a school's financial aid office or a school officer or agent who has responsibilities with respect to education loans may not solicit or accept any gifts from a lender, servicer, or guarantor. A "gift" is defined as any gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value of more than a *de minimus* amount. Exceptions to this gift ban include the following:

  - The school may accept brochures, workshops, or trainings using standard materials relating to a loan, default aversion and prevention, or financial literacy.

- The school may accept food, training, or informational material provided as part of a training session designed to improve the service of a lender, guarantor, or servicer if the training contributes to the professional development of the school's officer, employee or agent.

- The school may accept favorable terms and benefits on an education loan provided to a student employed by the school if those terms and benefits are comparable to those provided to all students at the school.

- A lender or guarantor may conduct entrance and exit counseling at a school, as long as the school's staff are in control of the counseling and the counseling does not promote the services of a specific lender.

- The school may accept philanthropic contributions from a lender, guarantor, or servicer that are unrelated to education loans or any contribution that is not made in exchange for advantage related to education loans.

- The school may accept education grants, scholarships, or financial aid funds administered by or on behalf of a state.

[HEA §487(e)(2); DCL GEN-08-12/FP-08-10]

• A school officer, employee, or agent working in the school's financial aid office or who has responsibilities with respect to education loans may not accept from a lender, or affiliate of any lender, any fee, payment, or other financial benefit as compensation for any type of consulting arrangement or contract to provide services to or on behalf of a lender relating to education loans.
[HEA §487(e)(3); DCL GEN-08-12/FP-08-10]

• A school may not assign, through award packaging or other methods, a lender to a first-time borrower. In addition, the school may not delay or refuse to certify a loan based on the borrower's choice of a particular lender or guarantor.
[HEA §487(e)(4); DCL GEN-08-12/FP-08-10]

• A school may not request or accept funds from a lender for private education loans, including funds for opportunity pool loans to its students, in exchange for providing concessions or promises to the lender for a specific number of FFELP loans made, insured, or guaranteed; a specified loan volume; or a preferred lender arrangement.
[HEA §487(e)(5); DCL GEN-08-12/FP-08-10]

• A school may not request or accept assistance from a lender with call center or financial aid office staffing. However, a school can receive assistance from a lender in the form of professional development training, educational counseling materials as long as the materials identify the lender that assisted in preparing the materials, and short-term non-recurring staffing assistance during emergencies or disasters.
[HEA §487(e)(6); DCL GEN-08-12/FP-08-10]

• Any employee of the school's financial aid office or who has responsibilities with respect to education loans or financial aid that serves on an advisory board, commission, or group established by a lender or guarantor, or group of lenders or guarantors, is prohibited from receiving anything of value for the service except for reimbursement of reasonable expenses incurred by the employee for service on the board.
[HEA §487(e)(7); DCL GEN-08-12/FP-08-10]

Revise Appendix G, page 11, column 2, by adding a new definition after paragraph 2, as follows:

Institution-Affiliated Organization: Any organization directly or indirectly related to a school that is engaged in the practice of recommending, promoting, or endorsing education loans for students attending that school or their families. Such an organization may include an alumni organization; athletic organization; foundation; or social, academic, or professional organization of a school.

Revise Appendix G, page 14, column 2, by adding a new definition after paragraph 1, as follows:

Opportunity Pool Loan: A private education loan made by a lender to a student (or the student's family) that involves a payment by the school to the lender for extending credit to the student (or the student's family).

Revise Appendix G, page 15, column 2, by adding a new definition after paragraph 3, as follows:

Preferred Lender Arrangement: An arrangement or agreement between a lender and a school or an institution-affiliated organization, under which the lender provides or otherwise issues FFELP or private education loans to students attending the school (or the students' families) and under which involves the school or institution-affiliated organization in recommends, promotes, or endorses the lender's education loan products. Such an arrangement does not apply to a school participating in the Federal Direct Loan Program or arrangements or agreements under the PLUS auction pilot program.

PROPOSED LANGUAGE - COMMON BULLETIN:

Program Participation Agreement

The *Common Manual* has been revised to include the changes made by the Higher Education Opportunity Act (HEOA), P.L. 110-315 relating to the agreements in a school's Program Participation Agreement (PPA). The updated PPA requires that a school may not request or accept funds from a lender for private education loans, including funds for opportunity pool loans, in exchange for FFELP loan volume or a preferred lender arrangement. The updated PPA also requires a school to develop, publish, administer, and enforce a code of conduct.

A school code of conduct must prohibit school officers, employees and agents from:

- Entering into revenue-sharing arrangements.
- Receiving certain gifts.
- Accepting certain compensation.
- Assigning a lender to a first-time borrower.
- Delaying or refusing to certify a loan based on the borrower's choice of lender or guarantor.
- Requesting or accepting funds from a lender for private education loans in exchange for promises or concessions.
- Requesting or accepting certain staffing assistance from a lender.
- Receiving anything of value for service on any advisory board, commission, or group established by a lender or guarantor, except for reimbursement of certain reasonable expenses.

Finally, the Glossary has been updated with the addition of the terms "institutional-affiliated organization," "opportunity pool loans," and "preferred lender arrangement."

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower may be advised of loan options by a school with a greater emphasis on how each option relates to the best interests of the borrower and student.

School:

A school may need to create and publish a code of conduct, or to amend an existing code of conduct, and to inform and train applicable staff regarding the code. The school may need to establish new policies to ensure compliance with the Program Participation Agreement.

Lender/Servicer:

A lender may not offer a school funds for private education loans in exchange for promises or concessions of a specific number or volume of FFELP loans or a preferred lender arrangement.

Guarantor:
A guarantor may be required to modify school program review standards.

U.S. Department of Education:
The Department may be required to modify school program review standards.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
August 14, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
Two commenters recommended clarifying in Subsection 4.1.E that lenders and guarantors may provide materials to schools for entrance and exit counseling, but that lenders and guarantors may only participate in on-site exit counseling.

Response:
The Committee disagrees. The Committee understands that issues of lender and guarantor prohibited inducements and school codes of conduct are being discussed in negotiated rulemaking and if there are any changes to these the Common Manual will be updated accordingly. This policy proposal details the items that are required to be in a new school code of conduct. The Higher Education Act (HEA) requires that a school code of conduct state that an officer, employee, or agent of a school's financial aid office or a school officer or agent who has responsibilities with respect to education loans are banned from soliciting or accepting any gifts from a lender, servicer, or guarantor. The HEA also clarifies that for the purpose of the school code of conduct it is not a gift when a lender or guarantor conducts entrance and exit counseling. The fact that lenders and guarantors may provide materials to schools for entrance and exit counseling, but that lenders and guarantors may only participate in on-site exit counseling is detailed in the Subsection 3.4.C. of the *Common Manual*.

Change:
None.

COMMENT:
One commenter recommended changing references to “school’s employees” in Subsection 4.1.A to “school’s officers, employees, and agents” in order to conform the language in Subsection 4.1.A with the language in Subsection 4.1.E.

Response:
The Committee agrees.

Change:
Subsection 4.1.A, Page 3, column 1, bullet 3 has been revised as follows:

- The school must develop, publish, administer, and enforce a School Code of Conduct that meets the minimum requirements as described in Subsection 4.1.E. The code of conduct applies to the school's officers, employees, and agents, and each institution-affiliated organization that has a preferred lender arrangement for the purpose of offering FFELP or private education loans. The school, and institution-affiliated organizations that have a website, must publish the code prominently on its website. Also, the school must annually inform any of its officers, employees, and ~~or~~ agents who have responsibilities with respect to education loans of the code's provisions.

bmf/edited-rrl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Ability to Benefit**

AFFECTED SECTIONS:
5.9 Required High School Diploma or Equivalent
5.10 Ability-to-Benefit Provisions
Appendix G

POLICY INFORMATION: **1124/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Awards of Title IV aid made on or after August 14, 2008.

BASIS:
HEA §484(d)(4), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP-08-10.

CURRENT POLICY:
Current policy allows a student without a high school diploma or its equivalent to become eligible to receive Title IV aid only after the school has administered a Department-approved test of the student's ability to benefit has been administered and has established the student's ability to benefit from the program has been established.

REVISED POLICY:
Revised policy expands the ability-to-benefit criteria and allows a student without a high school diploma or its equivalent to become eligible to receive Title IV aid upon satisfactory completion of six credit hours or equivalent coursework that is applicable toward a degree or certificate offered by the school.

REASON FOR CHANGE:
The change is necessary to incorporate provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 5.9, page 13, column 2, paragraph 2, as follows:

5.9
Required High School Diploma or Equivalent

To be eligible for FFELP funds, the borrower, or the dependent student for whom a parent seeks a PLUS loan, must have a high school diploma or its equivalent, or must ~~receive a passing score on an approved ability-to-benefit test~~ <u>demonstrate an ability to benefit from a program of study offered by a school</u> (see Section 5.10 for more information on ability-to-benefit provisions). The following are considered equivalent to a high school diploma for establishing Title IV eligibility:
[§668.32(e)(1) and (2)]

- …

Revise Section 5.10, page 14, column 1, paragraph 1, by adding a new bullet 4, as follows:

5.10
Ability-to-Benefit Provisions

To receive Title IV aid, a student without a high school diploma or its equivalent must demonstrate the potential to succeed in (i.e., an ability to benefit from) a program of study ~~in~~

offered by a ~~postsecondary institution~~ school. A student who is admitted on an ability-to-benefit (ATB) basis must meet one of the following requirements:
[§668.32(e); §682.201(a)(8)]

- The student takes—and achieves at least a passing score as specified by the U.S. Department of Education~~,~~ on—an independently administered test that has been approved by the Department to establish (according to the Department's criteria) whether the student has the ability to benefit from the education or training being offered. The independent administrator for the ATB test must be an individual or organization that has been certified by the test publisher and has no fiscal interest in the school.
[§668.141(a)(1)]

- The student obtains a passing score on a Department-approved state test or assessment.
[§668.141(a)(1)]

- The student is enrolled in an eligible school that participates in a state-approved testing process that is approved by the Department.
[§668.141(a)(2)]

- The student satisfactorily completes six credit hours or equivalent coursework that is applicable toward a degree or certificate offered by the school. The student is ineligible to receive Title IV aid while earning the six credit hours or their equivalent.
[HEA §484(d)(4); DCL GEN-08-12/FP-08-10]

Revise Appendix G, page 1, column 1, paragraph 1, as follows:

Ability-to-Benefit~~:~~ (ATB): Basis on which a student without a high school diploma, ~~a~~ its recognized equivalent, or a General Education Development (GED) Certificate may qualify for federal student aid. A student who has passed an approved test or has satisfactorily completed at least six credit hours or equivalent coursework applicable toward a degree or certificate offered by the school may qualify for Title IV aid. ATB is a condition of student eligibility and the student must meet this condition by one of these two methods prior to the school's certification or award of any Title IV aid. The Department maintains a list of approved tests for measuring a student's ability to benefit from the educational program the student seeks. ~~The test must be administered before the school admits the student.~~ See Section 5.10.

Revise Appendix G, page 11, column 2, paragraph 3, as follows:

Institution of Higher Education (Institution): A school that:

- Is located in a state (see State).

- Admits as a regular student only a person who has a certificate of graduation from a secondary school or a recognized equivalent or is beyond the age of compulsory school attendance in the state in which the school is physically located and has demonstrated the ability to benefit (see Ability-to-Benefit) from the school's education or training program ~~by passing a federally approved standardized test~~.

- ...

- ...

See Participating School and School.

PROPOSED LANGUAGE - COMMON BULLETIN:
Ability to Benefit
The *Common Manual* has been revised to incorporate a provision of the Higher Education Opportunity Act (HEOA) that expands the methods by which a student may demonstrate an ability to benefit from a postsecondary program of study and updates the definitions in the glossary pertaining to ability to benefit. As

an alternative to passing a Department-approved ability-to-benefit test, the new provision allows a student who does not have a high school diploma or its equivalent to demonstrate an ability to benefit by satisfactorily completing six credit hours or equivalent coursework that is applicable toward a degree or a certificate offered by the school. A student who completes those hours or their equivalent becomes eligible for Title IV aid. A student is not eligible for Title IV aid while earning the six credit hours or their equivalent.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower's ability to benefit may also be demonstrated through the satisfactory completion of six credit hours or equivalent coursework applicable toward a degree or a certificate offered by the school.

School:
A school, in addition to the ATB requirements that already exist, may demonstrate that a student has an ability to benefit from a program by documenting that the student has satisfactorily completed six credit hours or equivalent coursework applicable toward a degree or a certificate offered by the school.

Lender/Servicer:
None.

Guarantor:
A guarantor may be required to revise program review criteria for determining how a school determines a student's ability to benefit.

U.S. Department of Education:
The Department may be required to revise program review criteria for determining how a school determines a student's ability to benefit.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
August 14, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments
Many commenters supported this proposal as written. Other commenters recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter recommended clarifying in the definition of Ability-to-Benefit (ATB) that a student's ATB must be demonstrated prior to any disbursement of Title IV funds.

Response:
The Committee agrees with the comment for the most part. However, we disagree that ATB must be demonstrated prior to any disbursement; we rather believe that ATB conditions must be fulfilled prior to school certification or award of any Title IV aid.

Change:
Appendix G, page 1, column 1, paragraph 1, has been revised as follows:

> **Ability-to-Benefit~~:~~ (ATB):** Basis on which a student without a high school diploma, a recognized equivalent, or a General Education Development (GED) Certificate may qualify for federal student aid. A student that passes an approved test or has satisfactorily completed at least six credit hours or equivalent coursework applicable toward a degree or certificate offered by the school may qualify for federal student aid. ATB is a condition of student eligibility and the student must meet this condition by one of these two methods prior to the school's certification or award of any Title IV aid. The Department maintains a list of approved tests for measuring a student's ability to benefit from the educational program the student seeks. ~~The test must be administered before the school admits the student.~~ See Section 5.10.

bmf/edited -rrl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Academic Year Categories for the Purpose of Determining the Frequency of Stafford Annual Loan Limits**

AFFECTED SECTIONS:
6.1.B Academic Year Categories
Figure 6-2 Frequency of Stafford Annual Loan Limits
Appendix G

POLICY INFORMATION: **1092/Batch 157**

EFFECTIVE DATE/TRIGGER EVENT: Publication date of Volume 3 of the 08-09 FSA Handbook, unless implemented by the school on or after November 1, 2007.

BASIS:
08-09 FSA Handbook, Volume 3, Chapter 5, pp. 3-80 to 3-85.

CURRENT POLICY:
Current policy permits the use of a scheduled academic year (SAY) to determine the frequency of Stafford annual loan limits only for a standard term-based credit-hour program that is offered in a traditional academic calendar. Current policy restricts a nonstandard term-based credit-hour program with substantially equal terms of at least nine weeks of instructional time (SE9W) to the use of a borrower-based academic year (BBAY) to determine the frequency of Stafford annual loan limits.

REVISED POLICY:
Revised policy in Subsection 6.1.B adopts the FSA Handbook abbreviation for programs with nonstandard terms that are substantially equal and at least nine weeks of instructional time in length (SE9W), and the FSA Handbook standard for identifying the different BBAY categories that apply to different types of academic programs: BBAY1, BBAY2, and BBAY3. Revised policy permits programs using nonstandard terms that are SE9W in a traditional academic year calendar to use an SAY as an option to a BBAY to determine the frequency of Stafford annual loan limits.

Revised policy clarifies the beginning date of a BBAY for programs that are eligible to use BBAY1 (programs with standard terms or nonstandard terms that are SE9W and are offered in a traditional academic year calendar) and BBAY2 (programs with standard terms or nonstandard terms that are SE9W and are *not* offered in a traditional academic year calendar). A BBAY in these programs cannot begin with a term in which the student is not enrolled. However, a BBAY may begin with a term in which the student is enrolled less than half-time, except that the student is not eligible to receive, or receive the benefit of, a loan for that initial term.

Revised policy clarifies that once the calendar period associated with all of the terms in an SAY, BBAY1, or BBAY2 has elapsed, a student regains eligibility for new Stafford annual loan limits for a new BBAY regardless of whether the student attends all of the terms or completes all of the credit hours or weeks of instructional time in the program's Title IV academic year.

Revised policy states that BBAY3 must be used for a clock-hour program, a non-term-based credit-hour program, a nonstandard term-based program with terms that are *not* SE9W, and a credit-hour program with standard and nonstandard terms that does not qualify to use an SAY.

Revised policy clarifies loan proration requirements for an undergraduate student who is enrolled in a self-paced program, either a clock-hour program or non-term-based credit-hour program, that is *exactly one academic year in length*. If the average student successfully completes the clock or credit hours in the program in the weeks of instructional time allotted for program completion, the school is not required to prorate the Stafford annual loan limits for the occasional student who successfully completes the clock or credit hours in the program in fewer weeks of instructional time. However, revised policy clarifies that a student enrolled in such a program that is *more* than one academic year in length must successfully complete the number of clock or credit hours *and* complete the weeks of instructional time in the program's Title IV academic year before he or she gains eligibility to receive another loan for a new BBAY. Revised policy provides an example.

Figure 6-2, "Frequency of Stafford Annual Loan Limits," has been revised with corresponding changes.

Appendix G includes a new definition of "SE9W" relative to a nonstandard term-based credit-hour program, including information about what is *not* SE9W and an example. The existing glossary definition of the acronym "BBAY" has been expanded to include separate references to "BBAY1," "BBAY2," and "BBAY3," all of which are cross-referenced to the glossary definition of "Borrower-Based Academic Year." The glossary definition of "Borrower-Based Academic Year" has been expanded to include separate, high-level definitions of BBAY1, BBAY2, and BBAY3, with a cross reference for additional information to Subsection 6.1.B and the 08-09 FSA Handbook, Volume 3, Chapter 5.

REASON FOR CHANGE:
This change is required to incorporate Departmental guidance found in Volume 3 of the 08-09 FSA Handbook concerning frequency of Stafford annual loan limits.

PROPOSED LANGUAGE - *COMMON MANUAL*:
Revise Subsection 6.1.B, page 2, column 1, paragraph 1, as follows:

6.1.B
Academic Year Categories

~~Typically~~ Generally, there are two categories of academic year that determine the frequency of Stafford annual loan limits:

- A scheduled academic year (SAY) that corresponds to a traditional academic year calendar ~~(e.g., fall and spring semesters; or fall, winter, and spring quarters)~~. An SAY is a ~~"fixed" academic~~ fixed period of time that generally begins and ends at about the same time each calendar year according to an established schedule that is published in a school's catalog or other materials. Summer terms are generally not considered to be part of the SAY, but for loan limit purposes they are treated as a "header" or "trailer" to the SAY, as explained below.
[08-09 FSA Handbook, Volume 3, Chapter 5, pp. 3-79 and 3-80]

  For a standard term-based credit-hour program, a traditional academic year includes, for example, fall and spring semesters, or fall, winter, and spring quarters. For a nonstandard term-based credit-hour program with substantially equal terms that are at least nine weeks of instructional time in length (SE9W), a traditional academic year includes two or more nonstandard terms during the period fall through spring. Nonstandard terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in the loan period.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-79]

- A borrower-based academic year (BBAY) that does not have a fixed beginning or ending date. A BBAY begins when a student, or a group of students, begins attendance and tracks the student's (or group's) attendance and progress in a program of study.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-82]

Although there is no annual loan limit for a parent or Grad PLUS loan, a school must certify a parent or Grad PLUS loan for the same SAY or BBAY loan period that is used for the student's Stafford loan.
[~~07-08~~ 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-7~~8~~9]

Both the SAY and the BBAY must meet the minimum statutory requirements ~~of~~ for an academic year. One exception to this rule is that, for a program offered in an SAY, a BBAY that includes a summer term and that is used as an alternative to ~~a~~ the SAY ~~in a standard term-based, credit-hour program and that includes a summer term~~ may include fewer than 30 weeks of instructional time or fewer credit hours than the minimum number required for an

SAY.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-82]

~~For clock-hour programs and nonstandard term-based and non-term-based credit-hour programs, a school must use a BBAY.~~ For a standard term-based credit-hour program~~s~~ that ~~are~~ is offered in a traditional academic year calendar or a credit-hour program with nonstandard terms that are SE9W using a traditional academic year calendar, a school may use either an SAY or BBAY (referred to in discussion below as BBAY1). For ~~standard term-based program~~ such programs that ~~is~~ are *not* offered in a traditional academic year calendar, a school must use a BBAY (referred to in discussion below as BBAY2).
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-82]

For a clock-hour program, a non-term-based credit-hour program, or a credit-hour program with nonstandard terms that are *not* SE9W, a school must use a BBAY (referred to in discussion below as BBAY3).
[08-09 FSA Handbook, Volume 3, Chapter 5, p.3-83]

There are significant differences ~~between a~~ in how a school determines that a student has completed a BBAY for a ~~standard term-based~~ credit-hour program with standard terms or nonstandard terms that are SE9W ~~and~~ versus a BBAY for a clock-hour, a non-term-based credit-hour, or a nonstandard term-based credit-hour program with terms that are *not* SE9W. See the discussion that follows for additional information.

~~Standard Term-Based,~~ Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are SE9W Offered in a Traditional Academic Year Calendar: Using an SAY

~~A school with~~ For a ~~standard term-based~~ credit-hour program with standard terms or nonstandard terms that are SE9W using an SAY that corresponds to a traditional academic year calendar, the school must designate the summer term as either a "header" (precedes the academic year) or a "trailer" (follows the academic year). (See the discussion in this subsection under the ~~sub~~heading *Academic Year Categories* for additional information.) A school may consistently designate the summer term as either a header or trailer with no exceptions. ~~The~~ A school ~~has~~ may also choose any one of the following options, provided there is no overlap in academic years:

- ~~The school may consistently designate the summer term as either a header or a trailer with no exceptions~~
- The school may consistently designate the summer term as either a header or a trailer with some exceptions (e.g., for different programs or for individual students) that are determined by the school on a case-by-case basis.
- The school may make all decisions regarding the use of the summer term as a header or a trailer on a case-by-case basis.

The Stafford annual loan limit applies to the SAY, plus the summer trailer or header. Once the calendar period associated with all of the terms in the SAY has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes all of the credit hours or weeks of instructional time in the program's Title IV academic year.
[08-09 FSA Handbook, Volume 3, Chapter 5, pp. 3-79 and 3-80]

~~Standard Term-Based,~~ Credit-Hour Programs Using Standard Terms or Nonstandard Terms That Are SE9W Offered in a Traditional Academic Year Calendar: Using ~~a~~ BBAY1

If a program is offered in an SAY, the school may use BBAY1 as an alternative to the SAY for monitoring annual loan limit progression. If ~~a~~ BBAY1 is used, the school must include the same number of consecutive terms in the BBAY as it includes in the program's SAY, excluding a summer term designated as a "header" or "trailer" to the SAY. (See the discussion in this S~~s~~ubsection under the ~~sub~~heading *Academic Year Categories* for additional information.) For example, if the SAY includes three quarter terms (fall, winter, and spring), a BBAY would consist of any three consecutive terms. ~~Mini-sessions (summer or otherwise) must be combined and treated as a single term. The borrower is not required to attend the entire BBAY but the loan period must coincide with the student's attendance. The BBAY must begin with a term in which the student actually is enrolled but may include a term in which the student is not enrolled.~~ The BBAY may include a term(s) in which the student does not enroll if the student could have enrolled at least half-time in that term(s), but the BBAY must begin with a term in which the student is actually enrolled. A student may be enrolled less than half-time for the first term in the BBAY, although the student is not eligible to receive, or receive the benefit of, a loan for that initial term. Mini-sessions (summer or otherwise) that are offered consecutively within a term must be combined and treated as a single term.

A school may use ~~a~~ BBAY1 for all students, for students enrolled in certain programs, or on a student-by-student basis. For example, a school may use BBAY1 for a student who is enrolled in a program that begins in a term other than the first term of the SAY. The school may also alternate between ~~a~~ BBAY1 and an SAY for the same student, allowing a student to receive another annual loan limit sooner than would be permitted under the SAY. However, the school must ensure that it does not establish overlapping academic years for a student. [~~07-08~~ 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-8~~0~~2]

The Stafford annual loan limits apply to the BBAY. Once the calendar period associated with all of the terms in BBAY1 has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes the credit hours or weeks of instructional time in the program's Title IV academic year.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-82]

~~Standard Term-Based,~~ Credit-Hour Programs Using Standard Terms or Nonstandard Terms That Are SE9W Not Offered in a Traditional Academic Year Calendar: Using BBAY2

If a school has a program that is not offered in a traditional academic year calendar (i.e., one that corresponds to an SAY), the school must use ~~a~~ BBAY2. (See the discussion in this subsection under the ~~sub~~heading *Academic Year Categories* for additional information.) The BBAY for a program that is not offered in an SAY must always include enough consecutive terms to meet the program’s Title IV academic year requirements for weeks of instructional time. If the program uses semester~~s~~ or trimester~~s~~ terms, a BBAY consists of at least two consecutive terms. If the program uses quarter~~s~~ terms, a BBAY consists of at least three consecutive terms. If the program uses nonstandard terms that are SE9W, a BBAY consists of the number of consecutive terms that coincide with the weeks of instructional time in the program's academic year. ~~Mini-sessions (summer or otherwise) must be combined and treated as a single standard term. A BBAY may include a term(s) that a student does not attend if the student could have enrolled at least half time during that term(s), but the BBAY must begin with a term in which the student is actually enrolled. The BBAY for programs that are not offered in a traditional academic year calendar must always include enough terms to meet the minimum Title IV academic year requirements for weeks of instructional time.~~ The BBAY may include a term(s) in which the student does not enroll if the student could have enrolled at least half time in that term(s), but the BBAY must begin with a term in which the student is actually enrolled. A student may be enrolled less than half-time for the first term in the BBAY, although the student is not eligible to receive, or receive the benefit of, a loan for that initial term. Mini-sessions (summer or otherwise) must be combined and treated as a single standard term.
[~~07-08~~ 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-8~~1~~2 and 3-83]

~~A student enrolled in a standard term-based credit-hour program enters a new academic year for annual loan limit purposes when the calendar time for the SAY or BBAY has elapsed, regardless of whether the student attends all of the terms or completes all of the credits in the academic year.~~ The Stafford annual loan limits apply to the BBAY. Once the calendar period associated with all of the terms in BBAY2 has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes all of the credit hours or weeks of instructional time in the program's Title IV academic year.

[§682.603(g)(1); 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-82 and 3-83]

~~**Nonstandard Term-Based Programs with Substantially Equal Terms of at Least Nine Weeks of Instructional Time**~~

~~For a program with nonstandard terms that are substantially equal, and no term in the loan period is less than nine weeks of instructional time in length, the student enters a new academic year for annual loan limit purposes when the calendar time for the academic year has elapsed. Terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period. [§682.603(g)(1) and (4)~~

Clock-Hour Programs, Non-Term-Based Credit-Hour Programs, and Nonstandard Term-Based Credit-Hour Programs with Terms That Are *Not* ~~Substantially Equal or Not at Least Nine Weeks of Instructional Time~~ SE9W: Using BBAY3

~~For clock-hour programs, non-term-based credit-hour programs, and nonstandard term-based programs with terms that are not substantially equal or are not at least nine weeks of instructional time in length, the BBAY begins when the student enrolls and does not end until the student completes both the required number of weeks and the required number of clock or credit hours in the academic year~~. A school must use BBAY3 for any of the following programs:

- A clock-hour program.

- A non-term-based credit-hour program.

- A credit-hour program with nonstandard terms that are *not* SE9W, i.e., the terms are not substantially equal in length, or each term is not at least nine weeks of instructional time in length.

- A credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY.

BBAY3 begins when the student enrolls and does not end until the student successfully completes (i.e., passes) the number of credit or clock hours and completes the weeks of instructional time in the program's Title IV academic year. For a student enrolled in a nonstandard term-based program with terms that are not SE9W, the number of terms that have elapsed is irrelevant.

The Stafford annual loan limits apply to the BBAY. Once a student successfully completes (i.e., passes) the number of credit or clock hours and completes the weeks of instructional time in the program's Title IV academic year, a new BBAY begins and the student regains eligibility for a new annual loan limit. A student's enrollment status may affect how soon the student regains eligibility for new Stafford annual loan limits. A student who does not attend on a full-time basis will take longer to complete the academic year than a full-time student. [08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-83]

~~These types of programs frequently allow a student to complete the program at his or her own pace.~~ A student enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of clock or credit hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. ~~As a result,~~ If the self-paced program is an undergraduate program that is *exactly* one academic year in length, e.g., 900 clock hours and 26 weeks of instructional time, a student may successfully complete 900 clock hours in ~~28~~ 22 weeks ~~while another may successfully complete 900 clock hours in 32 weeks~~. If the average student successfully completes the program in ~~30~~ 26 weeks, the school is not required to prorate the loan amount for the occasional student who successfully completes the program in less than ~~30~~ 26 weeks (see Subsection 6.11.F). A student who is enrolled in a program that is more than one academic year in length cannot receive a subsequent loan for a new BBAY until the

student has completed both the number of clock or credit hours and the weeks of instructional time in the initial BBAY. For example, a student is enrolled in a program of 1800 clock hours and 52 weeks of instructional time in which the Title IV academic year is defined as 900 clock hours and 26 weeks of instructional time. The student successfully completes 900 clock hours in 22 weeks of instructional time. However, the student must also complete the 26 weeks of instructional time in the program's academic year before the student gains eligibility to receive another loan for a new BBAY. If the subsequent loan is for a final period of undergraduate study that includes fewer clock or credit hours than the program's academic year, the school must prorate the Stafford annual loan limits (see Subsection 6.11.F).
[~~07-08~~ 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-8~~1~~3 and 3-85]

~~A student enrolled in one of these types of programs enters a new academic year for annual loan limit purposes only after the student successfully completes both the weeks and the clock or credit hours in the academic year.~~
~~[§682.603(g)(2) and (3)]~~

Revise Figure 6-2, page 6, as follows:

See attached chart.

Revise Appendix G, page 3, column 1, paragraph 2, as follows:

. . .

BBAY (and BBAY1, BBAY2, BBAY3): See Borrower-Based Academic Year.

Blanket Endorsement: . . .

Borrower: . . .

Borrower-Based Academic Year: (BBAY) An academic year that is individualized per borrower and generally "floats" with the borrower's attendance and progress of a student, or a group of students, in a program of study for the purpose of determining Stafford annual loan limit frequency. ~~There are significant differences between a BBAY for a standard term-based credit-hour program, and a BBAY for a clock-hour, non-term-based credit-hour, or nonstandard term-based credit-hour program.~~ There are three different types of BBAY, as follows:

- BBAY1: This type of BBAY may be used as an alternative to a scheduled academic year (SAY) for either of the following program types, provided the program is offered in a traditional academic year calendar, i.e., a fixed period of time that generally begins and ends at about the same time each calendar year:

  – A standard term-based credit-hour program.

  – A credit-hour program with nonstandard terms that are substantially equal *and* at least nine weeks of instructional time in length (SE9W). Nonstandard terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in the loan period.

  BBAY1 must include the same number of consecutive terms as in the program's SAY, excluding a summer term the school designates as a "header" or "trailer" to the SAY. A BBAY that is used as an alternative to a program with an SAY and that includes a summer term may include fewer than 30 weeks of instructional time or fewer credit hours than the minimum number required for an SAY.

- BBAY2: This type of BBAY must be used for a standard term-based credit-hour program or a credit-hour program with nonstandard terms that are SE9W that is not offered in a traditional academic year calendar (i.e., one that corresponds to an SAY). BBAY2 must always include enough consecutive terms to meet the program's Title IV academic year requirements for credit hours and weeks of instructional time.

- BBAY3: This type of BBAY must be used for a clock-hour program, a non-term-based credit-hour program, and a credit-hour program with nonstandard terms that are *not* SE9W, (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length). BBAY3 must also be used for a credit-hour program with a combination of standard and nonstandard terms that does not qualify to use an SAY. BBAY3 begins when the student enrolls and does not end until the student successfully completes (i.e., passes) the clock or credit hours and completes the instructional weeks in the program's Title IV academic year.

For additional information, see Subsection 6.1.B, Figure 6-2, and the ~~07-08~~ 08-09 FSA handbook, Volume 3, Chapter 5, p. 3-78 to ~~3-84~~ 3-85 and p. ~~3-86~~ 3-94.

Borrower-Specific Deferment: . . .

. . .

Revise Appendix G, page 18, column 1, by adding a new paragraph 2, as follows:

Satisfactory Repayment Arrangement: . . .

SAY: See Scheduled Academic Year.

Scheduled Academic Year: (SAY) ~~The "fixed" academic~~ An academic year that corresponds to a traditional academic year calendar, i.e., a fixed period of time, as published in a school's printed materials, that generally begins and ends at the same time each year according to an established schedule. The SAY is the academic period to which the ~~statutory~~ program's definition of ~~an~~ Title IV academic year must be applied and must meet the minimum statutory requirements of an academic year for weeks of instructional time ~~as defined by the Department~~. ~~Schools may not use a SAY for borrowers enrolled in clock-hour and non-term-based credit-hour programs of study.~~ A standard term-based credit-hour program or a credit-hour program with nonstandard terms that are substantially equal *and* at least nine weeks of instructional time in length (SE9W) may use an SAY if the program is offered in a traditional academic year calendar. The summer term may be treated as an add-on at the beginning ~~(leader)~~ (header) or end (trailer) of the SAY. For additional information, see ~~Section 6.1 and the 07-08~~ Subsection 6.1.B and the 08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-79 to 3-81, and p. 3-94.

School: . . .

School-Affiliated Organization:

School Lender:

SE9W: In a nonstandard term-based credit-hour program, the terms are referred to as "SE9W" if they are substantially equal in length and each term is at least nine weeks of instructional time in length. Nonstandard terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in the loan period. If a nonstandard term-based credit-hour program has terms that are not substantially equal in length, or if each term is not at least nine weeks of instructional time in length, the terms are *not* SE9W. For example, a nonstandard term-based, credit-hour program has terms that are 8 weeks of instructional time in length. While the nonstandard terms in this program are substantially equal in length (i.e., no term is more than 2 weeks longer than any other term), the terms are not at least 9 weeks of instructional time in length. Therefore, the nonstandard terms in this program are *not* SE9W.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-79]

Secondary Market:

. . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Academic Year Categories for the Purpose of Determining the Frequency of Stafford Annual Loan Limits

The *Common Manual* has been updated to include guidance from the FSA Handbook concerning the use of a scheduled academic year (SAY) and a borrower-based academic year (BBAY) for the purpose of determining Stafford annual loan limit frequency in all types of programs.

An SAY corresponds to a traditional academic year calendar. An SAY is a fixed period of time that generally begins and ends at about the same time each calendar year according to an established schedule that is published in a school's catalog or other materials. Summer terms are generally not considered to be part of the SAY, but for loan limit purposes they are treated as a “header” or “trailer” to the SAY, as explained below. For a standard term-based credit-hour program, the traditional academic year includes, for example, fall and spring semesters, or fall, winter, and spring quarters. For a nonstandard term-based credit-hour program with substantially equal terms that are at least nine weeks of instructional time in length (SE9W), a traditional academic year includes 2 or more nonstandard terms in the fall through spring. Nonstandard terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in the loan period.

There are significant differences in how a school determines that a student has completed a BBAY for a credit-hour program with standard terms or nonstandard terms that are SE9W versus a BBAY for a clock-hour program, a non-term-based credit-hour program, or a credit-hour program with nonstandard terms that are not SE9W.

Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are SE9W Offered in a Traditional Academic Year Calendar: Using an SAY

For a credit-hour program with standard terms or nonstandard terms that are SE9W using an SAY that corresponds to a traditional academic year calendar, the school must designate the summer term as either a "header" (precedes the academic year) or a "trailer" (follows the academic year). A school may consistently designate the summer term as either a header or trailer with no exceptions. Provided there is no overlap in academic years, a school may also choose to consistently designate the summer term as either a header or trailer with some exceptions (e.g., for different programs or for individual students), or make all decisions regarding the use of the summer term as a header or trailer on a case-by-case basis.

The Stafford annual loan limits apply to the SAY, plus the summer trailer or header. Once the calendar period associated with all of the terms in the SAY has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes all of the credit hours or weeks of instructional time in the program's Title IV academic year.

Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are SE9W Offered in a Traditional Academic Year Calendar: Using BBAY1

If a program is offered in an SAY, the school may use BBAY1 as an alternative to the SAY for monitoring Stafford annual loan limit progression. If BBAY1 is used, the school must include the same number of consecutive terms in the BBAY as it includes in the program's SAY, excluding a summer term designated as a “header” or “trailer" to the SAY. For example, if the SAY includes three quarter terms (fall, winter, and spring), a BBAY would consist of any three consecutive terms. A BBAY that is used as an alternative to a program with an SAY and that includes a summer term may include fewer than 30 weeks of instructional time or fewer credit hours than the minimum number required for an SAY. The BBAY may include a term(s) in which the student does not enroll if the student could have enrolled at least half-time in that term(s), but the BBAY must begin with a term in which the student is actually enrolled. A student may be enrolled less than half-time for the first term in the BBAY, although the student is ineligible to receive, or receive the benefit of, a loan for that initial term. Mini-sessions (summer or otherwise) that are offered consecutively within a term must be combined and treated as a single term.

A school may use BBAY1 for all students, for students enrolled in certain programs, or on a student-by-student basis. For example, a school may use BBAY1 for a student who is enrolled in a program that begins in a term other than the first term of the SAY. The school may also alternate between BBAY1 and an SAY for the same student, allowing a student to receive another Stafford annual loan limit sooner than would be permitted under the SAY. However the school must ensure that it does not establish overlapping academic years for a student.

The Stafford annual loan limits apply to the BBAY. Once the calendar period associated with all of the terms in BBAY1 has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes the credit hours or weeks of instructional time in the program's Title IV academic year.

Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are SE9W Not Offered in a Traditional Academic Year Calendar: Using BBAY2

If a school has a program that is not offered in a traditional academic year calendar (i.e., one that corresponds to an SAY), the school must use BBAY2. The BBAY for programs that are not offered in an SAY must always include enough consecutive terms to meet the program’s Title IV academic year requirements in weeks of instructional time. If the program uses semester or trimester terms, a BBAY consists of at least two consecutive terms. If the program uses quarter terms, a BBAY consists of at least three consecutive terms. If the program uses nonstandard terms that are SE9W, a BBAY consists of the number of consecutive terms that coincide with the weeks of instructional time in the program's academic year. The BBAY may include a term(s) in which the student does not enroll if the student could have enrolled at least half time in that term(s), but the BBAY must begin with a term in which the student is actually enrolled. A student may be enrolled less than half-time for the first term in the BBAY, although the student is ineligible to receive, or receive the benefit of, a loan for that initial term. Mini-sessions (summer or otherwise) must be combined and treated as a single standard term.

The Stafford annual loan limits apply to the BBAY. Once the calendar period associated with all of the terms in BBAY2 has elapsed, a student regains eligibility for new Stafford annual loan limits regardless of whether the student attends all of the terms or completes all of the credit hours or weeks of instructional time in the program's Title IV academic year.

Clock-Hour Programs, Non-Term-Based Credit-Hour Programs, and Nonstandard Term-Based Credit-Hour Programs with Terms That Are Not SE9W: Using BBAY3

For a clock-hour program, a non-term-based credit-hour program, and a nonstandard term-based program with terms that are *not* SE9W (i.e., the terms are not substantially equal in length, or each term is not at least nine weeks of instructional time in length), a school must use BBAY3. A school must also use BBAY3 for a credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY.

BBAY3 begins when the student enrolls and does not end until the student successfully completes (i.e., passes) the number of credit or clock hours and completes the weeks of instructional time in the program's Title IV academic year. For a student enrolled in a nonstandard term-based program with terms that are not SE9W, the number of terms that have elapsed is irrelevant.

The Stafford annual loan limits apply to the BBAY. Once a student successfully completes (i.e., passes) the number of credit or clock hours and completes the weeks of instructional time in the program’s Title IV academic year, a new BBAY begins and the student regains eligibility for new Stafford annual loan limits. A student's enrollment status may affect how soon the student regains eligibility for new annual loan limits. A student who does not attend on a full-time basis will take longer to complete the academic year than a full-time student.

A student enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of clock or credit hours in the program’s academic year in fewer than the number of weeks of instructional time in the program’s academic year. If the self-paced program is an undergraduate program that is *exactly* one academic year in length, e.g., 900 clock hours and 26 weeks of instructional time, a student may successfully complete 900 clock hours in 22 weeks. If the average student successfully completes the program in 26 weeks, the school is not required to prorate the loan amount for the occasional student who successfully completes the program in less than 26 weeks. A student who is enrolled in a program that is more than one academic year in length cannot receive a subsequent loan for a new BBAY until the student has successfully completed (i.e., passed) the number of clock or credit hours and completed the weeks of instructional time in the initial BBAY. For example, a student is enrolled in a program of 1800 clock hours and 52 weeks of instructional time in which the Title IV academic year is defined as 900 clock hours and 26 weeks of instructional time. The student successfully completes 900 clock hours in 22 weeks of instructional time. However, the student must complete the 26 weeks of instructional time in the program's academic year before a the student gains eligibility to receive another loan for a new BBAY.

Figure 6-2, "Frequency of Stafford Annual Loan Limits," has been updated with corresponding changes.

Appendix G includes new a new definition of "SE9W." In a nonstandard term-based credit-hour program, the terms are referred to as "SE9W" if they are substantially equal in length and each term is at least nine weeks of instructional time in length. Nonstandard terms are considered substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in the loan period. If a nonstandard term-based credit-hour program has terms that are not substantially equal in length, or if each term is not at least nine weeks of instructional time in length, the terms are *not* SE9W. For example, a nonstandard term-based, credit-hour program has terms that are 8 weeks of instructional time in length. While the nonstandard terms in this program are substantially equal in length (i.e., no term is more than 2 weeks longer than any other term), the terms are not at least 9 weeks of instructional time in length. Therefore, the nonstandard terms in this program are *not* SE9W.

The existing glossary definition of the acronym "BBAY" has been expanded to include references to "BBAY1," "BBAY2,", and "BBAY3," all of which are cross-referenced to the glossary definition of "Borrower-Based Academic Year." The glossary definition of "Borrower-Based Academic Year" has been expanded to include separate, high-level definitions of "BBAY1," "BBAY2," and "BBAY3," with a cross-reference for additional information to Subsection 6.1.B and the 08-09 FSA Handbook, Volume 3, Chapter 5.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A Stafford borrower enrolled in a credit-hour program with nonstandard terms that are SE9W offered in a traditional academic year calendar may have additional options for accessing Stafford annual loan limits.

School:
A school that has a credit-hour program with nonstandard terms that are SE9W offered in a traditional academic year calendar will have additional options for determining the frequency of Stafford annual loan limits in that program. A school may be required to update its financial aid policies and procedures to clarify the use, as appropriate, of an SAY and/or BBAY for the types of programs the school offers.

Lender/Servicer:
None.

Guarantor:
A guarantor may be required to provide additional training on the use of, as appropriate, SAY, BBAY1, BBAY2, and BBAY3 and modify its program review parameters for credit-hour programs with nonstandard terms that are SE9W.

U.S. Department of Education:
The Department may be required to modify its program review parameters for credit-hour programs with nonstandard terms that are SE9W.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 21, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

Proposal Distributed to:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, NASFAA, NCHELP, NSLP, OGSLP, SCSLC, SLMA, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
The Committee received a comment on Policy Proposal 1095 in Batch 157 requesting a definition of a self-paced program. This policy proposal also makes reference to a self-paced program.

Response:
As the result of the comment received on Policy Proposal 1095 in Batch 157, the Committee located text in the 08-09 FSA Handbook sufficient to provide a definition of a self-paced program. As a result of that definition, which was incorporated into the glossary in Policy Proposal 1095, the Committee has made a coordinating change in this policy proposal.

Change:
The Proposed Policy, Common Bulletin and Revised Policy have all been modified to refer to a self-paced program only in the context of a clock-hour program or a non-term-based credit-hour program.

COMMENT:
The Committee received a comment on Policy Proposal 1095 in Batch 157 that resulted in a closer examination of the same language in Subsection 6.1.B, under the subheading *Clock-Hour Programs, Non-Term-Based Credit-Hour Programs, and Nonstandard Term-Based Credit-Hour Programs with Terms That Are Not SE9W: Using BBAY3* , paragraph 4, sentence 1, as follows:

> A student enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete more than the number of clock or credit hours in the program's academic year upon completion of the number of weeks of instructional time in the program's academic year.

The Committee notes that this language is inconsistent with the example that follows, which illustrates a case in which the student completes the number of credit or clock hours in the program's academic year in fewer than the number of weeks of instructional time in the academic year.

Response:
The Committee will make a coordinating change to align language of Subsection 6.1.B with language of Subsection 6.1.F that was modified in Policy Proposal 1057, Batch 157.

Change:
The aforementioned proposed policy text has been modified as follows:

> A student enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete ~~more than~~ the number of clock or credit hours in the program's academic year ~~upon completion of~~ <u>in fewer than</u> the number of weeks of instructional time in the program's academic year.

COMMENT:
One commenter requested a modification to the effective date/triggering event for this proposal, as follows:

> Publication date of Volume 3 of the 08-09 FSA Handbook<u>, unless implemented earlier by the school</u>

on or after July 1, 2008.

The commenter indicated that while Volume 3 of the FSA Handbook was not published until October 16, 2008, the provisions relative to programs with nonstandard terms that are SE9W in Chapter 3 are effective for the 2008-09 academic year. If schools were aware of this revised policy and implemented it on or after July 1, schools should not be penalized for allowing borrowers to receiving additional loan funds due to grade level changes.

Response:
The commenter is correct that, generally, concepts published in Volume 3 of the 08-09 FSA Handbook are derivatives of July 1, 2008, regulatory changes associated with credit-hour, nonstandard term programs that are SE9W. In the preamble to the November 1, 2007, *Federal Register* that published those regulatory changes, the Department authorized a school to immediately implement them at the school's discretion. Therefore, the Committee agrees with the commenter that the changes reflected in this proposal could have been implemented earlier than the publication date of the FSA Handbook. However, the Committee believes the effective date/triggering event for this proposal should reflect a school's ability to have implemented these changes, generally, no earlier than November 1, 2007.

In the preamble to the final rules dated November 1, 2007 (p. 62022), the Department responded to a commenter by stating that the prohibition against grade level increases for students enrolled in nonstandard term programs applied only to a student attending a program with nonstandard terms that are *not* SE9W. The Committee therefore agrees with the commenter that a school should not be penalized for allowing a borrower enrolled in a program with nonstandard terms that *are* SE9W to receive additional funds due to a mid-year grade level increase before the publication date of Volume 3 of the 08-09 FSA Handbook. However, not all of the changes related to a program with nonstandard terms that are SE9W are appropriate for earlier implementation. In the aforementioned *Federal Register*, the Department also stated that "an undergraduate student attending a final period of study in *any nonstandard term credit-hour program* is subject to proration of the annual loan limit while enrolled in the defined number of terms in the program's academic year *but attending less than the number of credit hours for that defined academic year*. It was not until the publication of Volume 3 of the 08-09 FSA Handbook that the Department authorized proration of the Stafford annual loan limit for students enrolled in programs with nonstandard terms that are SE9W based on the student's enrollment in fewer terms than in the defined academic year for the program.

This proposal does not directly address a mid-year grade level increase or proration of the Stafford annual loan limit for a student enrolled in a program with nonstandard terms that are SE9W. The Committee therefore believes it is appropriate to modify the effective date/triggering event for this proposal and proposal 1083 (Grade Level) to permit earlier implementation. The Committee will not modify the effective date/triggering event for proposal 1085, however, since its impetus and focus is Stafford annual loan limit proration for undergraduate students who attend a nonstandard term program that is, or is not, SE9W.

Change:
The effective date/triggering event for this proposal has been modified to read as follows:

> Publication date of Volume 3 of the 08-09 FSA Handbook, unless implemented by the school on or after November 1, 2007.

COMMENT:
One commenter questioned the removal of existing text in Subsection 6.1.B, paragraph 1, bullet 1, under the new subheading *Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are SE9W Offered in a Traditional Academic Year Calendar*:

> The school may consistently designate the summer term as either a header or a trailer with no exceptions.

The commenter was concerned about the removal of the text, stating that it was still a supported option for a school.

Response:
The Committee agrees that a school may still consistently designate the summer term as either a header or trailer with no exceptions. The Committee did not remove this policy text from the Manual, but rather

relocated it to the paragraph that introduces the subsequent bullets to align the Manual's text more closely with the corresponding 08-09 FSA Handbook discussion, as follows:

> For a credit-hour program with standard terms or nonstandard terms that are SE9W using an SAY that corresponds to a traditional academic year calendar, the school must designate the summer term as either a "header" (precedes the academic year) or a "trailer" (follows the academic year). . .*A school may consistently designate the summer term as either a header or trailer with no exceptions*. A school may also choose any one of the following options, provided there is no overlap in academic years:
>
> - The school may consistently designate the summer term as either a header or a trailer with some exceptions (e.g., for different programs or for individual students) that are determined by the school on a case-by-case basis.
>
> - The school may make all decisions regarding the use of a summer term as a header or trailer on a case-by-case basis.

Change:
None.

COMMENT:
One commenter requested that the Committee delete the third sentence from the fifth paragraph of the Revised Policy statement, as follows:

> However, revised policy requires a student enrolled in such a program that is more than one academic year in length to successfully complete the number of clock or credit hours and complete the weeks of instructional time in the program's Title IV academic year before he or she gains eligibility to receive another loan for a new BBAY.

The commenter indicated that this appears to be a new requirement for a self-paced, non-term credit-hour program, a credit-hour program with nonstandard terms that are not SE9W, or a clock hour program, when actually it is a long-standing principal.

Response:
The Committee agrees that the Revised Policy statement noted above is reflective of a long-standing principal. However, that principal is making its first appearance to contrast with the treatment of a borrower who is attending a program of exactly one academic year length who completes the number of hours in the program before completing the number of instructional weeks in the program.

Change:
The Committee has modified the Revised Policy statement questioned by the commenter so as not to infer that this is a new requirement:

> . . .However, revised policy ~~requires~~ clarifies that a student enrolled in such a program that is more than one academic year in length ~~to~~ must successfully complete the number of clock or credit hours and complete the weeks of instructional time in the program's Title IV academic year before he or she gains eligibility to receive another loan for a new BBAY. . .

COMMENT:
One commenter recommended a modification to the following existing Manual text, as follows:

> A BBAY begins when a student, or a ~~group~~ cohort of students, begins attendance and tracks the student's (or group's) attendance and progress in a program of study.

The commenter indicated that schools typically call the "group of students" a cohort in this scenario.

Response:
Existing Manual text in Subsection 6.1.B and Figure 6-2 uses the term "group of students" to conform to language used by the 08-09 FSA Handbook (see Volume 3, p. 3-79). The Committee also acknowledges that the FSA Handbook is inconsistent in the use of that term versus "cohort." However, the Committee prefers to

continue using “group of students” in the context of a borrower-based academic year to preserve an exclusive glossary definition of the word “cohort” relative to a school’s cohort default rate.

Change:
None.

COMMENT:
One commenter requested clarification of the third paragraph in Subsection 6.1.B, relative to a BBAY that included a summer term that was used as an alternative to a program offered in an SAY. Another commenter expressed confusion with this same language, specifically, reference to “. . .a program with an SAY. . .”

Reponse:
The aforementioned text has been modified per the first commenter’s request. The Committee believes that this modification will alleviate the second commenter’s confusion.

Change:
The third paragraph of Subsection 6.1.B has been modified as follows:

> Both the SAY and the BBAY must meet the minimum statutory requirements ~~of~~ for an academic year. One exception to this rule is that, for a program offered in an SAY, a BBAY that includes a summer term and that is used as an alternative to ~~a program with an~~ the SAY ~~in a standard term-based, credit-hour program~~ ~~and that includes a summer term~~ may include fewer than 30 weeks of instructional time or fewer credit hours than the minimum number required for an SAY.

COMMENT:
One commenter requested a clarification to the fourth paragraph of Subsection 6.1.B, under the subheading *Clock-Hour Programs, Non-Term-Based Credit-Hour Programs, and Nonstandard Term-Based Credit-Hour Programs with Terms That Are Not SE9W: Using BBAY3.* The commenter indicated that the example of a student attending a program of more than an academic year in length needed to be clarified. Specifically, the commenter requested that the proposed policy explain that if a student completes more than 900 clock hours at the end of 26 weeks, his or her last loan must be prorated accordingly. The commenter also suggested that this clarification be added to Figure 6-2.

Response:
The Committee agrees with the commenter that the proposed policy should state that a school must prorate the Stafford annual loan limit for the subsequent loan if it is a final period of undergraduate study and it includes fewer hours than the program’s academic year definition. However, the Committee believes that a cross-reference to Subsection 6.11.F (Prorating the Stafford Annual Loan Limit) in the policy text is most appropriate. The scenario the commenter refers to is the subject of details added to Subsection 6.11.F by policy proposal 1095 in Batch 157.

Change:
The paragraph to which the commenter refers has been clarified as follows:

> . . .For example, a student is enrolled in a program of 1800 clock hours and 52 weeks of instructional time in which the Title IV academic year is defined as 900 clock hours and 26 weeks of instructional time. The student successfully completes 900 clock hours in 22 weeks of instructional time. However, the student must also complete the 26 weeks of instructional time in the program’s academic year before the student gains eligibility to receive another loan for a new BBAY. If the subsequent loan is for a final period of undergraduate study that includes fewer clock or credit hours than the program’s academic year, the school must prorate the Stafford annual loan limit (see Subsection 6.11.F).

No change was made to Figure 6-2 as the text contained in the figure does not address this issue.

COMMENT:
One commenter requested the following change in Subsection 6.1.B, first paragraph, second bullet:

> For a standard-term~~-based~~, credit-hour program, a traditional academic year includes, for example, fall and spring semesters, or fall, winter, and spring quarters. For a nonstandard-term~~-based~~, credit-hour program with substantially equal terms that are at least nine weeks of instructional time in length

(SE9W), a traditional academic year includes 2 or more nonstandard terms during the period fall through spring. . .

The commenter indicates that the terms “standard” and “nonstandard” are meant to identify the term type and should be displayed as modifiers.

Response:
The Committee declines to make this change at this time, as it is reflective of a Manual convention that has far-reaching implications throughout the Manual. However, the Committee will take this recommendation under advisement and consult with its Editing Chair.

Change:
None.

jcs/edited-aes/kk

Frequency of Stafford Annual Loan Limits **Figure 6-2**

~~Scheduled Academic Year~~ **Credit-Hour Programs with Standard Terms or Nonstandard Terms That Are Substantially Equal and at Least Nine Weeks of Instructional Time (SE9W) Offered in a Scheduled Academic Year (SAY) (Including Such Programs Using Modules)**		**~~Borrower-Based Academic Year (BBAY)~~** **Credit-hour Programs with Standard Terms or Nonstandard Terms That Are SE9W *Not* Offered in an SAY (Including Such Programs Using Modules)**	**Credit-Hour Programs with Nonstandard Terms That Are *Not* SE9W, Non-Term-Based Credit-Hour and Clock-Hour Programs (Includes Programs that Mix Nonstandard and Standard Terms With No SAY)**
May Use SAY	**May Use BBAY1**	**Must Use BBAY2**	**Must Use BBAY3**
~~Standard Term-Based Credit-Hour Programs (including such programs offered in modules)~~ SAY consists of a traditional academic year calendar that begins and ends at approximately the same time each calendar year SAY includes at least two semesters or trimesters or three quarters in fall through spring, or a comparable academic calendar with nonstandard terms that are SE9W SAY must at least meet the program's Title IV academic year requirements in credit hours and weeks of instructional time Student does not have to be enrolled in the first term of the SAY All Stafford loans borrowed during a SAY (including summer header/trailer) must not exceed the annual loan limit for student's grade level Student regains eligibility for new annual loan limit after SAY calendar period elapses After original loan, additional loans during the same SAY are permissible if any of the following occur: • Student has remaining eligibility • Student progresses to a grade level with a higher annual loan limit • Student changes from dependent to independent Summer term may be "header" or "trailer" to the SAY, per • Strict policy • Program • Case by case basis Summer mini-sessions may be combined and treated as a single header/trailer or individual mini-sessions may be assigned to different SAYs	~~Consists of a traditional academic year calendar that begins and ends at approximately the same time each calendar year and includes at least two semesters or trimesters, or at least three quarters~~ ~~School must use a SAY that meets the minimum statutory requirements of an academic year~~ BBAY floats with a student's, or a group of students', enrollment BBAY must equal the number of terms in the program's SAY, excluding a summer header/trailer BBAY need not meet minimum statutory requirements of an academic year if the BBAY includes a summer term School may use BBAY1 for • All students • Certain students • Certain programs School may alternate SAY and BBAY1 for a student provided academic years do not overlap Student must be enrolled in the first term of the BBAY. Student may enroll less than half time for the initial term of the BBAY but the student is not eligible to receive, or receive the benefit of, a loan for that initial term BBAY may include terms that the student does not attend if the student could have enrolled at least half-time All Stafford loans borrowed during a ~~SAY~~ BBAY ~~(including summer header/trailer)~~ must not exceed the annual loan limit for student's grade level Borrower regains eligibility for new annual loan limit after ~~SAY~~ BBAY calendar period elapses After original loan, additional loans during the same ~~SAY~~ BBAY are permissible if any of the following occur: • Student has remaining eligibility • Student progresses to a grade level with a higher annual loan limit • Student changes from dependent to independent ~~Loan period may not always include all terms in SAY~~ ~~Summer term may be "header" or "trailer" to the SAY, per~~ ~~• Strict policy~~	**~~All standard term-based, credit-hour programs:~~** BBAY ~~Academic year~~ floats with a student's, or a group of students', enrollment BBAY consists of at least two consecutive semesters or trimesters, three consecutive quarters, or at least the number of consecutive nonstandard terms that are SE9W covered by the program's academic year BBAY must meet at least the program's Title IV academic year requirements in credit hours and weeks of instructional time Student must enroll in the first term of the BBAY. Student may enroll less than half time for the initial term in the BBAY but the student is not eligible to receive, or receive the benefit of, a loan for that initial term BBAY may include terms that the student does not attend if the student could have enrolled at least half time All Stafford loans borrowed during BBAY must not exceed the annual loan limit for student's grade level Borrower regains eligibility for new annual loan limit after BBAY calendar period elapses After original loan, additional loans during the same BBAY are permissible if any of the following occurs: • Student has remaining eligibility • Student progresses to a grade level with a higher annual loan limit • Student changes from dependent to independent ~~• BBAY begins with term in which student actually enrolls~~ ~~• BBAY may include terms student does not attend, if student could have enrolled at least half-time~~ Mini-sessions (summer or otherwise) must be combined with each other or with other terms and treated as a single standard or nonstandard term. Student need not enroll in each mini-session but must have been able to enroll at least half time in the combined term **~~Programs offered in a traditional~~**	BBAY floats with a student's, or a group of students', enrollment BBAY must meet at least the program's Title IV academic year requirements in credit/clock hours and weeks of instructional time BBAY begins with student's enrollment on at least a half-time basis All Stafford loans borrowed during BBAY must not exceed the annual loan limit for student's grade level Borrower gains eligibility for a new annual loan limit after successfully completing the credit/clock hours and weeks of instructional time in the BBAY Student may not borrow additional loan for progress to next grade level until the student successfully completes both the credit/clock hours and weeks of instructional time in the BBAY After original loan, additional loans during the same BBAY are permissible if the student has remaining eligibility, or the student changes from dependent to independent

	• ~~By program~~ • ~~Case by case~~ ~~Summer~~ M~~m~~ini-sessions (summer or otherwise) ~~may~~ must be combined with each other or with other terms and treated as a single ~~header/trailer or individual mini-sessions may be assigned to different SAYs~~ standard or nonstandard term. Student need not enroll in each mini-session but must have been able to enroll at least half time in the combined term	~~**academic year calendar (i.e., one that corresponds to a SAY):**~~ ~~Length of BBAY must equal number of terms in SAY, excluding summer header or trailer~~ ~~Number of hours/instructional weeks in BBAY need not meet minimum statutory requirements of an academic year if BBAY includes a shorter summer term~~ ~~School may use BBAY for~~ • ~~All students~~ • ~~Certain programs~~ • ~~Certain students~~ ~~May alternate SAY and BBAY for a student if no overlap of academic years~~ ~~**Programs not offered in a traditional academic year calendar:**~~ ~~Must use BBAY that consists of at least two semesters or trimesters, or at least three quarters~~ ~~BBAY must meet minimum statutory requirements of an academic year in instructional weeks~~	
~~**Nonstandard Term-Based Credit-Hour Programs with Substantially Equal Terms of at Least Nine Weeks of Instructional Time**~~	~~*****~~	~~BBAY must meet the minimum statutory requirements or equivalent~~ ~~Student enters a new academic year for annual loan limit purposes when the calendar time of the BBAY has elapsed~~	
~~**Clock-Hour Programs, Non-Term-Based Credit-Hour Programs, and Nonstandard Term-Based Credit-Hour Programs with Terms that Are Not Substantially Equal or Not at Least Nine Weeks of Instructional Time**~~	~~Not applicable~~	~~BBAY must meet the minimum statutory requirements or equivalent~~ ~~Student may not borrow additional loan for progress to next grade level until the student completes both the minimum number of weeks and credit/clock hours in an academic year~~	

~~*The use of the SAY in a nonstandard term-based program with substantially equal terms not less than nine weeks long has not bee defined. This figure will be updated when further guidance is received.~~

[~~07-08~~ 08-09 FSA Handbook, Volume 3, Chapter 5, pp. 3-79—~~3-84~~ 3-85 and ~~3-86~~ 3-94]

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Independent Student Definition**

AFFECTED SECTIONS: **6.8 Determining the Student's Dependency Status**

POLICY INFORMATION: **1125/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: For dependency determinations beginning with the 2009-2010 award year.

BASIS:
HEA §480(d)(1), as amended by the College Cost Reduction and Access Act (CCRAA) of 2007, P.L. 110-84 and the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-01; DCL GEN-08-12; 2009-2010 *Free Application for Federal Student Aid* (FAFSA).

CURRENT POLICY:
Current policy for the definition of "independent student" does not include the changes brought forth by the College Cost Reduction and Access Act (CCRAA) or the clarifications contained in the Higher Education Opportunity Act (HEOA).

REVISED POLICY:
Revised policy incorporates the changes made to the definition of "independent student" by the CCRAA, as well as incorporates the clarifications made to that definition through the HEOA. Although the specific HEOA changes are not effective until July 1, 2010, the Department has updated the 2009-2010 FAFSA to reflect the changes. As a result, the *Common Manual* is being updated to reflect the HEOA clarifications.

Revised policy amends the independent student criteria related to a student who is an orphan or ward of the court by including reference to foster care, and clarifying that if the student was an orphan or ward of the court at any time when the student was 13 years of age or older, the student is considered an independent student.

Revised policy adds two new criteria for determining a student's dependency status as independent. The first criterion states that if a student is or was (immediately prior to attaining the age of majority) an emancipated minor or in legal guardianship as determined by a court in the student's state of legal residence, the student is considered independent.

The second criterion states that if the student has been verified, after the start of the academic year for which the FAFSA is filed, as either an unaccompanied youth who is a homeless child or an unaccompanied youth at risk of being homeless and self-supporting, the student is considered independent. For purposes of this criterion, the following definitions apply:

- "Homeless" means lacking fixed, regular, and adequate housing, which includes living in shelters, motels, or cars, or temporarily living with other people because the student has nowhere else to go.
- "Unaccompanied" means that the student is not living in the physical custody of his or her parent(s) or guardian(s).
- "Youth" means 21 years or age or younger and the student is still in high school as of the day the FAFSA is completed.

Homeless status can be verified by any one of the following entities:

- A local educational homeless liaison designated pursuant to the McKinney-Vento Homeless Assistance Act.
- The director of an emergency shelter or transitional housing program funded under the Runaway and Homeless Youth Act.
- The director of a program funded under the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants).

- The financial aid administrator.

REASON FOR CHANGE:
This change is necessary to incorporate changes made to the definition of "independent student" included in both CCRAA and HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: Section 6.8 is also being updated as part of Proposals 1107 in Batch 157 and 1126 in Batch 159.

Revise Section 6.8, page 19, column 2, paragraph 2, as follows:

6.8
Determining the Student's Dependency Status

A student's dependency status is determined from information provided on the Free Application for Federal Student Aid (FAFSA). A student's dependency status affects the expected family contribution (EFC) and the types and amounts of aid that the student may be eligible to receive.

For purposes of Title IV aid, a student is considered independent if he or she meets one or more of the following criteria:

- The student is at least 24 years old by December 31 of the award year.

- The student is an orphan, in foster care, or a ward/dependent of the court, or was an orphan, in foster care, or a ward/dependent of the court ~~until he or she reached age 18~~ at any time when the student was 13 years of age or older.
  [HEA §480(d)(1)(B); DCL GEN-08-01; DCL GEN-08-12]

- The student is or was, immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court in the student's state of legal residence.
  [HEA §480(d)(1)(C); DCL GEN-08-01; DCL GEN-08-12]

- The student has been verified, on or after the start of the award year for which the FAFSA is filed, as either an unaccompanied youth who is a homeless child or an unaccompanied youth at risk of being homeless and self-supporting. For purposes of this criterion, the following definitions apply:

  – *Homeless* means lacking fixed, regular, and adequate housing, which includes living in shelters, motels or cars, or temporarily living with other people because the student has nowhere else to go.

  – *Unaccompanied* means the student is not living in the physical custody of his or her parents or guardian.

  – *Youth* means 21 years of age or younger and the student is still in high school as of the day the FAFSA is completed.

  Homeless status can be verified by any one of the following entities:

  – A local educational homeless liaison, designated pursuant to the McKinney-Vento Homeless Assistance Act.

  – The director of an emergency shelter or transitional housing program funded under the Runaway and Homeless Youth Act.

  – The director of a program funded under the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants).

– The financial aid administrator (FAA).
[HEA §480(d)(1)(H); DCL GEN-08-01; DCL GEN-08-12]

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- . . .

A student is considered dependent if he or she does not meet any of the preceding criteria for an independent student unless the FAA determines that the student is independent on the basis of special circumstances and performs a dependency override.
[HEA §480(d)(7); §668.2(b)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Definition of Independent Student

The *Common Manual* has been updated to incorporate changes made to the definition of "independent student" that were included in the College Cost Reduction and Access Act (CCRAA) of 2007 and further clarified through the Higher Education Opportunity Act (HEOA). Although the specific HEOA changes are not effective until July 1, 2010, the 2009-2010 *Free Application for Federal Student Aid* (FAFSA) has already been updated to reflect the changes. As a result, the *Common Manual* is being updated to reflect the HEOA clarifications.

The independent student criteria related to a student who is an orphan or ward of the court has been revised by including reference to foster care, and clarifying that if the student was an orphan, a ward of the court, or in foster care at any time when the student was 13 years of age or older, the student is considered an independent student.

The Manual is also revised to include two new criteria for determining a student's dependency status as independent. The first criterion states that if a student is or was (immediately prior to attaining the age of majority) an emancipated minor or in legal guardianship as determined by a court in the student's state of legal residence, the student is considered independent.

The second criterion states that if the student has been verified, on or after the start of the award year for which the FAFSA is filed, as either an unaccompanied youth who is a homeless child or an unaccompanied youth at risk of being homeless and self-supporting, the student is considered independent. For purposes of this criterion, the following definitions apply:

- "Homeless" means lacking fixed, regular and adequate housing, which includes living in shelters, motels or cars, or temporarily living with other people because the student has nowhere else to go.
- "Unaccompanied" means the student is not living in the physical custody of his or her parents or guardian.
- "Youth" means 21 years of age or younger and the student is still in high school as of the day the FAFSA is completed.

Homeless status can be verified by any one of the following entities:

- A local educational homeless liaison designated pursuant to the McKinney-Vento Homeless Assistance Act.
- The director of an emergency shelter or transitional housing program funded under the Runaway and Homeless Youth Act.
- The director of a program funded under the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants).
- The financial aid administrator.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:
A borrower who is an orphan, in foster care, a ward of the court, homeless, or an unaccompanied youth may be considered an independent student for purposes of obtaining Title IV aid.

School:
A school is able to more clearly understand the revisions made to the definition of “independent student” when determining a student's eligibility for Title IV aid.

Lender/Servicer:
None.

Guarantor:
A guarantor may need to revise its program review procedures to reflect the expanded definition.

U.S. Department of Education:
The Department may need to revise its program review procedures to reflect the expanded definition.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 12, 2007

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received from:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter suggested that the Effective Date/Trigger Event be revised to read as follows:

> For dependency determinations ~~made for~~ beginning with the 2009-2010 award year.

Response:
The Committee agrees.

Change:
The Effective Date/Trigger Event is revised as suggested.

COMMENT:
Two commenters suggested that the following bullet in Section 6.8 be revised as follows:

- The student is an orphan, in foster care, or ward/dependent of the court, or was an orphan, in foster care, or was a ward/dependent of the court at any time when the student was 13 years of age or older.

The commenters also suggested that the same change be made in the Common Bulletin language and the borrower implication statement.

Response:
The Committee agrees.

Change:
The bullet in Section 6.8 is revised as suggested by the commenter, as well as the corresponding Common Bulletin language and the borrower implication statement.

COMMENT:
One commenter suggested that the fourth bullet in Section 6.8 be revised as follows:

- The student has been verified, on or after the start of the ~~academic~~ award year for which the FAFSA is filed, as either an unaccompanied youth who is a homeless child or an unaccompanied youth at risk of being homeless and self supporting. For purposes of this criteria, the following definitions apply:

Response:
The Committee agrees.

Change:
The bullet in Section 6.8 is revised as suggested by the commenter.

COMMENT:
One commenter stated that it was not clear in proposed language Section 6.8 who verifies a student as self-supporting and at risk of homelessness.

Response:
The Committee believes that the proposed language in Section 6.8 follows closely the statutory language in §480(d)(1)(H) and Department guidance provided thus far. Should the Department issue further guidance on the topic, it will be incorporated into the Manual. Per statute and Department guidance, homeless status can be verified by any one of the following entities:

- A local educational homeless liaison designated pursuant to the McKinney-Vento Homeless Assistance Act.
- The director of an emergency shelter or transitional housing program funded under the Runaway and Homeless Youth Act.
- The director of a program funded under the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants).
- The financial aid administrator.

Change:
None.

nm/edited-rrl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Proration of Stafford Annual Loan Limits**

AFFECTED SECTIONS: **6.11.F Prorated Loan Limits**
Appendix G

POLICY INFORMATION: **1095/Batch 157**

EFFECTIVE DATE/TRIGGER EVENT: Publication date of Volume 3 of the 08-09 FSA Handbook for the following in a credit-hour program that uses nonstandard terms that are substantially equal and at least nine instructional weeks in length (SE9W):

- Determining the final period of study for an undergraduate borrower.
- Exempting from proration an undergraduate borrower who is enrolled less than half time for a term(s) during a final period of study that contains the number of terms in the program's academic year.

Publication date of Volume 3 of the 07-08 FSA Handbook for exempting from proration an undergraduate borrower who is enrolled in a standard term-based credit-hour program and enrolled less than half time for a term(s) during a final period of study that contains the number of terms in the program's academic year.

Publication date of Volume 3 of the 05-06 FSA Handbook for the following:

- Clarifying that a school must prorate the Stafford annual loan limit when the school knows in advance that an undergraduate borrower will enroll in a program that is shorter than an academic year or, for a program that is equal to or longer than an academic year, the borrower will enroll in a final period of study that is shorter than an academic year.
- Exempting from proration an undergraduate borrower who is enrolled at least half time but less than full time or enrolled for a period of less than a full academic year that is not a final period of study.

Publication date of Volume 3 of the 04-05 FSA Handbook for using the school's academic year for the program to determine whether a final period of study is shorter than an academic year.

BASIS:

08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-100; 08-09 FSA Handbook, Volume 4, Chapter 2, p. 4-45; 07-08 FSA Handbook, Volume 3, Chapter 5, p. 3-95; 05-06 FSA Handbook, Volume 3, Chapter 4, pp. 3-80 and 3-83; 04-05 FSA Handbook, Volume 3, Chapter 4, p. 3-67.

CURRENT POLICY:

Current policy does not address several clarifications regarding proration of the Stafford annual loan limits.

REVISED POLICY:

Revised policy clarifies that a school must calculate prorated, i.e., reduced, Stafford annual loan limits when the school knows *in advance* that an undergraduate Stafford loan borrower will be enrolled in a program of study that is shorter than the statutory minimum for an academic year or, for a program that is longer than the statutory academic year minimum, the borrower is completing a final period of study that is shorter than an academic year. Revised policy incorporates the following concepts that apply when determining whether a final period of study is shorter than an academic year:

- In a credit-hour program that uses standard terms or nonstandard terms that are substantially equal and at least nine instructional weeks in length (SE9W), a final period of study is considered shorter than an academic year if it contains fewer terms than the number of terms in the program's academic year. For a program that uses a scheduled academic year (SAY), the number of terms in the school's academic year does not include a summer term that is designated as a header or trailer.

- In a clock-hour program, a non-term-based credit-hour program, a credit-hour program that uses nonstandard terms that are *not* SE9W (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length), or a credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY, a final period of study is shorter than an academic year if it consists of fewer clock or credit hours than in the program's academic year.

- In any program, a school may establish an academic year that is greater than the statutory minimum in clock or credit hours or instructional weeks. For such a program, the school uses its academic year definition for the program—not the statutory minimum for an academic year—to determine whether a final period of study is shorter than an academic year.

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of clock or credit hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. If the self-paced program is more than an academic year in length and the subsequent Stafford loan period will be an undergraduate borrower's final period of study, the school must prorate the Stafford annual loan limits. Revised policy includes an example.

Revised policy includes a new subheading *When Proration of the Stafford Annual Loan Limits Is Not Applicable*, followed by consolidated information about cases when a school is not permitted, or not required, to prorate, as follows:

- A school is not permitted to prorate the Stafford annual loan limits for a graduate or professional Stafford loan borrower.

- A school is not permitted to prorate the Stafford annual loan limits for any undergraduate Stafford loan borrower who enrolls:

  – In coursework necessary for a professional credential or certification from a state if that credential or certification is required for employment as a teacher in an elementary or secondary school.

  – In preparatory coursework necessary for admission into either an undergraduate or a graduate program of study.

  – At least half time but less than full time.

  – For a period of less than a full academic year that is not a final period of study.

  – In an undergraduate credit-hour program that uses standard terms or nonstandard terms that are SE9W during a final period of study that contains the number of terms in the program's academic year and includes a term(s) in which the borrower is enrolled less than half time. However, the borrower is ineligible to receive, or receive the benefit of, a loan for the term in which he or she is enrolled less than half time.

- A school is permitted, but not required, to retroactively prorate the Stafford annual loan limits for an undergraduate borrower who originally enrolls for a final period of study in a period of enrollment that is a full academic year in length and who completes the program early in less than a full academic year.

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of clock or credit hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. If the self-paced program is an undergraduate program that is *exactly* one academic year in length, a school is not required to prorate the Stafford annual loan limits for the occasional student who successfully completes the program in fewer weeks of instructional time than the average student. Revised policy includes an example.

A glossary definition has been added for "self-paced program."

REASON FOR CHANGE:
This change is required to incorporate Departmental guidance published in the FSA Handbook and to align Subsection 6.11.F with policy guidance that is already found in Subsection 6.11.A concerning proration for an undergraduate student attending a self-paced program.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 6.11.F, page 30, column 2, paragraph 3, as follows:

6.11.F Prorated Loan Limits

~~A school also is responsible for determining whether prorated loan limits are applicable and how annual loan limits must be prorated. An undergraduate Stafford loan borrower is subject to certain prorated loan limits if he or she is~~ A school must calculate prorated, i.e., reduced, Stafford annual loan limits when the school knows in advance that an undergraduate Stafford loan borrower will be enrolled in a program of study that meets either of the following criteria:

- The program's duration is shorter than the statutory minimum for an academic year (see Section 6.1 for information about defining an academic year). See Figure 6-4 for information about the proration calculation for a program of study of less than a full academic year.
- The program's duration is equal to or longer than the statutory minimum for an academic year, but the borrower is completing ~~the remainder of the program~~ a final period of study in a period of enrollment that is shorter than an academic year. See Figure 6-4 for information about the proration calculation for a final period of study that is shorter than an academic year. The following concepts apply when determining whether a final period of study is shorter than an academic year:
  - In a credit-hour program that uses standard terms or nonstandard terms that are substantially equal *and* at least nine weeks of instructional time in length (SE9W), a final period of study is shorter than an academic year if it contains fewer terms than the number of terms in the program's academic year. For a program that uses a scheduled academic year (SAY), the number of terms in the school's academic year does not include a summer term that is designated as a header or trailer (see Subsection 6.1.B).
  - In a clock-hour program, a non-term-based credit-hour program, a credit-hour program that uses nonstandard terms that are *not* SE9W (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length), or a credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY, a final period of study is shorter than an academic year if it consists of fewer clock or credit hours than in the program's academic year.
  - In any program, a school may establish an academic year that is greater than the statutory minimum in clock or credit hours or instructional weeks (see Section 6.1). For such a program, the school must use its academic year definition for the program—not the statutory minimum for an academic year—to determine whether a final period of study is shorter than an academic year.

[§682.204(a) and (d); 08-09 FSA Handbook, Volume 3, Chapter 5, pp. 3-100 and 3-101]

~~Loan proration is not required for a student completing coursework necessary for a professional credential or certification from a state if that credential or certification is required for employment as a teacher in an elementary or secondary school, or for a student completing preparatory coursework necessary for admission into either an undergraduate or a graduate program of study. (For information on Stafford annual loan limits for these~~

~~categories of students, see Subsection 6.11.A.)~~

If a ~~student~~ borrower who received a prorated loan amount because ~~the remainder of his or her program~~ his or her final period of study was less than a full academic year changes the number of hours for which the ~~student~~ borrower is enrolled, the school need not recalculate the amount of the loan. However, the following principles apply:

- If the ~~student~~ borrower drops hours after the loan has been certified, the ~~student~~ borrower must continue to be enrolled at least half time to be eligible for the loan.

- If the ~~student~~ borrower increases hours after the loan has been certified so that the ~~student~~ borrower is attending the full academic year, ~~the student~~ he or she may be eligible for additional loan funds. If the ~~student~~ borrower requests and is eligible for an increased loan amount, the school may certify the increased loan amount without requiring the student to complete a new Federal Stafford Loan Master Promissory Note (Stafford MPN). For more information on increased loan amounts, see Section 6.20.
  [§682.603(g)(4); DCL GEN-98-25; DCL GEN-99-9]

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of credit or clock hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. If the self-paced program is more than an academic year in length and the subsequent Stafford loan period will be an undergraduate borrower's final period of study, the school must prorate the Stafford annual loan limits. For example, a borrower is enrolled in a program of 1800 clock hours and 52 weeks of instructional time in which the academic year is defined as 900 clock hours and 26 weeks of instructional time. The borrower completes the 900 clock hours in the program's academic year upon completion of 22 weeks of instructional time. The borrower must complete an additional 4 weeks of instructional time for a total of 26 instructional weeks before he or she may receive another Stafford loan for the final period of study. (For more information about the frequency of Stafford annual loan limits, see Subsection 6.1.B.) Upon completion of 26 weeks of instructional time, the borrower has successfully completed 1040 clock hours. Since the borrower's final period of study consists of fewer clock hours (760) than in the program's academic year (900), the school must prorate the borrower's Stafford annual loan limits.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-103]

When Proration of Stafford Annual Loan Limits Is Not Applicable

In some instances, a school is not required to prorate the Stafford annual loan limits and in other instances, the school is not permitted to prorate the Stafford annual loan limits, as follows:

- A school is not permitted to prorate the Stafford annual loan limits for a graduate or professional Stafford loan borrower.
  [08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-99]

- A school is not permitted to prorate the Stafford annual loan limits for any undergraduate Stafford loan borrower who enrolls:

  – In coursework necessary to for a professional credential or certification from a state if that credential or certification is required for employment as a teacher in an elementary or secondary school (see Subsection 6.11.A).
  [08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-99]

  – In preparatory coursework necessary to for admission into either an undergraduate or a graduate program of study (see Subsection 6.11.A).
  [08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-99]

  – At least half time but less than full time.
  [08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-99]

– For a period of less than a full academic year that is not a final period of study.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-99]

– In an undergraduate credit-hour program that uses standard terms or nonstandard terms that are SE9W during a final period of study that contains the number of terms in the program's academic year and includes a term(s) in which the borrower is enrolled less than half time. For example, an undergraduate borrower is enrolled in a quarter term-based, credit-hour program that uses an SAY of three quarter terms—fall, winter, and spring. For the final period of study, the borrower enrolls full time for fall, less than half time for winter, and full time for spring. The school does not prorate the borrower's Stafford annual loan limits because the final period of study equals the number of terms in the program's academic year. However, the borrower is ineligible to receive, or receive the benefit of, a loan for the term in which he or she is enrolled less than half time.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-103]

• A school is permitted, but not required, to retroactively prorate the Stafford annual loan limits for an undergraduate borrower who originally enrolls for a final period of study that is a full academic year in length and who completes the program early in less than a full academic year.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-100]

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of credit or clock hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. If the self-paced program is an undergraduate program that is *exactly* one academic year in length, a school is not required to prorate the Stafford annual loan limits for the occasional borrower who successfully completes the program in fewer weeks of instructional time than the average student. For example, a borrower enrolls in a program that is exactly one academic year in length, e.g., 900 clock hours and 26 weeks of instructional time. However, the borrower successfully completes the program's 900 clock hours in 22 weeks of instructional time. If the average student enrolled in such a program successfully completes the program in 26 weeks, the school is not required to prorate the Stafford annual loan limits for the occasional borrower who successfully completes the program in less than 26 weeks.
[08-09 FSA Handbook, Volume 3, Chapter 5, p. 3-83]

Revise Appendix G, page 18, column 2, by inserting a new paragraph 2, as follows:

Self-Paced: A flexible course structure in an educational program without terms that permits a student to complete courses without a defined schedule for completing the courses, or, at the student's discretion, to begin courses either on specific dates set by the school or at any time without a defined schedule for completing the program.
[08-09 FSA Handbook, Volume 4, Chapter 2, p. 4-45]

PROPOSED LANGUAGE - COMMON BULLETIN:

Proration of Stafford Annual Loan Limits

The *Common Manual* has been updated with several new and existing clarifications found in the FSA Handbook concerning prorating the Stafford annual loan limits.

A school must calculate prorated, i.e., reduced, Stafford annual loan limits when the school knows *in advance* that an undergraduate borrower will be enrolled in a program of study that is shorter than the statutory minimum for an academic year, or, for a program that is longer than the statutory minimum for an academic year, the borrower is completing a final period of study that is shorter than an academic year. The following concepts apply when determining whether a final period of study is shorter than an academic year:

• In a credit-hour program that uses standard terms or nonstandard terms that are substantially equal (i.e., no term in the loan period is more than two weeks of instructional time longer than any other term) *and* at least nine weeks of instructional time in length (SE9W), a final period of study is shorter than an academic year if it contains fewer terms than the number of terms covered by the program's academic year. For a program that uses a scheduled academic year (SAY), the number of terms covered in the school's academic year does not include a summer term that is designated as a header or trailer.

- In a clock-hour program, a non-term-based credit-hour program, a credit-hour program that uses nonstandard terms that are *not* SE9W (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length), or a credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY, a final period of study is shorter than an academic year if it consists of fewer clock or credit hours than in the program's academic year.

- In any program, a school may establish an academic year for a program that is longer than the statutory minimum in credit or clock hours, or weeks of instructional time (see Section 6.1). For such a program, the school uses its academic year definition for the program—not the statutory minimum for an academic year—to determine whether a final period of study is shorter than an academic year.

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of credit or clock hours in the program's academic year in fewer than the number of weeks of instructional time than in the program's academic year. If the self-paced program is more than an academic year in length and the subsequent Stafford loan period will be an undergraduate borrower's final period of study, the school must prorate the Stafford annual loan limits. For example, a borrower is enrolled in a program of 1800 clock hours and 52 weeks of instructional time in which the academic year is defined as 900 clock hours and 26 weeks of instructional time. The borrower completes the 900 clock hours in the program's academic year upon completion of 22 weeks of instructional time. The borrower must complete an additional four weeks of instructional time for a total of 26 instructional weeks before he or she may receive another Stafford loan for the final period of study. (For more information about the frequency of Stafford annual loan limits, see Subsection 6.1.B). Upon completion of 26 weeks of instructional time, the borrower has successfully completed 1040 clock hours. Since the final period of study consists of fewer clock hours (760) than in the program's academic year (900), the school must prorate the borrower's Stafford annual loan limits.

When Proration of Stafford Annual Loan Limits Is Not Applicable
In some instances, a school is not required to prorate the Stafford annual loan limits and in other instances, the school is not permitted to prorate the Stafford annual loan limits, as follows:

- A school is not permitted to prorate the Stafford annual loan limits for a graduate or professional Stafford loan borrower.

- A school is not permitted to prorate the Stafford annual loan limits for any undergraduate Stafford loan borrower who enrolls:

  – In coursework necessary for a professional credential or certification from a state if that credential or certification is required for employment as a teacher in an elementary or secondary school (see Subsection 6.11.A).

  – In preparatory coursework necessary for admission into either an undergraduate or a graduate program of study (see Subsection 6.11.A).

  – At least half time but less than full time.

  – For a period of less than a full academic year that is not a final period of study.

  – In an undergraduate credit-hour program that uses standard terms or nonstandard terms that are SE9W during a final period of study that contains the number of terms in the program's academic year and includes a term(s) in which the borrower is enrolled less than half time. For example, an undergraduate borrower is enrolled in a quarter term-based, credit-hour program that uses an SAY of three quarter terms—fall, winter, and spring. For the final period of study, the borrower enrolls full time for fall, less than half time for winter, and full time for spring. The school does not prorate the borrower's Stafford annual loan limits because this final period of study equals the number of terms in the program's academic year. However, the borrower is ineligible to receive, or receive the benefit of, a loan for the term in which he or she is enrolled less than half time.

- A school is permitted, but not required, to retroactively prorate the Stafford annual loan limits for an undergraduate borrower who originally enrolls for a final period of study that is a full academic year in length and who completes the program early in less than a full academic year.

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete the number of credit or clock hours in the program's academic year in fewer than the number of weeks of instructional time in the program's academic year. If the self-paced program is an undergraduate program that is *exactly* one academic year in length, a school is not required to prorate the Stafford annual loan limits for the occasional borrower who successfully completes the program in fewer weeks of instructional time than the average student. For example, a borrower enrolls in a program that is exactly one academic year in length, e.g., 900 clock hours and 26 weeks of instructional time. However, the borrower successfully completes the program's 900 clock hours in 22 weeks of instructional time. If the average student enrolled in such a program successfully completes the program in 26 weeks, the school is not required to prorate the Stafford annual loan limit for the occasional borrower who successfully completes the program in less than 26 weeks.

"Self-paced" is defined as a flexible course structure in an educational program without terms that permits a student to complete courses without a defined schedule for completing the courses, or, at the student's discretion, begin courses either on specific dates set by the school or at any time without a defined schedule for completing the program.

Guarantor Comments:
None.

Implications:
Borrower:
A borrower will experience more consistent application of Stafford annual loan limits.

School:
A school will better understand when proration of the Stafford annual loan limits is applicable. A school may be required to amend procedures and/or systems to ensure that it accurately prorates the Stafford annual loan limits for an undergraduate student.

Lender/Servicer:
None.

Guarantor:
A guarantor may be required to revise its program review parameters regarding Stafford annual loan limits proration for an undergraduate student enrolled in a credit-hour program with nonstandard terms that are SE9W.

U.S. Department of Education:
The Department may be required to revise its program review parameters regarding Stafford annual loan limits proration for an undergraduate student enrolled in a credit-hour program with nonstandard terms that are SE9W.

To be completed by the Policy Committee

Policy Change Proposed by:
CM Policy Committee

Date Submitted to CM Policy Committee:
October 28, 2008

Date Submitted to CM Governing Board for Approval:
April 9, 2009

Proposal Distributed to:
CM Policy Committee

CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA;, CSLF, EAC, FAME, Great Lakes, HESC, NASFAA, NCHELP, NSLP, OGSLP, SCSLC, SLMA, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments
Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
Due to the intricacies of this policy proposal's content, one commenter suggested that it may be appropriate to introduce a figure to assist with implementation. The commenter provided a recommended chart for that purpose.

Response:
The Committee declines to introduce a figure at this stage of policy proposal development. While the idea of providing an "at-a-glance" format to ease understanding of the proposal's concepts is meritorious, such a significant change would warrant the proposal's distribution for a second community comment period. There is insufficient time for the Committee to consider, and if necessary, further develop the commenter's recommended figure before the distribution deadline for the last policy proposal batch in this production year. The Committee believes it is essential that the July 2009 *Common Manual* include the important updates contained in this proposal. Therefore, the Committee will consider the commenter's recommendation for a possible enhancement to the Manual's text.

Change:
None.

COMMENT:
Two commenters requested a modification to all of the effective date/triggering events for this proposal to permit earlier implementation by the school on July 1 of the award year in which the applicable FSA Handbook was published.

The commenters indicated that Volume 3 of the FSA Handbook was effective for the academic year in which it was published. If schools were aware of these policy changes and implemented them on or after July 1 of the applicable academic year, they should not be penalized for doing so.

Response:
The primary impetus for this policy proposal was to clarify final rule changes published in the November 1, 2007, *Federal Register*, concerning credit-hour programs with nonstandard terms that are SE9W. In the preamble to the *Federal Register*, the Department authorized immediate implementation of the regulatory changes published in that Federal Register at a school's discretion. However, as it relates to proration of the annual loan limit in credit-hour programs with nonstandard terms that are SE9W, the Department stated that "an undergraduate student attending a final period of study in *any nonstandard term credit-hour program* is subject to proration of the annual loan limit while enrolled in the defined number of terms in the program's academic year *but attending less than the number of credit hours for that defined academic year*." It was not until the publication of Volume 3 of the 08-09 FSA Handbook that the Department authorized proration of the Stafford annual loan limit for students enrolled in programs with nonstandard terms that are SE9W based on the student's enrollment in fewer terms than in the defined academic year for the program.

Regarding the remaining effective dates contained in this policy proposal, the Committee has consistently over the course of years published Manual updates that align with FSA Handbook changes with a general effective date of the publication of the FSA Handbook. The Committee does not believe that it is appropriate to assume that all changes published in the FSA Handbook may be implemented earlier than the FSA Handbook publication date, as witnessed by the example noted above. The Committee also does not believe that it is appropriate to establish effective dates based on Department guidance that may be in a school's possession but that is not widely publicized. The Committee is confident that program reviewers acknowledge a school's ability to implement a change that the school supports through private guidance or a Department training presentation.

Change:
None.

COMMENT:
Two commenters requested that the 08-09 FSA Handbook, Volume 3, p. 83, be added to the Basis, as well as pp. 101 through 103 in addition to p. 100.

Response:
The 08-09 FSA Handbook, Volume 3, p. 83, discusses completion of a borrower-based academic year in programs that must use BBAY3. It does not offer any instruction that is specific to loan proration in such programs. Page 3-102 discusses proration of the annual loan limit in a program that is shorter than an academic year, which not a focal topic in this policy proposal. Page 3-101 addresses the concept that the proration calculation is based on the program's academic year definition, not the statutory minimum definition of an academic year. While it is an appropriate citation for Manual text, the basis for that change is in the 04-05 Handbook, p. 3-67. Page 3-103 discusses prorating the annual loan limit for a student attending a program of more than an academic year in length in a case when the student is able to complete more than the number of hours in an academic year upon completion of the number of instructional weeks. While it is also an appropriate citation for Manual text, the basis for that concept is in the 05-06 FSA Handbook, p. 3-83.

Change:
The Basis has been corrected to include p. 3-83 of the 05-06 FSA Handbook, Volume 3.

COMMENT:
Two commenters requested a change to the Revised Policy, paragraph 1, bullet 1, as follows:

> Revised policy incorporates the following concepts that apply when determining whether a final period of study is shorter than an academic year:
>
> - In a credit-hour program that uses standard terms or nonstandard terms that are SE9W, a final period of study is considered shorter than an academic year if it contains fewer terms than the number of terms covered by the program's academic year. For a program that uses a scheduled academic year (SAY), the number of terms covered in the school's academic year <u>usually</u> does not include a summer term that is designated as a header or trailer.

Response:
The Committee declines to incorporate the commenters' suggested change. While the Committee acknowledges that the word inserted by the commenter appears in 08-09 FSA Handbook guidance, the Department does not clarify its meaning and it is inconsistent with FSA Handbook examples. The Committee would consider for future policy proposal development additional information submitted by one or both of the commenters, and supported by the Department, that explains the circumstances when, for the purpose of proration, the number of terms in an academic year in a program that uses a scheduled academic year would include a summer term designated as a header or trailer to the SAY.

Change:
None.

COMMENT:
Two commenters recommended a glossary definition for the term "self-paced." The commenters noted that while the term seems self-explanatory, it may create confusion for some schools. The commenter also observed that the term was not explained in federal regulations or in the FSA Handbook.

Response:
The Committee has located additional information about a self-paced program in the 08-09 FSA Handbook, Volume 4, Chapter 2, on p. 4-45. While the discussion of a self-paced program is offered in the context of the Academic Competitiveness and National SMART Grants, it appears that the Department's description of such a program is not specific to those federal grant programs.

Change:
Given that the Manual's text will now include at least two separate references to a program that is self-paced,

the Committee has created a new glossary entry for "self-paced," as follows:

> **Self-Paced:** A flexible course structure in an educational program without terms that permits a student to complete courses without a defined schedule for completing the courses, or, at the student's discretion, begin courses either on specific dates set by the school or at any time without a defined schedule for completing the program.

Coordinating changes have been made to the Revised Policy, Proposed Policy, and Common Bulletin in this proposal. The Basis of this policy proposal has also been modified to include the 08-09 FSA Handbook citation from which the self-paced program definition was derived.

An additional, coordinating change will be made in Policy Proposal 1092 in Batch 157 to clarify that the Department defines a self-paced program as one that does not have terms (i.e., a clock-hour program, or a non-term-based credit-hour program).

COMMENT:
One commenter indicated that the reference to "a final period of study" is Subsection 6.11.F, paragraph 1, bullet 2 (see below), is redundant and confusing. The commenter indicated that the final period of study, the remainder of the program, and the period of enrollment are all referring to the same thing in the following text:

> A school must calculate prorated, i.e., reduced, Stafford annual loan limits when the school knows in advance that an undergraduate Stafford loan borrower will be enrolled in a program of study that meets either of the following criteria:
>
> - . . .
> - The program's duration is equal to or longer than the statutory minimum for an academic year, but the borrower is completing *a final period of study*, i.e., the remainder of the program, in a period of enrollment that is shorter than an academic year.

Response:
The Committee agrees that it may be redundant to explain that the remainder of the program is a final period of study. The Committee added that term to ensure that schools who encounter it in the FSA Handbook understand that it is one and the same with the remainder of a program. To eliminate redundancy, the Committee agrees to use one term consistently – "a final period of study."

Change:
Proposed policy text and Common Bulletin language have been modified to consistently refer to a final period of study in a program of more than an academic year in length.

COMMENT:
One commenter noted that similar language in paragraphs 3 and 5 of Subsection 6.11.F require clarification, as follows:

> A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete more than the number of clock or credit hours in the program's academic year upon completion of the number of weeks of instructional time in the program's academic year.

Response:
The Committee agrees.

In addition, the commenter draws the Committee's attention to an inconsistency between the language of sentence 1 in paragraphs 3 and 5 of Subsection 6.11.F and the subsequent examples. In both paragraphs, the examples address a case in which a student completes the number of credit or clock hours in the academic year in fewer than the number of instructional weeks in the academic year.

Change:
The Revised Policy, policy proposal text, and Common Bulletin have all been modified per the commenter's suggestion, with an additional change to eliminate the aforementioned inconsistency:

A borrower enrolled in a self-paced program, either a clock-hour program or a non-term-based credit-hour program, may successfully complete ~~more than~~ the number of credit or clock hours in the program's academic year ~~upon completion of~~ in fewer than the number of weeks of instructional time in the program's academic year.

COMMENT:
One commenter recommended that Subsection 6.11.F, paragraph 1, bullet 1, subbullet 2, be clarified to include programs that mix standard and nonstandard terms, as follows:

In a clock-hour program, a non-term-based credit-hour program, ~~or~~ a credit-hour program that uses nonstandard terms that are *not* SE9W (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length), or a credit-hour program that mixes standard and nonstandard terms, a final period of study is shorter than an academic year if it consists of fewer clock or credit hours than in the program's academic year.

Response:
The Committee agrees that the type of program referenced by the commenter is also subject to the same rules as a clock-hour program, a non-term-based credit-hour program, or a credit-hour program with nonstandard terms that are not SE9W. However, the Committee will add the additional clarification, per the FSA Handbook, that such a program is one that does not qualify to use an SAY.

Change:
The aforementioned policy proposal text has been modified as follows:

In a clock-hour program, a non-term-based credit-hour program, ~~or~~ a credit-hour program that uses nonstandard terms that are *not* SE9W (i.e., the terms are not substantially equal, or each term is not at least nine weeks of instructional time in length), or a credit-hour program with a combination of standard terms and nonstandard terms that does not qualify to use an SAY, a final period of study is shorter than an academic year if it consists of fewer clock or credit hours than in the program's academic year.

Coordinating changes have been made to the Revised Policy and Common Bulletin.

COMMENT:
One commenter recommended removing the examples from the Revised Policy to shorten the length of the policy proposal and reduce redundancy. These examples illustrated when a school is, or is not, required to prorate the annual loan limit for a student enrolled in a self-paced program who completes the number of credit or clock hours in the academic year before the student completes the number of weeks of instructional time in the academic year.

Response:
The Committee agrees.

Change:
The examples have been removed from the Revised Policy.

COMMENT:
One commenter questioned whether the third Effective Date/Triggering Event should be revised as follows:

Publication date of Volume 3 of the 05-06 FSA Handbook for the following:

- Clarifying that a school must prorate the Stafford annual loan limit when the school knows in advance that an undergraduate student will be enrolled in a ~~period~~ program of less than an academic year.

Response:
The Committee agrees that a school must prorate the Stafford annual loan limits when the school knows in advance that an undergraduate student will be enrolled in a program that is shorter than the statutory minimum for an academic year. A school must also prorate the Stafford annual loan limits for a program that is equal to or longer than the statutory academic year minimum, when the borrower will complete a final period of study that is shorter than an academic year. In order to avoid repeating all of the clarifying language

associated with both conditions, the Committee opted to use the word “period” to infer either. However, if this creates confusion for the commenter, the Committee will revise the Effective Date/Triggering Event.

Change:
The aforementioned Effective Date/Triggering Event has been revised as follows:

Publication date of Volume 3 of the 05-06 FSA Handbook for the following:

- Clarifying that a school must prorate the Stafford annual loan limits when the school knows in advance that an undergraduate ~~student~~ borrower will ~~be~~ enroll~~ed~~ in a ~~period~~ program ~~of less~~ that is shorter than an academic year or, for a program that is equal to or longer than an academic year, the borrower will enroll in a final period of study that is shorter than an academic year.

COMMENT:
One commenter recommended a change throughout this proposal to a credit-hour program with nonstandard terms that are SE9W. This commenter recommended that such a program be referred to as a program “with nonstandard SE9W terms.”

Response:
The Committee declines to make the commenter’s requested change. The language used to describe a credit-hour program with nonstandard terms that are SE9W conforms to policy proposal text throughout proposals 1092, 1093, and 1095 in Batch 157, and proposal 1106 in Batch 158. As a result of a recommendation from the Committee’s Editing chair, the Committee has established a convention used throughout these proposals to consistently refer to a credit-hour program with “nonstandard terms that are SE9W” or a credit-hour program with “nonstandard terms that are *not* SE9W.”

Change:
None.

COMMENT:
One commenter requested a change in several places throughout the proposal where references occur to non-term or term-based programs, as exemplified by the following:

“...a non-term-~~based~~, credit-hour program. . .”
“. . .in a quarter ~~term~~-based, credit-hour program. . .”
“. . .three quarter ~~terms~~ – fall, winter, and spring. . .”

Response:
The Committee declines to make these changes. The terminology that the commenter requests to be changed are reflective of Manual editing conventions that have a far-reaching impact throughout the Manual. The Committee will take the commenter’s recommendation under advisement and consult with its Editing Chair.

Change:
None.

COMMENT:
One commenter requested a change in the order of the bullets under the new subheading *When Proration of Stafford Annual Loan Limits Is Not Applicable* so that the bullets first depict what a school is not permitted to do, followed by what a school may do.

Response:
The Committee agrees.

Change:
The order of bullets under the new subheading *When Proration of Stafford Annual Loan Limits Is Not Applicable* has been changed in the Revised Policy, proposed Common Manual language, and Common Bulletin.

jcs/edited-aes/kk

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Use of Professional Judgment in Certifying Unsubsidized Stafford Loans**

AFFECTED SECTIONS:
6.8 Dependency Overrides
6.15.B Stafford Loan Certification

POLICY INFORMATION: **1126/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Loans certified for loan periods that begin on or after August 14, 2008, or include that date.

BASIS:
HEA §479(a), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP-08-10; private letter guidance from Jeff Baker received on March 25, 2009.

CURRENT POLICY:
Current policy does not address a financial aid administrator's (FAA's) authority to certify an unsubsidized Stafford loan for a dependent undergraduate student if the student's parent(s) has ended financial support and refuses to complete the parental section of the FAFSA.

REVISED POLICY:
Revised policy includes new authority for an FAA, without supporting documentation, to certify an unsubsidized Stafford loan for a dependent undergraduate student if the student's parent(s) has ended financial support and refuses to complete the parental section of the FAFSA. In this situation, financial support includes not only payment of educational costs, but also other cash or non-cash support, such as room and/or board. This professional judgment authority is *not* the same as the dependency override provision contained in Section 480(d)(1)(I) of the Higher Education Act of 1965, as amended (HEA). Prior Department guidance has specifically stated that the refusal of a parent to support a student and to complete the FAFSA is not, by itself, sufficient grounds for a dependency override.

If the FAA uses this authority, the dependent student is only eligible to receive an unsubsidized Stafford loan and not any other Title IV aid. Also, the student's parent(s) who ended financial support is not eligible to apply for a PLUS loan on the student's behalf. However, if the student’s parents are separated or divorced, the parent whose financial information would not have been included on the FAFSA may apply for a PLUS loan on the student’s behalf. If that parent, however, is unable to obtain a PLUS loan, the student is not subsequently eligible to receive the additional unsubsidized Stafford loan funds that are available to students whose parents are unable to obtain a PLUS loan.

Revised policy also states that before an FAA can exercise professional judgment and certify an unsubsidized Stafford loan for a dependent student based on these circumstances, the FAA must verify that the parent(s) has ended financial support and refuses to complete the parental section of the FAFSA. The student is not permitted to self-certify this information. The FAA must obtain a signed and dated statement from one of the student's parents stating the following:

- The parent(s) has stopped providing financial support to the student. The statement must include the date when the financial support ceased.
- The parent(s) will not provide financial support in the future.
- The parent(s) refuses to complete the parental section of the FAFSA.

Revised policy also states that if the student's parent(s) will not provide the required verification statement, the FAA must obtain documentation from a third party (e.g., a teacher, counselor, clergy member, or court) describing the student's relationship with his or her parent(s) prior to certifying the unsubsidized Stafford loan. In addition, the FAA may, but is not required to, determine how the student intends to support himself or herself financially without parental support.

Revised policy also states that the maximum unsubsidized Stafford annual loan amount that a dependent student may receive under this new authority is the "base" limit applicable to the student's grade level plus the additional unsubsidized amount of $2,000 as authorized by the Ensuring Continued Access to Student Loans Act of 2007 (ECASLA). The dependent student is not eligible for the additional unsubsidized amounts that are available to an independent student.

REASON FOR CHANGE:
The change is necessary to incorporate provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: Section 6.8 is also being updated as part of Proposals 1107 in Batch 158 and 1125 in Batch 159.

Revise Section 6.8, page 20, column 2, by inserting the following paragraph after the bullets of paragraph 2:

Unusual circumstances may include, but are not limited to:

- An abusive family situation in which an otherwise dependent student has been a victim of domestic violence and is no longer residing with his or her parents.
- Abandonment by parents in which a student's parents cannot be located.

The following four conditions, individually or in combination with one another, do not qualify as unusual circumstances:

- A parent's refusal to contribute to the student's education.
- A parent's unwillingness to provide information on the FAFSA or for verification.
- A parent not claiming the student as a dependent for income tax purposes.
- A student's demonstration of total self-sufficiency.

<u>Note: An FAA is permitted to certify an unsubsidized Stafford loan for a dependent student if the parent(s) has ended all financial support and refuses to complete the parental section of the FAFSA. This is not a situation that permits an FAA to perform a dependency override. See Subsection 6.15.B, subheading "Use of Professional Judgment for a Student Whose Parent(s) Ceases Financial Support and Refuses to Complete FAFSA" for more information.</u>

An FAA may make a dependency override only from dependent to independent. However, if an independent student is receiving substantial support from his or her parents, a school may use professional judgment to adjust one or more of the FAFSA's data elements, such as untaxed income, to reflect this support.
[DCL GEN-03-07; 07-08 FSA Handbook, Application and Verification Guide, Chapter 2, p. AVG-24]

Revise Subsection 6.15.B, page 34, column 1, by adding a new subheading, as follows:

6.15.B
Stafford Loan Certification

. . .

. . .

. . .

. . .

<u>**Use of Professional Judgment for a Student Whose Parent(s) Ceases Financial Support and Refuses to Complete FAFSA**</u>

A financial aid administrator (FAA) is permitted to use his or her professional judgment to certify an unsubsidized Stafford loan for a dependent undergraduate student if the student's parent(s) has ended financial support and refuses to complete the parental section of the FAFSA. In this situation, providing financial support includes not only payment of educational costs, but also providing the student other cash or non-cash support, such as room and/or board. (Note that this authority does not permit the FAA to perform a dependency override for such a student. For information on dependency overrides, see Section 6.8.)

If the FAA exercises this authority, the dependent student is eligible to receive only an unsubsidized Stafford loan and may not receive any other Title IV aid. The maximum annual unsubsidized Stafford loan amount that a dependent student may receive under this authority is the "base" limit for a dependent student applicable to the student's grade level plus the additional unsubsidized amount of $2,000 (see Figure 6-4).

Also, a student's parent(s) who has ended financial support is not eligible to apply for a PLUS loan on the student's behalf. However, if the student's parents are separated or divorced, the parent whose financial information would not have been included on the FAFSA may apply for a PLUS loan on the student's behalf. If this parent is subsequently unable to obtain a PLUS loan, the student is *not* eligible for the additional unsubsidized Stafford loan funds typically available to dependent students whose parents are unable to obtain a PLUS loan.

The FAA must verify that the parent(s) has ceased financial support and refuses to complete the parental section of the FAFSA. The student is not permitted to self-certify this information. The FAA must obtain a signed and dated statement from one of the student's parents specifically stating each of the following:

- The parent(s) has stopped providing financial support to the student. The statement must include the date when the financial support stopped.

- The parent(s) will not provide financial support in the future.

- The parent(s) refuses to complete the parental section of the FAFSA.

If the student's parent(s) will not provide the required verification statement, the FAA must obtain alternative documentation from a third party (e.g.,a teacher, counselor, clergy member, or court) prior to certifying the unsubsidized Stafford loan. The alternative documentation must describe the student's relationship with his or her parents. In addition, the FAA may, but is not required to, determine how the student intends to support himself or herself financially without parental support.
[HEA §479(a); GEN-08-12/FP-08-10]

PROPOSED LANGUAGE - COMMON BULLETIN:

Use of Professional Judgment in Certifying Unsubsidized Stafford Loans

The *Common Manual* has been revised to include the new professional judgment authority for an FAA to certify an unsubsidized Stafford loan for a dependent student if the student's parent(s) has ended financial support and refuses to complete the parental section of the FAFSA, as provided through the Higher Education Opportunity Act (HEOA). In this situation, financial support includes not only payment of educational costs, but also other cash or non-cash support, such as room and/or board. This professional judgment authority is not the same as the dependency override provision contained in Section 480(d)(1)(I) of the Higher Education Act of 1965, as amended (HEA). Prior Department guidance has specifically stated that the refusal of a parent to support a student and to complete the FAFSA is not, by itself, sufficient grounds for a dependency override.

If the FAA uses this authority, the dependent student is only eligible to receive an unsubsidized Stafford loan and not any other Title IV assistance. The maximum unsubsidized Stafford annual loan amount that a dependent student may receive under the new authority is the “base” limit applicable to the student's grade level plus the additional unsubsidized amount of $2,000.

Also, the student's parent(s) who has ended financial support is not eligible to apply for a PLUS loan on the student's behalf. However, if the student's parents are separated or divorced, the parent whose financial information would not have been included on the FAFSA may apply for a PLUS loan on the student's behalf. If this parent is subsequently unable to obtain a PLUS loan, the student is *not* eligible for the additional unsubsidized Stafford loan funds typically available to dependent students whose parents are unable to obtain a PLUS loan.

The policy also states that before an FAA can exercise professional judgment to certify an unsubsidized Stafford loan for a dependent student based on these circumstances, the FAA must verify that the parent(s) has ended financial support and refuses to complete the parental section of the FAFSA. The student is not permitted to self-certify this information. The FAA must obtain a signed and dated statement from one of the student's parents stating the following:

- The parent(s) has stopped providing financial support to the student. The statement must include the date when the financial support stopped.
- The parent(s) will not provide financial support in the future.
- The parent(s) refuses to complete the parental section of the FAFSA.

Finally, the policy also states that if the student's parent(s) will not provide the required verification statement, the FAA must obtain documentation from a third party (e.g., a teacher, counselor, clergy member, or court) describing the student's relationship with his or her parents prior to certifying the unsubsidized Stafford loan. In addition, the FAA may, but is not required to, determine how the student intends to support himself or herself financially without parental support.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A dependent student whose parent(s) ceases financial support and refuses to complete the parental section of the FAFSA may be able to borrow an unsubsidized Stafford loan.

School:
A school is permitted to use professional judgment to certify an unsubsidized Stafford loan for a dependent student whose parent(s) ceases financial support and refuses to complete the parental section of the FAFSA. The school may be required to establish policies with respect to the certification and procedures to document the student's eligibility for this type of professional judgment.

Lender/Servicer:
None.

Guarantor:
A guarantor may need to update its program review procedures.

U.S. Department of Education:
The Department may need to update its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
January 23, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received from:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter stated that she does not believe that the first of the four conditions listed under Section 6.8 (Dependency Overrides) – a parent's refusal to contribute to the student's education – necessarily equates to the parent ending financial support for the student and does not qualify for special consideration under the intent of the professional judgment provision. The commenter suggested that the Manual state if both the conditions apply the FAA may be able to use professional judgment under the new provision.

Another commenter stated that the first sentence under the "Note" added to Section 6.8 was confusing, and pointed out that there is a difference between refusal to contribute to the student's education and not providing any support at all. The commenter also stated that in order for the student to be eligible for the unsubsidized Stafford loan, all financial support from the parents must have ended. The commenter suggested the following revision to the "Note:"

> Note: ~~If both of the first two conditions listed above exist, a~~AnFAA is permitted to certify an unsubsidized Stafford loan for a dependent student if the parent(s) has ended all financial support and refuses to file the FAFSA.

Response:
The Committee agrees with the commenters.

Change:
The revision suggested by the second commenter has been incorporated into the "Note" contained in Section 6.8.

COMMENT:
Three commenters stated that during recent Department of Education Web-based training sessions it was clarified that in the situation of divorced or separated parents, the non-custodial parent (i.e., parent who would not be required to complete the FAFSA) may apply for a PLUS loan on the student's behalf. However, if the non-custodial parent is unable to obtain a PLUS loan, the student is not eligible for additional unsubsidized Stafford loan funds.

One of the commenters suggested that Subsection 6.15.B, paragraph 2 be revised as follows:

> A financial aid administrator (FAA) is permitted to use his/her professional judgment to certify an unsubsidized Stafford loan for a dependent student if the student's custodial parent(s) (i.e., the parent(s) that would have otherwise been expected to provide his or her information for purposes of the FAFSA) has ended financial support and refuses to file the FAFSA. In this situation, providing financial support includes not only payment of educational costs, but also providing the student other cash or non-cash support, such as room and/or board. ~~[~~(This authority is not the same as the dependency override policy contained in Section 6.8.~~]~~) If the FAA exercises this professional judgment, the dependent student is ~~only~~ eligible to receive only an unsubsidized Stafford loan and may not receive any other Title IV ~~assistance~~ aid. Also, the student's custodial parent(s) is not eligible to apply for a PLUS loan on the student's behalf. However, in the case of a student with separated or divorced parents, the noncustodial parent may borrow a PLUS loan for the student. Note that if this parent is denied a PLUS loan, it does not enable the student to receive the additional unsubsidized Stafford amount available to a dependent student whose parent is unable to obtain a PLUS loan. For example, a first-year dependent student would be able to receive the base amount of $5,500, all unsubsidized, and would not be able to receive the additional $4,000 because of the PLUS denial for the noncustodial parent.

Another of the commenters suggested that Section 6.15.B, paragraph 2 be revised as follows:

A financial aid administrator (FAA) is permitted to use his/her professional judgment to certify an unsubsidized Stafford loan for a dependent student if the student's parent(s) has ended financial support and refuses to file the FAFSA. In this situation, providing financial support includes not only payment of educational costs, but also providing the student other cash or non-cash support, such as room and/or board. [This authority is not the same as the dependency override policy contained in Section 6.8.] If the FAA exercises this professional judgment, the dependent student is only eligible to receive an unsubsidized Stafford loan and may not receive any other Title IV assistance. Also, the ~~student's~~ parent~~(s)~~ who refused to contribute to the student's education or provide information on the FAFSA, is not eligible to apply for a PLUS loan on the student's behalf. The non-FAFSA parent may apply for a PLUS loan on the student's behalf. However, the student is not eligible for the additional unsubsidized loan funds if the non-FAFSA parent is denied a PLUS loan. For example, a first-year dependent student would be able to receive a base unsubsidized Stafford loan in the amount of $5,500, but would not be eligible to receive the additional $4,000 unsubsidized Stafford loan because the non-FAFSA parent is denied a PLUS loan.

Response:
The Committee agrees that the Department's clarification would be helpful to include in the Manual.

Change:
Subsection 6.15.B, is revised as follows:

~~Aid Administrator's~~ Use of Professional Judgment for a Student~~s~~ Whose Parent(s) Ceases Financial Support and Refuses to Complete FAFSA

A financial aid administrator (FAA) is permitted to use his or her professional judgment to certify an unsubsidized Stafford loan for a dependent undergraduate student if the student's parent(s) has ended financial support and refuses to ~~file~~ complete the parental section of the FAFSA. In this situation, providing financial support includes not only payment of educational costs, but also providing the student other cash or non-cash support, such as room and/or board. ~~[~~(Note that ~~T~~this authority ~~is~~ does not ~~the same as the~~ permit the FAA to perform a dependency override ~~policy contained in~~ for such a student. For information about dependency overrides, see Section 6.8.~~]~~)

If the FAA exercises this authority ~~professional judgment~~, the dependent student is ~~only~~ eligible to receive only an unsubsidized Stafford loan and may not receive any other Title IV ~~assistance~~ aid. The maximum unsubsidized Stafford annual loan amount that a dependent student may receive under this authority is the "base" limit for a dependent student based on the student's grade level plus the additional unsubsidized amount of $2,000 (see Figure 6-4).

Also, ~~the~~ a student's parent(s) who has ended financial support is not eligible to apply for a PLUS loan on the student's behalf. However, if the student's parents are separated or divorced, the parent whose financial information would not have been included on the FAFSA may apply for a PLUS loan on the student's behalf. If this parent is subsequently unable to obtain a PLUS loan, the student is *not* then eligible for the additional unsubsidized Stafford loan funds typically available to students whose parents are unable to obtain a PLUS loan.

The FAA must verify that the parent(s) has ceased financial support and refuses to complete the parental section of the FAFSA. The student is not permitted to self-certify this information. The FAA must obtain a signed and dated statement from one of the student's parents specifically stating each of the following:

- The parent(s) has stopped providing financial support to the student. The statement must include the date when the financial support stopped.
- The parent(s) will not provide financial support in the future.
- The parent(s) refuses to complete the parental section of the FAFSA.

If the student's parent(s) will not provide the required verification statement, the FAA must obtain alternative documentation from a third party (e.g., a teacher, counselor, clergy member, or court) prior to certifying the unsubsidized Stafford loan. The alternative documentation must describe the student's relationship with his or her parents. In addition, the FAA may, but is not required to, determine how the student intends to ~~financially~~ support himself or herself financially without parental support.

~~The maximum annual unsubsidized Stafford loan amount that a dependent student may receive under this authority is the "base" limit for a dependent student based on the student's grade level plus the additional unsubsidized amount of $2,000 (see Figure 6-4).~~
[HEA §479(a); DCL GEN-08-12/FP-08-10]

COMMENT:
One commenter questioned why the word “parent(s)” is used throughout the proposal. The commenter stated that only the custodial parent may complete the FAFSA, and only one parent must be denied a PLUS loan.

Response:
The Committee intended to make the distinction that the family situation could involve just one parent or both parents. Therefore, the use of “parent(s)” is believed to be accurate.

Change:
None.

COMMENT:
One commenter suggested that the final paragraph of the Revised Policy be revised as follows for clarity:

> Revised policy also states that the maximum annual subsidized loan amount that a dependent student may receive under the new authority is the “base” limit for the student’s grade level plus the additional unsubsidized amount of $2,000 annually as authorized by ECASLA. The dependent student is not eligible for the additional unsubsidized amounts that are available to an independent student.

The commenter also suggested that the final paragraph of the Common Bulletin language be similarly revised as follows:

> Finally, the policy states that the maximum annual unsubsidized loan amount that a dependent student may receive under the new authority is the “base” limit for the student’s grade level plus the additional unsubsidized amount of $2,000 annually.

Response:
The Committee agrees.

Change:
The Revised Policy and Common Bulletin are revised as suggested, except that the acronym ECASLA is spelled out.

nm/edited-rrl

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Pre-repayment Disclosures**

AFFECTED SECTIONS: **10.7 Disclosing Repayment Terms**

POLICY INFORMATION: **1128/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Disclosures made on or after July 1, 2009.

BASIS:
§428(b)(9), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; §682.205(h); DCL GEN-08-12/FP-08-10.

CURRENT POLICY:
Current policy requires a lender to provide notice to a FFELP borrower of the availability of the income-sensitive repayment plan at the time it offers repayment options, provide procedures by which the borrower may choose the income-sensitive repayment plan, and advise the borrower where and how the borrower may obtain more information on the income-sensitive repayment plan.

REVISED POLICY:
Revised policy includes new disclosure requirements that relate to the new income-based repayment plan. In addition to providing a borrower information on the income-sensitive repayment plan, a lender is required to provide, at the time it offers repayment options, a notice to the borrower, (except for a parent PLUS borrower or a Consolidation borrower whose Consolidation loan includes one or more parent PLUS loans) of the availability of the income-based repayment plan. The notice must provide the process by which the borrower may qualify for the income-based repayment plan and must advise the borrower where and how he or she may obtain more information on the income-based repayment plan.

REASON FOR CHANGE:
This change is made to incorporate provisions of the HEOA and the *Federal Register* Vol. 73, No. 206, dated October 23, 2008.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Note: Section 10.7 is also being updated as part of Proposal 1109 in Batch 158.

Revise Section 10.7, page 12, column 2, paragraph 3, as follows:

Disclosing Repayment Terms

...

A lender must offer the borrower the choice of a standard, a graduated, an income-sensitive, an income-based, or, if applicable, an extended repayment plan ~~schedule~~. The lender must also inform the borrower that he or she is eligible for an income-sensitive repayment plan (including through loan consolidation), or may be eligible for an income-based repayment plan (except for a parent PLUS loan borrower or a Consolidation loan borrower whose Consolidation loan includes one or more parent PLUS loans). The lender must also provide information regarding the process~~dures~~ by which the borrower can choose an income-sensitive or income-based repayment plan, and where and how the borrower may obtain more information on the income-sensitive and income-based repayment plans ~~may be obtained~~. If a lender chooses to include repayment choices with the repayment notification, the lender must ensure that the timing of this notice also meets the requirements of Subsection 10.7.A.
[HEA §428(b)(9) and §682.205(h)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Pre-repayment Disclosures

The *Common Manual* has been revised to include the lender disclosure requirements related to the new income-based repayment plan. In addition to providing a borrower information on existing repayment plans, a lender is also required to provide, at the time it offers repayment options, a notice to a borrower (except a parent PLUS loan borrower or a Consolidation loan borrower whose loan includes one or more parent PLUS loans) of the availability of the income-based repayment plan. The notice must provide the process by which the borrower may qualify for the income-based repayment and must advise the borrower where and how to obtain more information on the income-based repayment plan.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will receive notification of the availability of all repayment options, including the new income-based repayment plan.

School:

None.

Lender/Servicer:

A lender will need to update notices to include the availability of the new income-based repayment plan.

Guarantor:

A guarantor may need to revise program review procedures.

U.S. Department of Education:

The Department may need to revise program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

October 31, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 9, 2009

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:

AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENTS:

One commenter suggested replacing the words “paid off” with “includes” in paragraph 1, line 6 of the Proposed Language.

Response:
The Committee agrees.

Change:
The Proposed language has been revised as suggested. Corresponding changes have also been made to the Revised Policy and the Bulletin Language.

COMMENTS:
Two commenters suggested updating section 10.7, page 13, column 2 to include in the disclosure information the amount of interest paid to date by the borrower. The rationale was to provide consistency.

Response:
The Committee declines to make the commenters' suggested change in this policy proposal. This policy proposal is strictly looking at the new disclosure requirements that relate to the new income-based repayment plan. The requirement for disclosing the amount of interest paid to date by the borrower was previously addressed in the general repayment disclosure requirements updated by Policy 1109 in Batch 158.

Change:
None.

jhh/edited-as

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Lender Disclosures during Repayment**

AFFECTED SECTIONS: **Chapter 10 Loan Servicing**

POLICY INFORMATION: **1129/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Required lender disclosures made for loans with first payments due on or after July 1, 2009.

BASIS:
HEA §433(e)(1) and (2), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP-08-10.

CURRENT POLICY:
Current policy does not contain information about two new lender disclosure provisions from the HEOA: the required repayment disclosure and the required lender disclosure for a borrowers having difficulty making payments.

REVISED POLICY:
Revised policy adds new disclosures for borrowers during the repayment period. A lender must provide a borrower in repayment with a bill or statement that corresponds to each installment period for which a payment is due and that includes, in simple and understandable terms, each of the following:

- The original principal amount of the borrower's loan.
- The borrower's current balance, as of the time of the bill or statement.
- The interest rate on the loan.
- The total amount the borrower has paid in interest on the loan.
- The aggregate amount the borrower has paid on the loan, including all the interest and fees paid, and the amount paid against the balance.
- A description of each fee charged for the most recent preceding installment period.
- The payment amount, the due date for the payment to avoid additional fees, and the amount of any such fees.
- The lender's or loan servicer's address and toll-free phone number for payment and billing error purposes.
- A reminder of the borrower's option to change repayment plans, a listing of the repayment plans available to the borrower, a link to the Department's Website for more information on the repayment plans, and directions to the borrower on how to request a change in repayment plan.

Revised policy also requires a lender to provide a borrower who notifies the lender that he or she is having difficulty making scheduled payments a description, in simple and understandable terms, of each of the following:

- The repayment plans available to the borrower and how the borrower can request a change in repayment plan.
- The requirements for obtaining a forbearance on the loan, including the associated costs.
- The other options available to the borrower to avoid default, including any associated costs or fees.

REASON FOR CHANGE:
This change is made to comply with provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Chapter 10, page 22, column1, by inserting a new Section 10.12, as follows:

10.12

Lender Disclosures During Repayment

A lender must provide a borrower in repayment a bill or statement that corresponds to each installment period for which a payment is due and that includes, in simple and understandable terms, each of the following:

- The original principal amount of the borrower's loan.
- The borrower's current balance, as of the time of the bill or statement.
- The interest rate on the loan.
- The total amount the borrower has paid in interest on the loan.
- The aggregate amount the borrower has paid on the loan, including all the interest and fees paid, and the amount paid against the balance.
- A description of each fee charged for the most recent preceding installment period.
- The payment amount, the due date for the payment to avoid additional fees, and the amount of any such fees.
- The lender's or loan servicer's address and toll-free phone number for payment and billing error purposes.
- A reminder of the borrower's option to change repayment plans, a listing of the repayment plans available to the borrower, a link to the Department's Website for more information on the repayment plans, and directions to the borrower on how to request a change in repayment plan.

[HEA §433(e)(1); DCL GEN-08-12/FP 08-10]

Required Lender Disclosure for a Borrower Having Difficulty Making Payments

If a borrower notifies the lender that he or she is having difficulty making scheduled payments, the lender must provide, in simple and understandable terms, a description of each of the following:

- The repayment plans available to the borrower, including how the borrower can request a change in repayment plan.
- The requirements for obtaining a forbearance on a loan, including costs associated with the forbearance.
- The other options available to the borrower to avoid default, including any fees or costs associated with those options.

[HEA §433(e)(2); DCL GEN-08-12/FP-08-10]

Revise Chapter 10 by renumbering Section 10.12, page 22, column 1 as follows:

10.13~~2~~
Paid-in-Full Loans

PROPOSED LANGUAGE - COMMON BULLETIN:
Lender Disclosures during Repayment
The *Common Manual* is being revised by adding information regarding new disclosures a lender must provide to a borrower during the repayment period. A lender must provide a borrower in repayment with a bill or statement that corresponds to each installment period for which a payment is due and that includes, in simple and understandable terms, each of the following:

- The original principal amount of the borrower's loan.

- The borrower's current balance, as of the time of the bill or statement.
- The interest rate on the loan.
- The total amount the borrower has paid in interest on the loan.
- The aggregate amount the borrower has paid on the loan, including all the interest and fees paid, and the amount paid against the balance.
- A description of each fee charged for the most recent preceding installment period.
- The payment amount, the due date for the payment to avoid additional fees, and the amount of any such fees.
- The lender's or loan servicer's address and toll-free phone number for payment and billing error purposes.
- A reminder of the borrower's option to change repayment plans, a listing of the repayment plans available to the borrower, a link to the Department's Website for more information on the repayment plans, and directions to the borrower on how to request a change in repayment plan.

The *Common Manual* is also being updated to include the requirement that, if the borrower notifies the lender that he or she is having difficulty making scheduled payments, the lender must provide to the borrower a description of each of the following:

- The repayment plans available to the borrower and how the borrower can request a change in repayment plan.
- The requirements for obtaining a forbearance on the loan, including the associated costs.
- The other options available to the borrower to avoid default, including any associated costs or fees.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower is provided more information throughout the repayment process. A borrower who is having difficulty making scheduled payments may also receive additional information regarding repayment plans, forbearance, and options to avoid default.

School:
None.

Lender/Servicer:
A lender must develop processes and procedures for providing the required disclosures to a borrower throughout the borrower's repayment period. A lender may also need to change systems and procedures to provide a borrower who indicates that he or she is having difficulty making payments with the required information.

Guarantor:
A guarantor may need to update program review procedures, and may need to update program participation agreements because guarantors are no longer protected from the loss of federal reinsurance on a loan when required disclosures are not provided [per HEOA §433(f)].

U.S. Department of Education:
The Department may need to update program review procedures and procedures to limit, suspend, or terminate a participating lender from the FFELP if the lender fails to comply with the disclosure requirements.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 16, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENTS:
One commenter suggested revising the third bullet under "Required Lender Disclosure for a Borrower Having Difficulty Making Payments" in Section 10.2, as follows:

- The other options available to ~~with which~~ the borrower to ~~may~~ avoid default~~ing on the loan~~, including any fees or costs associated with those options.

The commenter stated that the suggested language would mirror language used in the Revised Policy and the Bulletin Language, which is more clear and concise.

Response:
The Committee agrees.

Change:
The Proposed language has been revised as suggested.

jhh/edited - aes

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Disclosures When Granting Deferments on Unsubsidized Stafford Loans**

AFFECTED SECTIONS: **11.1 Authorized Deferment**

POLICY INFORMATION: **1130/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: In-school, graduate fellowship, unemployment, military, and economic hardship deferments on unsubsidized Stafford loans granted on or after August 14, 2008.

BASIS:
HEA §428(b)(1)(Y)(iii) as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP 08-10.

CURRENT POLICY:
Current policy does not reflect that when granting certain deferments on an unsubsidized Stafford loan, a lender must provide information to the borrower to assist him or her in understanding the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan.

REVISED POLICY:
Revised policy states that when granting an in-school, graduate fellowship, unemployment, military or economic hardship deferment on an unsubsidized Stafford loan, a lender is required to provide information to the borrower to assist him or her in understanding the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan.

REASON FOR CHANGE:
The change is necessary to incorporate provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 11.1, page 5, column 2, by adding a new Subsection 11.1.J after paragraph 3, as follows:

11.1.J
Disclosure When Granting a Deferment on an Unsubsidized Stafford Loan

When granting an in-school, graduate fellowship, unemployment, military, or economic hardship deferment on an unsubsidized Stafford loan, a lender must provide information to the borrower to assist the borrower in understanding the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan. [§428(b)(1)(Y)(iii)]

PROPOSED LANGUAGE - COMMON BULLETIN:
Disclosure When Granting Deferments on Unsubsidized Stafford Loans
The *Common Manual* has been revised to state that when granting an in-school, graduate fellowship, unemployment, military or economic hardship deferment on an unsubsidized Stafford loan, a lender must provide information to the borrower to assist him or her in understanding the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:

Borrower:
A borrower is provided more information about the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan when the borrower is granted certain deferments on his or her unsubsidized Stafford loan.

School:
None.

Lender/Servicer:
A lender may need to develop processes and procedures to provide a borrower with information about the impact of the capitalization of interest on the borrower's loan principal and the total amount of interest to be paid over the life of the loan when the borrower is granted certain deferments on his or her unsubsidized Stafford loan.

Guarantor:
A guarantor may need to revise program review procedures.

U.S. Department of Education:
The Department may need to revise program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 16, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:____
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. One commenter recommended a wordsmithing change that was incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
None.

ma/edited - chh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Providing Forbearance Information to the Borrower or Endorser**

AFFECTED SECTIONS:
11.20.I Borrower Contact during Forbearance
11.23 Mandatory Administrative Forbearance
11.24.B Internship or Residency

POLICY INFORMATION: **1131/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Forbearance granted by the lender on or after August 14, 2008.

BASIS:
HEA §428(c)(3), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP-08-10.

CURRENT POLICY:
Current policy requires the lender to send a notice to a borrower with whom it has negotiated a verbal forbearance agreement to confirm the terms of the forbearance. Current policy also requires the lender to contact the borrower or endorser at least once every 6 months to inform the borrower of each of the following:

- The continuing obligation to repay the loan.
- The outstanding principal and interest balance.
- That interest continues to accrue on the loan during the forbearance period.
- That the borrower or endorser may choose to discontinue the forbearance at any time.

Current policy with respect to the mandatory forbearance for an intern or resident does not include the requirement to notify the borrower every 6 months, nor does policy regarding mandatory administrative forbearance include the periodic notification requirements or all of the data that the lender must now provide in each of those notices.

REVISED POLICY:
Revised policy requires the lender to send a notice to the borrower or endorser when it grants a forbearance to assist the borrower or endorser, as applicable, in understanding the effect that interest capitalization has on the loan's principal balance and the amount of interest that may be paid over the life of the loan. Revised policy also requires the lender to contact the borrower or endorser not less than every 180 days during the forbearance period and include in its notice each of the following in addition to the existing requirements:

- The amount of interest accrued since the last interest accrual information was provided to the borrower.
- The amount of interest that will be capitalized on the loan and the date that the capitalization will occur.
- The option to pay the interest before it is capitalized.

Revised policy removes the exception regarding notices for the internship and residency forbearance, and adds a cross-reference to the subsection that describes the standard borrower notice and notification requirements. Revised policy also amends the required notifications for mandatory forbearance.

REASON FOR CHANGE:
These changes are made to comply with the provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 11.20.I, page 29, column 1, paragraph 2, as follows:

11.20.I
Borrower Contact during Forbearance

When a lender grants a forbearance, the lender must provide to the borrower or the endorser, as applicable, information to assist the borrower or endorser in understanding the effect of interest capitalization on the loan's principal balance, and the total amount of interest to be paid over the life of the loan.

If the lender and borrower or endorser agree verbally to a discretionary forbearance, the lender must record the forbearance terms in the borrower's file and send, within 30 days of that agreement, a notice to the borrower or endorser confirming the terms of the forbearance agreement.

~~Whenever granting forbearance involves postponing all payments~~ During the forbearance period, the lender must contact the borrower or endorser not less than once every 180 days ~~at least once every 6 months during the forbearance period~~. The lender must inform the borrower or endorser of all of the following ~~information in each such contact~~:

- The obligation to repay the loan.
- The outstanding balance of principal and interest on the loan.
- That interest will accrue on the loan for the entire forbearance period.
- The amount of interest accrued since the last interest accrual information was provided to the borrower.
- The amount of interest that will be capitalized on the loan and the date that the capitalization will occur.
- The borrower's option to pay the interest before it is capitalized.
- That the borrower or endorser may opt to discontinue the forbearance at any time.

This notification requirement does not apply to the postponement of interest payments during a deferment period.~~, a period of forbearance for an internship or residency, or a period of mandatory administrative forbearance. (See Subsection 11.24.B for information regarding required notification for internship and residency forbearance. See Section 11.22 for information regarding notification for mandatory administrative forbearance.)~~
[HEA §428(c)(3); §682.211(e); DCL GEN-08-12/FP-08-10]

Revise Section 11.23, page 38, column 1, paragraph 1, as follows:

11.23
Mandatory Administrative Forbearance

A lender must grant a mandatory administrative forbearance when applicable. This type of forbearance does not require the borrower's request or a forbearance agreement between the lender and the borrower. As soon as feasible, the lender must notify the borrower or endorser that the lender has granted a forbearance and indicate the date that payments should resume. See Subsection 11.20.I for information regarding the notices that the lender must send when granting a forbearance and during the forbearance period. ~~The lender's notification must state that the borrower or endorser:~~

- ~~May decline the forbearance and continue to be obligated to make scheduled payments.~~
- ~~Consents to make payments in accordance with the lender's notification if the forbearance is not declined.~~

Any outstanding delinquency that precedes the beginning . . .

[HEA §428(c)(3); §682.211(i)(1) and (2)]

Revise Subsection 11.24.B, page 40, column 1, paragraph 2, as follows:

Eligibility and documentation requirements are the same as for a borrower who has requested an internship/residency deferment (see Section 11.7). A lender must grant forbearance in 12-month increments unless the actual period during which a borrower is eligible is less than 12 months. See Subsection 11.20.I for information regarding notices that the lender must send when granting a forbearance and during the forbearance period.

PROPOSED LANGUAGE - COMMON BULLETIN:

Providing Forbearance Information to the Borrower or Endorser

The *Common Manual* has been revised to require the lender to send a notice to the borrower or endorser, as applicable, when it grants a forbearance to assist the borrower or endorser in understanding the effect that interest capitalization has on the loan's principal balance and the amount of interest that may be paid over the life of the loan. Revised policy also requires the lender to contact the borrower or endorser not less than every 180 days during the forbearance period and include in its notice each of the following new data elements in addition to existing requirements:

- The amount of interest accrued since the last interest accrual information was provided to the borrower.
- The amount of interest that will be capitalized on the loan and the date that the capitalization will occur.
- The option to pay the interest before it is capitalized.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will receive additional information when the lender grants forbearance and during the forbearance period.

School:

None.

Lender/Servicer:

A lender may be required to amend its procedures and systems for sending forbearance notifications.

Guarantor:

A guarantor may be required to amend its program review procedures.

U.S. Department of Education:

The Department may be required to amend its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

February 2, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 9, 2009

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:

AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP,

NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Most commenters supported this proposal as written. Other commenters recommended wordsmithing changes to more closely align the text with the Dear Colleague Letter GEN-08-12 language. Those were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:

One commenter suggested that certain language proposed to be stricken remains valid. The commenter notes that the lender is not required to provide the requisite forbearance notices in the case of the postponement of interest payments during a deferment period.

Response:

The Committee concurs.

Change:

The strike-out is removed from the first part of the cited sentence, reinstating the statement that the notice is not applicable to a period of deferment where the borrower is not making payments.

bg/edited - kk

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **New Administrative Forbearance for Repayment Plan Change**

AFFECTED SECTIONS: **11.21 Administrative Forbearance**

POLICY INFORMATION: **1132/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Repayment plan changes granted by the lender on or after July 1, 2009.

BASIS:
§682.211(f)(14).

CURRENT POLICY:
Current policy does not permit a lender to grant an administrative forbearance to a borrower to cover a period of delinquency that exists at the time the borrower chooses a different repayment plan.

REVISED POLICY:
Revised policy permits the lender to grant an administrative forbearance to cover a period of delinquency that exists at the time a borrower chooses a different repayment plan.

REASON FOR CHANGE:
These changes are necessary to incorporate provisions of the *Federal Register* Vol. 73, No. 206 dated October 23, 2008.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Section 11.21, page 37, column 1, by adding a new Subsection 11.21.Tafter paragraph 2, as follows:

Note: The subsections in 11.21 are being renumbered as part of Proposal 1119 in Batch 159.

> **11.21.T**
> **Repayment Plan Change**
>
> The lender may grant an administrative forbearance to cover a period of delinquency that exists at the time a borrower chooses a different repayment plan— for example, from standard to income-based.
> [§682.211(f)(14)]

PROPOSED LANGUAGE - COMMON BULLETIN:
Administrative Forbearance for Repayment Plan Change
The *Common Manual* has been revised to permit the lender to grant an administrative forbearance to cover a period of delinquency that exists at the time a borrower chooses a different repayment plan, for example, when the borrower changes from a standard repayment plan to an income-based repayment plan.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
A borrower's loan may be brought current when he or she chooses a different repayment plan.

School:
None.

Lender/Servicer:
A lender may grant an administrative forbearance to a borrower when he or she chooses a different repayment plan. The lender may need to update processes and systems, and to amend its borrower counseling information.

Guarantor:
The guarantor may need to amend its program review procedures and to amend its borrower counseling information.

U.S. Department of Education:
The Department may be required to amend its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
February 2, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments
Most commenters supported this proposal as written. Other commenters recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter requested that the proposal include a regulatory cite at the end of the new language.

Response:
The Committee concurs

Change:
The policy is revised to include a reference to §682.211(f)(14).

bg/edited - kk

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB Meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Total and Permanent Disability Discharge Requests Based on U.S. Department of Veterans Affairs Determinations**

AFFECTED SECTIONS: **13.8.G Total and Permanent Disability**

POLICY INFORMATION: **1133/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: Total and permanent disability discharge requests received by the lender on or after August 14, 2008, that are based on U.S. Department of Veterans Affairs determinations.

BASIS:

HEA §437(a), as amended by the Higher Education Opportunity Act (HEOA), P.L. 110-315; DCL GEN-08-12/FP 08-10; Discharge Application: Total and Permanent Disability published February 9, 2009.

CURRENT POLICY:

Current policy does not address a borrower's eligibility for a loan discharge due to total and permanent disability if the borrower provides documentation from the U.S. Department of Veterans Affairs (VA) showing that the borrower has been determined to be unemployable due to a service-connected condition, and such documentation is acceptable by the U.S. Department of Education.

REVISED POLICY:

Revised policy adds information regarding a borrower's eligibility for loan discharge due to total and permanent disability if the borrower provides documentation from the U.S. Department of Veterans Affairs (VA) showing that the VA has determined the borrower to be unemployable due to a service-connected condition, and such documentation is acceptable by the U.S. Department of Education.

REASON FOR CHANGE:

This change is made to comply with the provisions of the HEOA.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection 13.8.G, page 45, column 2, by adding a new paragraph 2, as follows:

Note: Subsection 13.8.G is also being updated as part of Proposal 1068 in Batch 154.

13.8.G
Total and Permanent Disability

<u>A total and permanent disability discharge request based on a determination by the U.S. Department of Veterans Affairs (VA) has different eligibility criteria than one that is not based on a VA determination, as outlined below.</u>

<u>Discharge Requests Based on VA Determinations</u>

<u>A borrower is eligible for loan discharge due to total and permanent disability if the borrower provides documentation from the VA showing that the VA has determined the borrower to be unemployable due to a service-connected condition, and this documentation is acceptable to the U.S. Department of Education (the Department). The borrower is not required to provide additional documentation to support the discharge; however, the borrower is required to complete the appropriate sections of the Discharge Application: Total and Permanent Disability. If the lender believes the borrower qualifies for discharge based on its review of the VA disability documentation, the lender must forward the loan discharge application and VA</u>

documentation to the guarantor for review. If the guarantor determines that the borrower meets the criteria for discharge based on its review of the VA documentation, the guarantor must forward the VA documentation and the loan discharge application to the Department for determination of the borrower's eligibility for loan discharge. The borrower is not subject to the 3-year conditional period. If the Department grants a final discharge based on a VA determination, it will notify the loan holder of the discharge. Any loan payments made after the effective date of the VA determination (that the borrower is unemployable due to a service-connected condition) are refunded to the borrower.
[HEA §437(a); DCL GEN-08-12/FP 08-10; Discharge Application: Total and Permanent Disability]

Discharge Requests Not Based on VA Determinations

If any party to a loan claims to be totally and permanently disabled, the lender must request that party to provide certification of the disability from a physician who is a doctor of medicine or osteopathy and is legally authorized to practice in a state. An eligible party includes any one of the following:

- A borrower.
- One of two comakers on a PLUS or Consolidation loan.
- An endorser, if the lender is pursuing collection activities against the endorser.

. . .

~~**Suspending Collection**~~ *Suspending Collection*

. . .

~~**General Requirements for Total and Permanent Disability Loan Discharge**~~ *General Requirements for Total and Permanent Disability Loan Discharge*

. . .

~~**Discharge When Guarantee Is Lost**~~ *Discharge When Guarantee Is Lost*

. . .

~~**Conditional Discharge Due to Total and Permanent Disability**~~ *Conditional Discharge Due to Total and Permanent Disability*

. . .

~~**NSLDS Reporting during the Conditional Period for Comade Loans**~~ *NSLDS Reporting during the Conditional Period for Comade Loans*

. . .

~~**Total and Permanent Disability Loan Discharge Payment**~~ *Total and Permanent Disability Loan Discharge Payment*

. . .

~~**Timely Filing Deadline for Total and Permanent Disability Claims**~~ *Timely Filing Deadline for Total and Permanent Disability Claims*

. . .

~~**Notification Requirements after Claim Filing or Filing of a Partial Discharge Request**~~

Notification Requirements after Claim Filing or Filing of a Partial Discharge Request

. . .

~~**Resuming Loan Servicing on Comade or Endorsed Loans**~~ *Resuming Loan Servicing on Comade or Endorsed Loans*

. . .

~~**Treatment of Payments**~~ *Treatment of Payments*

. . .

PROPOSED LANGUAGE - COMMON BULLETIN:

Total and Permanent Disability Discharge Requests Based on U.S. Department of Veterans Affairs Determinations

The *Common Manual* has been revised to add information about total and permanent disability discharge requests based on U.S. Department of Veterans Affairs (VA) determinations. A discharge request based on a VA determination has different eligibility criteria than one that is not based on a VA determination.

A borrower is eligible for loan discharge due to total and permanent disability if the borrower provides documentation from the VA showing that the VA has determined the borrower to be unemployable due to a service-connected condition, and this documentation is acceptable to the U.S. Department of Education (the Department). The borrower is not required to provide additional documentation to support the discharge, however, the borrower is required to complete the appropriate sections of the Discharge Application: Total and Permanent Disability. If the lender believes the borrower qualifies for discharge based on its review of the VA disability documentation, the lender must forward the loan discharge application and VA documentation to the guarantor for review. If the guarantor determines that the borrower meets the criteria for discharge based on its review of the VA documentation, the guarantor must forward the VA documentation and the loan discharge application to the Department for determination of the borrower's eligibility for loan discharge. The borrower is not subject to the 3-year conditional period. If the Department grants a final discharge based on a VA determination, it will notify the loan holder of the determination. Any loan payments made after the effective date of the VA determination (that the borrower is unemployable due to a service-connected condition) are refunded to the borrower.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower who requests loan discharge due to total and permanent disability based on a VA determination that the borrower is unemployable due to a service-connected condition is not subject to the 3-year conditional discharge period. Any loan payments made after the effective date of the VA determination (that the borrower is unemployable due to a service-connected condition) are refunded to the borrower.

School:

None.

Lender/Servicer:

A lender may need to update its processes and procedures to accommodate loan discharge requests due to total and permanent disability determinations made by the VA.

Guarantor:

A guarantor may need to update its processes and procedures to accommodate loan discharge requests due to total and permanent disability determinations made by the VA. A guarantor may need to update its program review procedures.

U.S. Department of Education:

The Department may need to update its processes and procedures to accommodate loan discharge requests due to total and permanent disability determinations made by the VA. The Department may need to update its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 16, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designee
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter suggested making sure that language applicable only to VA determinations and language applicable only to non-VA determinations are distinctly separated (whether by sub-sub-headings or formatting).

Response:
The Committee agrees.

Change:
All subheadings that appear after the newly added subheading "Discharge Requests Not Based on VA Determinations," will be changed to sub-sub-headings.

COMMENT:
One commenter noted that as currently written, the policy seems to imply that the lender transfers the documentation directly to the Department. The commenter suggested revising the language to read, as follows:

> "<u>If the lender believes the borrower qualifies for discharge based on the VA documentation provided by the borrower, the lender must forward the application and VA documentation to the guarantor for review. If the guarantor determines the borrower meets the criteria for discharge based on the review of the VA documentation, </u>~~T~~<u>t</u>he VA documentation and application form must be transferred to the Department for determination of the borrower's eligibility for discharge of the loan. . . ."

Response:
The Committee agrees.

Change:
The language has been revised to clarify that the lender must forward the application to the guarantor and the guarantor will forward the information to the Department if it appears that the borrower meets the criteria for loan discharge based on its review of the VA documentation.

COMMENT:
One commenter asked what is the basis for refunding payments made after the effective date of the VA

determination and what are the implications if the VA determination is substantially earlier than the borrower's total and permanent disability application date.

Response:
A lender is required to refund any loan payments made after the effective date of the VA determination regardless of the date of the determination. This information is clarified in the revised Discharge Application: Total and Permanent Disability published by the Department on February 9, 2009, Section 6, item 4, last sentence.

Change:
Citations have been added to the Proposed Language.

COMMENT:
Two commenters suggested revising the last sentence of the newly added paragraph to mirror current regulations and *Common Manual* language in Subsections 13.8.G and 13.8.H and suggests that the sentence read, as follows:

> "Any loan payments made after the effective date of the VA determinations are refunded to the ~~borrower~~ <u>sender</u>."

Response:
The Committee hesitates to mirror current language regarding to whom the refund of payments should be sent because regulations have not been developed for total and permanent disability loan discharges determined by the VA. Since the recently approved TPD discharge form is the only guidance published by the Department that addresses the issue of where these refunds should be sent, the Committee believes the policy should follow that guidance. However, after final regulations are published, the Committee will revise this policy, as applicable.

Change:
None.

COMMENT:
One comenter noted that the Manual does not typically reference specific sections of a form that a borrower must complete and suggests that there be a more generic reference, such as "appropriate sections of the form."

Response:
The Committee agrees.

Change:
The policy has been revised per the commenter's suggestion.

ma/edited - chh

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: April 21, 2009

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With No Changes	Apr 16

SUBJECT: **Eligible Not-for-Profit Holder**

AFFECTED SECTIONS: **A.2.A Special Allowance and Excess Interest Rates**
Appendix G

POLICY INFORMATION: **1134/Batch 159**

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2009.

BASIS:
§682.302(f)(3).

CURRENT POLICY:
Current policy contains a definition of “eligible not-for-profit holder” as it relates to special allowance payments, and includes information regarding how a lender meets this designation.

Current policy states that an eligible lender trustee (ELT) can be designated as an eligible not-for-profit holder if the ELT is acting on behalf of a state, political subdivision, authority, agency, instrumentality, or other entity, regardless of whether that entity is an eligible lender.

Current policy does not include information on what compensation a lender may receive for acting as an ELT for a state or nonprofit entity.

Current policy states that a lender cannot be designated as an eligible not-for-profit holder if the lender (directly or through an ELT) is owned or controlled, in whole or in part, by a for-profit entity or if the lender is not the sole owner of the beneficial interest in and the income from a loan.

Current policy does not contain information on the policy for notifying the Department if a lender’s eligible not-for-profit holder designation changes.

REVISED POLICY:
Revised policy defines an “eligible not-for-profit holder” as an eligible lender (other than a school lender) that requests special allowance payments from the Department and that meets one of the qualifying conditions. To be designated as an eligible not-for-profit holder, a state or nonprofit entity must have made or acquired a FFELP loan on or before September 27, 2007.

Revised policy states that an ELT may qualify as an eligible not-for-profit holder if the ELT is acting on behalf of an entity that is not an eligible school and is a state or nonprofit entity or special purpose entity for a state or non-profit entity that was the sole beneficial owner of a loan eligible for special allowance payments on September 27, 2007. Revised policy also includes definitions in the related subsection of the Manual for “state or nonprofit entity” and “special purpose entity” (including “related special purpose entity”).

Revised policy states a lender may receive compensation for reasonable and customary fees for acting as an ELT on behalf of a state or nonprofit entity. Fees are considered reasonable and customary if either of the following applies:

- The fees do not exceed the amounts the ELT received for similar services on similar loan portfolios of that state or special purpose entity that are not eligible for special allowance payments at the rate paid to an eligible not-for-profit holder.

- The fees do not exceed an amount as determined by another method requested by the state or nonprofit entity and that the Department considers reliable.

Revised policy states that a lender cannot be designated as an eligible not-for-profit holder if the lender (directly or through an ELT or a special purpose entity) is owned or controlled, in whole or in part, by a for-profit entity. A for-profit entity has ownership and control of a state or nonprofit entity or its related special purpose entity if any of the following occurs:

- The for-profit entity is a member or shareholder of a state or nonprofit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the state or nonprofit entity or its special purpose entity.

- The for-profit entity employs or appoints individuals that together represent a majority of the state, nonprofit, or special purpose entity's board of trustees or directors, or a majority of that board's audit committee or compensation committee.

- If a state, or a nonprofit, or special purpose entity does not have a board of trustees or directors, or associated committees, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials unless the Department determines that the authority to approve such decisions is not likely to affect the integrity of those decisions.

Revised policy states that a lender (directly or through an ELT or a special purpose entity) cannot be designated as an eligible not-for-profit holder if the lender is not the sole owner of the beneficial interest in and the income from a loan. Revised policy also includes definitions in the related subsection of the Manual for "beneficial owner" (including "beneficial ownership" and "owner of a beneficial interest") and "sole owner".

Revised policy states that if a state or nonprofit entity designated as an eligible not-for-profit holder (directly or through an ELT) becomes aware of a change that may cause loss of that eligibility, the state or nonprofit entity must, within 10 business days of becoming aware of the change, do each of the following:

- Submit the details of the change to the Department.

- Cease special allowance billing at the eligible not-for-profit holder rate from the date of the change to the date the Department determines that the state or nonprofit entity has not lost its eligibility due to the change.

Revised policy also updates the definition of "eligible not-for-profit holder" in Appendix G.

REASON FOR CHANGE:
This change is necessary to incorporate provisions of the *Federal Register* Vol. 73, No. 206, dated October 23, 2008.

PROPOSED LANGUAGE - *COMMON MANUAL*:

Revise Subsection A.2.A, page 4, column 2, paragraph 1, as follows:

Note: Subsection A.2.A is also being updated as part of Proposal 1119 in Batch 159.

> The special allowance factor for a loan first disbursed on or after October 1, 2007, is based on whether ~~or not~~ the lender qualifies as an eligible not-for-profit holder. As it relates to special allowance payments on loans first disbursed on or after October 1, 2007, a lender is considered to be an eligible not-for-profit holder if the lender is ~~was~~ an ~~active,~~ eligible lender ~~and~~ that requests special allowance payments from the Department and meets ~~met~~ any one of the following conditions ~~on September 27, 2007~~:
>
> - The lender is a state, or a political subdivision, authority, agency, or other instrumentality of such, including those entities that are eligible to issue tax-exempt bonds, and that made or acquired a FFELP loan on or before September 27, 2007.
>
> - The lender is a qualified scholarship funding corporation established by a state or one or more political subdivisions, that has not elected to cease status as a qualified scholarship funding corporation and that made or acquired a FFELP loan on or before September 27, 2007.
>   [§150(d)(2) and (3) of the Internal Revenue Code of 1986]

- The lender is a tax-exempt organization as described in ~~Section~~ §501(c)(3) of the Internal Revenue Code of 1986 that made or acquired a FFELP loan on or before September 27, 2007.

- The lender is acting as an eligible lender trustee (ELT) on behalf of an entity (other than an eligible school lender) that is a state or nonprofit entity, or a special purpose entity for a state or nonprofit entity, and that was the sole beneficial owner of a loan eligible for special allowance payments on September 27, 2007~~, political subdivision, authority, agency, instrumentality, or other entity, regardless of whether that entity is an eligible lender as defined by the Higher Education Act (HEA) of 1965, as amended~~.

  – A *state or nonprofit entity* is an entity as described in the bullets above, regardless of whether that entity is an eligible lender.

  – A *special purpose entity* is an entity established for the limited purpose of financing the acquisition of loans from (or at the direction of) a state or nonprofit entity, or for servicing and collecting such loans, and that is established by the state or nonprofit entity or from an established special purpose entity.

  – A special purpose entity is a *related special purpose entity* of a state or nonprofit entity if it holds any interest in loans acquired from (or at the direction of) the state or nonprofit entity or from an established special purpose entity.

  A lender may receive compensation for reasonable and customary fees for acting as an ELT on behalf of a state or nonprofit entity. Fees are considered reasonable and customary if either of the following applies:

  – The fees do not exceed the amounts the ELT received for similar services on similar loan portfolios of the state or nonprofit entity, or special purpose entity, that are not eligible for special allowance payments at the rate paid to an eligible not-for-profit holder.

  – The fees do not exceed an amount as determined by another method requested by the state or nonprofit entity and that the Department considers reliable.

  If an ELT receives fees in excess of the reasonable and customary fees on loans owned by a state or nonprofit entity, or related special purpose entity, those loans no longer qualify for special allowance payments at the rate paid to an eligible not-for-profit holder.

[HEA §435(p)(1); §682.302(f)(3)(i) - (iii) and (viii)~~(v)~~; DCL FP-07-12]

The state may waive the above requirements for a new eligible not-for-profit holder that it determines to be necessary to fill a public purpose of that state. A state may not waive any requirements for trustees.
[HEA §435(p)(2)(A)(ii); §682.302(f)(3)(iv); DCL FP-07-12]

A lender is not considered to be an eligible not-for-profit holder if any of the following conditions occurs:

- The lender is a school lender.

- The ~~lender~~ state or nonprofit entity, or related special purpose entity, (directly or through an ELT~~ eligible lender trustee~~) is owned or controlled, in whole or in part, by a for-profit entity. A for-profit entity has ownership and control of a state or nonprofit entity or its related special purpose entity if any of the following occurs:

  – The for-profit entity is a member or shareholder of a state or nonprofit entity, or its special purpose entity, that is a membership or stock corporation, and the for-profit entity has sufficient power to control the state or nonprofit entity or its special purpose entity.

  - A for-profit entity has sufficient power to control a state or nonprofit entity or its special purpose entity if it possesses directly (or represents, alone or with other persons) under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold a sufficient voting percentage of the membership interests or voting securities that direct or cause the direction of the management and policies of the state or nonprofit entity or its related special purpose entity. [§682.302(f)(3)(vi)(A)]

- The for-profit entity employs or appoints individuals that together represent a majority of the state, nonprofit, or special purpose entity's board of trustees or directors, or a majority of that board's audit, executive, or compensation committee.

  - An individual is considered to be employed or appointed by a for-profit entity if the entity employs a family member of that individual [as defined in §600.21(f)], unless the Department determines that the specific nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member. [§682.302(f)(3)(vi)(B)]

- If a state, nonprofit, or special purpose entity does not have a board of trustees or directors, or associated committees, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials unless the Department determines that the authority to approve those decisions is not likely to affect the integrity of the decisions.

[§682.302(f)(3)(v)]

• The lender (directly or through an ELT ~~eligible lender trustee~~ or a special purpose entity) is not the sole owner of the beneficial interest in, and the income from a loan.

  - *Beneficial owner* (including *beneficial ownership* and *owner of a beneficial interest*) is the entity that has the rights to a loan or income from a loan that are normal occurrences of ownership. This includes the right to receive, possess, use, and sell, or otherwise exercise control over, a loan and the income from a loan. The ownership may be subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest, and subject to any limitations on those rights as a result of the entity not qualifying as an eligible lender or holder.

  - *Sole owner* is the entity that has all the rights to a loan or the income from a loan subject to the rights and limitations above, excluding any other entity with respect to both a loan and the income from a loan.

[HEA §435(p)(2)(B) and (C); §682.302(f)(3)(~~iii~~ v) and (vi); DCL FP-07-12]

A state or nonprofit entity that has sole ownership of the beneficial interest in and income from a loan will retain that ownership if the entity transfers the beneficial interest to its special purpose entity and no other party owns any beneficial interest or residual ownership interest in, or income from, the loan.

A~~n eligible not-for-profit holder~~ state or nonprofit entity, its related special purpose entity, or an ELT~~, regardless of whether that entity is an eligible lender as defined by the HEA,~~ is not considered to be owned or controlled by a for-profit entity, and will not lose its status as sole owner of beneficial interest in and income from a loan by granting security interest in, or using a loan or income from a loan as collateral, to secure a debt obligation for which the not-for-profit holder is the issuer of the debt obligation.
[HEA §435(p)(2)(E); §682.302(f)(3)(~~vi~~ ix); DCL FP-07-12]

…

…

…

Not-For-Profit Holder Designation

In order for a lender to be designated as a not-for-profit holder (directly or through an ELT ~~eligible lender trustee~~) for purposes of special allowance payments, two certifications must be submitted to the Department: a certification signed by the state or nonprofit entity's chief executive officer (CEO) and a certification or opinion signed by the state or nonprofit entity's external legal counsel or the office of the state's attorney general. For additional information on these certifications, refer to DCL FP-07-12 dated December 28, 2007. [§682.302(f)(3)(x)]

Change in Not-for-Profit Holder Designation

If a state or nonprofit entity designated as an eligible not-for-profit holder (directly or through an ELT) becomes aware of a change that may cause loss of that eligibility, the state or nonprofit entity must, within 10 business days of becoming aware of the change, do each of the following:

- Submit the details of the change to the Department.
- Cease special allowance billing at the eligible not-for-profit holder rate from the date of the change to the date the Department determines that the state or nonprofit entity has not lost its eligibility due to the change. If the Department determines that there is no loss of eligibility, the eligible not-for-profit holder may bill for special allowance in the following quarter in an amount equal to the difference in the special allowance rate paid during the change period and the special allowance rate paid to an eligible not-for-profit holder.

§682.302(xii)

Revise Appendix G, page 7, column 1, paragraph 3, as follows:

Eligible Not-For-Profit Holder: As it relates to special allowance payments on loans first disbursed on or after October 1, 2007, a holder of a loan that is:

- A state, or political subdivision, authority, agency, or other instrumentality of such, including those lenders that are eligible to issue tax-exempt bonds, and that made or acquired a FFELP loan on or before September 27, 2007.
- A qualified scholarship funding corporation established by a state, or one or more political subdivisions, that has not elected to cease status as a qualified scholarship funding corporation and that made or acquired a FFELP loan on or before September 27, 2007.
- A tax-exempt organization as described in ~~Section~~ §501(c)(3) of the Internal Revenue Code of 1986 that made or acquired a FFELP loan on or before September 27, 2007.
- An eligible lender trustee (ELT) acting on behalf of an entity (other than an eligible school) that is a state or nonprofit entity or special purpose entity for a state or nonprofit entity that was the sole beneficial owner of a loan eligible for special allowance payments on September 27, 2007~~, political subdivision, authority, agency, instrumentality, or other entity, regardless of whether that entity is a eligible lender as defined by the Higher Education Act of 1965, as amended~~.

See Subsection A.2.A for more information on eligible not-for-profit holder designations.

PROPOSED LANGUAGE - COMMON BULLETIN:
Eligible Not-for-Profit Holder
The *Common Manual* has been updated with regulatory guidance published in the *Federal Register* Vol. 73, No. 206, dated October 23, 2008, as it relates to the definition of "eligible not-for-profit holder." An eligible not-for-profit holder is an eligible lender that requests special allowance payments from the Department and that meets one of the qualifying conditions. To qualify as an eligible not-for-profit holder, a state or nonprofit entity

must have made or acquired a FFELP loan on or before September 27, 2007.

An eligible lender trustee (ELT) may be designated as an eligible not-for-profit holder if acting on behalf of an entity (other than an eligible school lender) that is a state or nonprofit entity, or a special purpose entity for a state or nonprofit entity, that was the sole beneficial owner of a loan eligible for special allowance payments on September 27, 2007. Subsection A.2.A of the Manual has been updated to include definitions of "state or nonprofit entity" and "special purpose entity" (including "related special purpose entity").

A lender may receive compensation for reasonable and customary fees for acting as an ELT on behalf of a state or nonprofit entity. Fees are considered reasonable and customary if either of the following applies:

- The fees do not exceed the amounts the ELT received for similar services on similar loan portfolios of that state or special purpose entity that are not eligible for special allowance payments at the rate paid to an eligible not-for-profit holder.

- The fees do not exceed an amount as determined by another method requested by the state or non-profit entity and that the Department considers reliable.

A lender cannot be designated as an eligible not-for-profit holder if the lender (directly or through an ELT or a special purpose entity) is owned or controlled, in whole or in part, by a for-profit entity. A for-profit entity has ownership and control of a state or nonprofit entity, or its related special purpose entity if any of the following occurs:

- The for-profit entity is a member or shareholder of a state or nonprofit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the state or nonprofit entity or its special purpose entity.

- The for-profit entity employs or appoints individuals that together represent a majority of the state, nonprofit, or special purpose entity's board of trustees or directors, or a majority of that board's audit committee or compensation committee.

- If a state, nonprofit, or special purpose entity does not have a board of trustees or directors, or associated committees, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials unless the Department determines that the authority to approve such decisions is not likely to affect the integrity of those decisions.

A lender (directly or through an ELT or a special purpose entity) cannot be designated as an eligible not-for-profit holder if the lender is not the sole owner of the beneficial interest in, and the income from a loan. Subsection A.2.A of the Manual is being updated to include definitions of "beneficial owner" (including "beneficial ownership" and "owner of a beneficial interest") and "sole owner".

If a state or nonprofit entity designated as an eligible not-for-profit holder (directly or through an ELT) becomes aware of a change that may cause loss of this eligibility, the state or nonprofit entity must, within 10 business days of becoming aware of the change, do each of the following:

- Submit the details of the change to the Department.

- Cease special allowance billing at the eligible not-for-profit holder rate from the date of the change to the date the Department determines that the state or non-profit entity has not lost its eligibility due to the change.

The definition of "eligible not-for-profit holder" contained in Appendix G of the Manual has also been updated with related changes.

GUARANTOR COMMENTS:
None.

IMPLICATIONS:
Borrower:
None.

School:
None.

Lender/Servicer:
For an applicable lender, the definition of “eligible not-for-profit holder” has been revised.

Guarantor:
A guarantor may be required to revise its program review procedures.

U.S. Department of Education:
The Department may need to revise its program review procedures.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
October 31, 2008

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 9, 2009

PROPOSAL DISTRIBUTED TO:
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board

Comments Received From:
AES/PHEAA, ASA, CSLF, EAC, FAME, Great Lakes, HESC, IBR Workgroup, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLMA, SLND, SLSA, TG, UHEAA, USA Funds, and VSAC.

Responses to Comments:
All of the commenters supported this proposal as written. Other commenters recommended punctuation or wordsmithing changes that were considered without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

COMMENT:
One commenter suggested adding the appropriate regulatory cite under the subheading *Change in Not-for-Profit Holder Designation*. The commenter stated that the addition of the cite is helpful in knowing the source for this policy statement.

Reponse:
The Committee agrees.

Change:
The cite reference §682.302(f)(3)(xii) has been added under the subheading noted above.

sf/edited - kk