

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1226	Eligibility for Total and Permanent Disability Discharge When Loan Paid In Full by Involuntary Payment	13.8.G Total and Permanent Disability Clarifies that if a loan was paid in full through involuntary payment within 30 days of a guarantor's receipt of a total and permanent discharge application, the guarantor may assign the loan to the Department but the guarantor must notify the current Total and Permanent Disability servicer before assigning a loan with a zero balance.	Federal	Total and Permanent Disability applications received on or after October 1, 2010.
1227	Refund of Payments When Borrower Approved for Total and Permanent Disability Discharge during Conditional Discharge Period versus Post-Discharge Monitoring Period	13.8.G Total and Permanent Disability Clarifies that the Department will refund payments received after the date of the physician's certification. For an account in the three-year conditional discharge period, any payments to be refunded will be returned to the borrower at the end of that three-year period. Under the most recent final rule changes, any payments to be refunded will be returned to the borrower when the Department approves the discharge if all of the following criteria are met: <ul style="list-style-type: none"> • The discharge application was received by the holder on or after July 1, 2010. • The Department approved the borrower for a discharge. • The account is placed in a post-discharge monitoring period. 	Federal	Discharge Application: Total and Permanent Disability received by the loan holder on or after July 1, 2010.
1216	Teacher Loan Forgiveness Eligibility <i>This policy proposal originally appeared in Batch 170. Due to substantive changes made as the result of comments received, the Policy Committee redistributed this proposal in Batch 172 for a second review. Due to additional, substantive changes to the proposal, the Policy Committee is redistributing this proposal for a third review.</i>	13.9.A Teacher Loan Forgiveness Program Clarifies that, in the case of a borrower with an outstanding balance on a FFELP or FDLP loan on October 1, 1998, the loan's outstanding balance must be considered paid in full or discharged as of the date the borrower obtains a new loan after October 1, 1998, in order for the new loan to qualify for teacher loan forgiveness.	Federal	Teacher loan forgiveness applications or teacher for forgiveness forbearance requests received by a lender on or after May 14, 2010, for new borrowers after October 1, 1998, unless implemented earlier by the guarantor or lender.

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1228	Prior Overpayment and Prior Default Data Matches and Reinstatement of Title IV Funds	5.2.D NSLDS Data Match 5.2.E Department of Justice Data Match 5.2.F Department of Veterans Affairs Data Match Reorganizes Subsection 5.2.D by creating separate subsections for prior overpayment and prior default and retains information about documentation required to prove default resolution in the new subsection for prior default.	Organizational	None.

Batch 173 Transmittal

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: October 29, 2010

X	DRAFT	Comments Due	Nov 19
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: Eligibility for Total and Permanent Disability Discharge When Loan Paid In Full by Involuntary Payment

AFFECTED SECTIONS: 13.8.G Total and Permanent Disability

POLICY INFORMATION: 1226/Batch 173

EFFECTIVE DATE/TRIGGER EVENT: Total and Permanent Disability applications received on or after October 1, 2010.

BASIS:

Department of Education Electronic Announcement dated September 10, 2010.

CURRENT POLICY:

Current policy states that a borrower is not eligible for discharge of a loan that has already been paid in full when the loan holder receives the borrower's total and permanent disability loan discharge request.

REVISED POLICY:

Revised policy clarifies that if a loan was paid in full through involuntary payment within 30 days of a guarantor's receipt of a total and permanent discharge application, the guarantor may assign the loan to the Department of Education (the Department), but the guarantor must notify the current Total and Permanent Disability Servicer before assigning a loan with a zero (0.00) balance.

REASON FOR CHANGE:

This change is made to comply with the clarifications provided by the Department in the September 10, 2010, electronic announcement regarding guarantor assignment procedures.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.8.G, page 48, column 2, paragraph 1, as follows:

13.8.G Total and Permanent Disability

...

A borrower is not eligible for discharge of a loan that has already been paid in full when the loan holder receives the borrower's total and permanent disability loan discharge request.

Note: In some circumstances a guarantor may assign a loan paid in full by involuntary payment to the Department's Total and Permanent Disability Servicer and the Department may discharge some part of the loan balance.

PROPOSED LANGUAGE - COMMON BULLETIN:

Eligibility for Total and Permanent Disability Discharge When a Loan is Paid in Full by Involuntary Payment

The *Common Manual* has been updated to clarify a borrower's eligibility for discharge if a loan was paid in full by involuntary payment within 30 days of the guarantor's receipt of the discharge application.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

Disabled borrowers whose loans are paid in full via involuntary means may receive some loan discharge benefit.

School:
None.

Lender/Service:
None.

Guarantor:
The guarantor may need to review a defaulted borrower's payment history, assess the borrower's eligibility for Total and Permanent discharge based on revised criteria, and establish new procedures to contact the Total and Permanent Disability Servicer prior to assigning a paid in full loan that meets this new criterion.

U.S. Department of Education:
The Department's TPD Servicer must establish procedures to permit its review and the potential discharge of a loan that was involuntarily paid in full.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 29, 2010

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

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

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COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: October 29, 2010

X	DRAFT	Comments Due	Nov 19
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: Refund of Payments When Borrower Approved for Total and Permanent Disability Discharge during Conditional Discharge Period versus Post-Discharge Monitoring Period

AFFECTED SECTIONS: 13.8.G Total and Permanent Disability

POLICY INFORMATION: 1227/Batch 173

EFFECTIVE DATE/TRIGGER EVENT: Discharge Application: Total and Permanent Disability received by the loan holder on or after July 1, 2010.

BASIS:
§682.402(c)(3)(ii); §682.402(c)(4)(iii).

CURRENT POLICY:
Current policy provides for the refund of payments during the three-year conditional discharge period, but does not provide for the refund of payments during the new post-discharge monitoring period.

REVISED POLICY:
Revised policy clarifies that the Department will refund payments received on an account after the date of the physician's certification. For an account in the three-year conditional discharge period, any payments to be refunded will be returned to the borrower at the end of that three-year period. However, under the most recent final rule changes, any payments to be refunded will be returned to the borrower when the Department approves the discharge of the loan(s) if all of the following criteria are met:

- The discharge application was received by the holder on or after July 1, 2010.
- The Department approved the borrower for a discharge.
- The account is placed into a post-discharge monitoring period.

REASON FOR CHANGE:
This change is made to comply with the final regulations published by the Department in the *Federal Register* dated October 29, 2009.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.8.G, page 52, column 1, by adding a new bullet 7, as follows:

13.8.G Total and Permanent Disability

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- If the borrower satisfies the criteria for a total and permanent disability loan discharge during and at the end of the conditional discharge period, the Department discharges the balance of the loan at the end of the conditional discharge period. The Department then

returns to the person who made payments any that were received after the date that the physician completed and certified the borrower's loan discharge application.
[§682.402(c)(4)(iii)]

Revise Subsection 13.8.G, page 53, column 1, paragraph 2, by adding a new bullet 2, as follows:

...

- If the borrower satisfies the criteria for a total and permanent disability loan discharge, the Department discharges the balance of the loan and returns to the person who made payments any that were received after the date that the physician completed and certified the borrower's loan discharge application, before the loan entered the post-discharge monitoring period.
[§682.402(c)(3)(ii)]

Revise Subsection 13.8.G, page 54, column 2, paragraph 1, as follows:

~~If the borrower satisfies the criteria for a total and permanent disability loan discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the date that the physician completed and certified the borrower's loan discharge application are returned by the Department to the person who made the payments on the loan.~~
~~[§682.402(c)(4)(iii)]~~

PROPOSED LANGUAGE - COMMON BULLETIN:

Refund of Payments When Borrower Approved for Total and Permanent Disability Discharge

The *Common Manual* has been revised to clarify when payments received after the date that the physician completed and certified the borrower's loan discharge application will be refunded. For loans on which the loan discharge application is received prior to July 1, 2010, if the payments are received when the loan is in a conditional discharge period, those payments are refunded at the end of that period. However, if the loan discharge application is received on or after July 1, 2010, payments received after that date that the physician completed and certified the borrower's loan discharge application and during the post-discharge monitoring period, will be refunded when the Department determines that the borrower satisfies the criteria for total and permanent disability loan discharge.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower will receive refund of payments made after the date that the physician completed and certified the borrower's loan discharge application either at the end of the conditional discharge period or prior to the post-discharge monitoring period depending on when the lender received the borrower's loan discharge application.

School:

None.

Lender/Service:

A lender may need to review its procedures to ensure that it is reporting the correct date that the borrower's loan discharge application was received.

Guarantor:

The guarantor may need to review its procedures to ensure that the lender has clearly identified the date the lender received the borrower's loan discharge application.

U.S. Department of Education:

The Department may need to revise its procedures to ensure a timely refund of the borrower's payment(s) to base on its determination whether the borrower would be in a three-year conditional discharge period or a post-discharge monitoring period.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:
CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:
September 29, 2010

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

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

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COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: October 29, 2010

X	DRAFT	Comments Due	Nov 19
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: Teacher Loan Forgiveness Eligibility

AFFECTED SECTIONS: 13.9.A Teacher Loan Forgiveness Program

POLICY INFORMATION: 1216/Batch 173

EFFECTIVE DATE/TRIGGER EVENT: Teacher loan forgiveness applications or teacher loan forgiveness forbearance requests received by a lender on or after May 14, 2010, for new borrowers after October 1, 1998, unless implemented earlier by the guarantor or lender.

BASIS:
§682.216(a); Private guidance from Jon Utz of the Department dated May 14, 2010; Private guidance from Jon Utz dated February 6, 2008.

CURRENT POLICY:

Current policy states that to be eligible for teacher loan forgiveness, a borrower must have had no outstanding balance on a FFELP or FDLP loan on October 1, 1998, or had no outstanding balance on a FFELP or FDLP loan on the date he or she obtained a loan after October 1, 1998.

REVISED POLICY:

Revised policy clarifies that, in the case of a borrower with an outstanding balance on a FFELP or FDLP loan on October 1, 1998, the loan's outstanding balance must be considered paid in full or discharged as of the date the borrower obtains a new loan after October 1, 1998, in order for the new loan to qualify for teacher loan forgiveness. Revised policy includes an example to illustrate this concept.

REASON FOR CHANGE:

This change is necessary to provide clarity.

PROPOSED LANGUAGE - COMMON MANUAL:

Note: *This policy proposal was previously distributed in Batch 170.*

Revise Subsection 13.9.A of the *Common Manual*, page 58, column 2, paragraph 4, as follows:

Eligibility Criteria

To be eligible for loan forgiveness under this program, a borrower must meet all of the following criteria:

- The borrower must have had no outstanding balance on a FFELP or FDLP loan on October 1, 1998, or had no outstanding balance on a FFELP or FDLP loan on the date he or she obtained a loan after October 1, 1998. A borrower must pay in full or obtain a full loan discharge on a FFELP or FDLP loan(s) that has an outstanding balance as of October 1, 1998, in order to qualify for teacher loan forgiveness on a subsequent loan(s) that the borrower obtains after October 1, 1998. In addition, if a borrower obtains a FFELP or FDLP loan(s) after October 1, 1998, while an outstanding balance remains on a loan the borrower obtained on or before October 1, 1998, the borrower must pay in full or obtain a full loan discharge on all of the borrower's outstanding loans in order to qualify for teacher loan forgiveness on any subsequent loan.

For the purpose of the Teacher Loan Forgiveness Program, paid in full does not include paid in full through consolidation.

Example: A borrower received a Stafford loan on September 1, 1998, and a subsequent Stafford loan on August 26, 1999. The 1998 loan is not eligible for teacher loan forgiveness because the borrower obtained the loan on or before

October 1, 1998. The loan made on August 26, 1999, is not eligible for teacher loan forgiveness because the borrower had an outstanding balance on a FFELP or FDLP loan obtained on or before October 1, 1998, as of the date the borrower obtained the newer loan. In this example, the borrower paid both loans in full on June 3, 2002. The borrower obtained a subsequent Stafford loan on January 6, 2004. The 2004 Stafford loan is eligible for teacher loan forgiveness, provided all other eligibility criteria are met, because on the date that the borrower obtained the 2004 loan, the 1998 and 1999 loans were paid in full. If, however, the borrower paid in full the 1998 loan but did not pay in full the 1999 loan before the borrower obtained the subsequent loan on January 6, 2004, the 2004 loan would *not* be eligible for teacher loan forgiveness.

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PROPOSED LANGUAGE - COMMON BULLETIN:

Teacher Loan Forgiveness Eligibility

The *Common Manual* has been updated to clarify that, in the case of a borrower with an outstanding balance on a FFELP or FDLP loan on October 1, 1998, the borrower must pay the loan in full or obtain a full loan discharge in order to qualify for teacher loan forgiveness on a subsequent loan(s) that the borrower obtains after October 1, 1998. In addition, if a borrower obtains a FFELP or FDLP loan(s) after October 1, 1998, while an outstanding balance remains on a loan the borrower obtained on or before October 1, 1998, the borrower must pay in full or obtain a full loan discharge on *all* of the borrower's outstanding loans in order to qualify for teacher loan forgiveness on any subsequent loan(s). For this purpose, paid in full does not include paid in full through consolidation. To illustrate the concept, an example has been added to the Manual.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

A borrower who applies for or inquiries about teacher loan forgiveness should receive consistent treatment from lender/servicers, guarantors, and the Department.

School:

A school may find it necessary to modify its borrower counseling information.

Lender/Servicer:

A lender will have more detailed information on which to make teacher loan forgiveness eligibility determinations and provide accurate counseling to a borrower. A lender may be required to modify its internal procedures.

Guarantor:

A guarantor will have more detailed information on which to make teacher loan forgiveness eligibility determinations and provide accurate counseling to a borrower. A guarantor may be required to modify its internal procedures.

U.S. Department of Education:

None.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

Iowa Student Loan

DATE SUBMITTED TO CM POLICY COMMITTEE:

July 2, 2010

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others

The following comments were received as a result of this policy proposal's distribution in Batch 171.

Comments Received from:

AES/PHEAA, ASA, EdFund, FAME, Great Lakes, HESAA (NJ), HESC (NY), NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLISA, TG, USA Funds, and VSAC.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended only 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 the original, draft policy proposal was insufficiently clear as to whether both of the earlier loans, or only the pre-October 1, 1998, must be considered discharged or paid in full for the January 6, 2004 to be considered dischargeable. This commenter requested clarification about what happens if only the pre-October 1, 1998, loan is paid in full but the August 26, 1999, remains outstanding at the time the borrower obtains a new, subsequent loan.

Two other commenters requested that the proposed policy be modified to specifically state that if the borrower had not paid in full the 1999 loan at the time the 2004 loan was made, the 2004 loan would be ineligible for teacher loan forgiveness. The latter two commenters provided private guidance from the Department, dated May 14, 2010, to support this clarification, and provided suggested text to accomplish this clarification:

- . . . In the case of a borrower with an outstanding balance on a FFELP or FDLP loan on October 1, 1998, or on a FFELP or FDLP loan made after October 1, 1998, while a FFELP or FDLP loan made on or before October 1, 1998, was still outstanding, the loan's outstanding balance must be considered paid in full, other than through consolidation, or discharged ~~as of~~ prior to the date the borrower obtains a new loan after October 1, 1998, in order for the new loan to qualify for teacher loan forgiveness.

Three commenters requested a clarification of the proposed policy to state that "paid in full" does not include payment by consolidation. In other words, a borrower is not eligible for teacher loan forgiveness on the portion of a consolidation loan made after October 1, 1998, that repays a loan(s) first disbursed on or before October 1, 1998. Two of these commenters referred the Committee to the Department's private guidance, which also includes this clarification. All three commenters suggested different ways to accomplish this clarification in the proposed policy text.

Response:

The Committee agrees with all of the commenters noted above that it is prudent to align the proposed policy text with the interpretation of the "new borrower" definition offered by the Department's private guidance and the clarification regarding the meaning of "paid in full" as it relates to consolidation. If the Committee follows established precedent for advancing proposed policy based on private guidance from the Department, the effective date of these changes would align with the retroactive date of the private guidance, May 14, 2010. However, the Committee is aware that a significant segment of the community did not subscribe to all of the interpretations included in this guidance. Lenders, servicers, and guarantors that were previously unaware of the Department's interpretations should not be adversely affected by its retroactive enforcement. Similarly, borrowers who were previously granted a teacher loan forgiveness benefit based on a good faith interpretation that differed from what is described in this private guidance should not be harmed.

In the process of reviewing modifications suggested by the commenters, the Committee notes that the example's reference to "pre-October 1, 1998" is not entirely accurate. According to the Department's comment response to the NCHELP Program Operations Committee Forms Workgroup, Teacher Loan

Forgiveness Application subgroup, “. . . regulations at 34 CFR 682.216(a) and 34 CFR 685.217(a) state that loan forgiveness is available only to a borrower who has no outstanding balance on a FFEL or Direct Loan program loan ‘**on** [emphasis added] October 1, 1998 or who has no outstanding balance on the date he or she obtains a loan **after** [emphasis added] October 1, 1998’. . . Under the law and regulations, a borrower who took out a loan on October 1, 1998, does not qualify for loan forgiveness under this program. These provisions reflect the statutory definition of ‘new borrower’ in Sec. 103 of the Higher Education Act of 1965, as amended (the HEA).”

Change:

The Committee has adopted the Department's private guidance as an additional Basis for this proposal. However, the Committee has reclassified the policy proposal type from “Correction” to “Guarantor,” and established a prospective triggering event that clarifies the ineligibility of a borrower with a loan made on October 1, 1998, as follows:

Teacher loan forgiveness applications or forbearance requests received by a lender on or after July 1, 2004, January 1, 2011, ~~from~~ for new borrowers on or after October 1, 1998, unless implemented earlier by the guarantor or lender.

The proposed policy text has been modified to capture the intent of the commenters’ specific suggestions for change but reduce complexity, as follows:

- The borrower must have had no outstanding balance on a FFELP or FDLP loan on October 1, 1998, or had no outstanding balance on a FFELP or FDLP loan on the date he or she obtained a loan after October 1, 1998. In the case of a borrower with an outstanding balance on a FFELP or FDLP loan on October 1, 1998, the loan’s outstanding balance must be considered paid in full or discharged prior to the date the borrower obtains a new loan after October 1, 1998. A borrower must pay in full or obtain a full loan discharge on a FFELP or FDLP loan(s) that has an outstanding balance as of October 1, 1998, in order to qualify for teacher loan forgiveness on a subsequent loan(s) that the borrower obtains after October 1, 1998. In addition, if a borrower obtains a FFELP or FDLP loan(s) after October 1, 1998, while an outstanding balance remains on a loan the borrower obtained on or before October 1, 1998, the borrower must pay in full or obtain a full loan discharge on all of the borrower’s outstanding loans in order to qualify for teacher loan forgiveness on any subsequent loan.

For this purpose, paid in full does not include paid in full through consolidation.

Example: A borrower received a Stafford loan on September 1, 1998, and a subsequent Stafford loan on August 26, 1999. The loan made on August 26, 1999, is not eligible for teacher loan forgiveness because the borrower had an outstanding balance on a FFELP or FDLP loan obtained on or before pre-October 1, 1998, FFELP or FDLP loan as of the date the borrower obtained the newer loan. In this example, the borrower paid both loans in full on June 3, 2002. The borrower obtained a subsequent Stafford loan on January 6, 2004. The 2004 Stafford loan is eligible for teacher loan forgiveness, provided all other eligibility criteria are met, because on the date that the borrower obtained this the 2004 loan, the 1998 and 1999 loans made on September 1, 1998, was were paid in full. If, however, the borrower paid in full the 1998 loan but did not pay in full the 1999 loan before the borrower obtained the subsequent loan on January 6, 2004, the 2004 loan would not be eligible for teacher loan forgiveness.

Corresponding adjustments have been made to the Revised Policy and Common Bulletin.

COMMENT:

One commenter questioned whether the new, last sentence of bullet one under the subheading “Eligibility Criteria” was saying the same thing as existing text in sentence one of the same bullet that reads, “. . . had no outstanding balance on a FFELP or FDLP loan on the date he or she obtained a loan after October 1, 1998.” The commenter opined that if the Committee considered the new language more clear, it replace, not supplement, existing text. The commenter also indicated support for the example.

Response:

The Committee thanks the commenter for supporting the example.

The existing text of bullet 1 is Departmentally-approved language used to describe the “new borrower”

definition for the purpose of teacher loan forgiveness eligibility on the Teacher Loan Forgiveness Application. The new, proposed language endeavors to further clarify how this definition is practically applied to a borrower with an outstanding balance on a loan as of October 1, 1998, who obtains subsequent loans after October 1, 1998. For these reasons, the Committee believes that the existing first sentence of the bullet must be retained, and that the new language is not purely repetitive.

Change:

None.

COMMENT:

One commenter requested that the Example explain why the loan first disbursed on September 1, 1998, is not eligible for teacher loan forgiveness.

Response:

The Committee agrees.

Change:

The Example has been further modified to read as follows:

Example: A borrower received a Stafford loan on September 1, 1998, and a subsequent Stafford loan on August 26, 1999. The 1998 loan is not eligible for teacher loan forgiveness because the borrower obtained the loan on or before October 1, 1998. The loan made on August 26, 1999, is not eligible for teacher loan forgiveness because the borrower had an outstanding balance on a FFELP or FDLP loan obtained on or before October 1, 1998, as of the date the borrower obtained the newer loan. . .

COMMENT:

One commenter recommended that the Committee replace all references to FDLP throughout the Manual with the term "Direct Loans," as this term is more commonly used.

Response:

The Committee agrees that the term "Direct Loans" is more commonly used than the acronym FDLP. The Committee will take this recommendation under advisement and consult with its Editing Chair to evaluate the scope and impact of this suggestion.

Change:

None.

Due to significant and substantive changes the Committee made to this policy proposal in response to comments received from the community, the Committee will redistribute this policy proposal in Batch 172 for additional community review and comment.

The following comments were received as a result of this policy proposal's distribution in Batch 172.

Comments Received from:

ACS, AES/PHEAA, Great Lakes, MGA, NASFAA, NCHELP, NSLP, OGSLP, PPSV, SCSLC, SLND, SLSA, TG, USA Funds, VSAC, and XL Servicing.

Responses to Comments

Many commenters supported this proposal as written. Other commenters recommended only wordsmithing changes or typographical corrections 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:

Three commenters disagreed with the proposal's effective date/trigger event:

In summary, the commenters stated that it is not appropriate to set a future effective date for compliance with a longstanding and generally well understood federal policy, specifically, the operational definition of "new borrower." The commenters believed that the current definition of "new borrower" has been effective since the 1998 Reauthorization and that the examples provided in the

revised policy proposal do not constitute a change in policy.

One of these three commenters asserted that guarantors may not change the effective date of federal regulations and requirements simply because a segment of the community was not complying with federal requirements, and that suggesting these entities may take even more time to comply may result in additional audit findings and liabilities.

Another of these three commenters also asserted that this is not a policy change, as evidenced by the lack of implications statement for participants, but rather a clarification of an existing *Common Manual* policy. This commenter opined that by setting a future date for compliance, this proposal says, in effect, that if a program participant is improperly providing a federal taxpayer-funded benefit, that the *Common Manual* endorses their continuing to do so until 1/1/2011. The commenter stated that Congress and the Department granted FFELP guarantors the ability to establish and implement policy that is inclusive of or more restrictive than federal policy. Guarantors do not have the ability to disregard federal policy so long as a consensus among guarantors has been reached. The idea that the existing guidance is ambiguous and subject to legitimate differences in interpretation between the Department and the FFELP community does not seem credible given all the other contexts in which the same “new borrower” language is used, particularly when compliance with that language in other contexts doesn’t appear to pose similar compliance challenges. The commenter stated that the teacher loan forgiveness regulations clarify that determining teacher loan forgiveness eligibility is a guarantor responsibility, and guarantors are liable for teacher loan forgiveness processing decisions irrespective of whether or not they employ a servicer to perform their teacher loan forgiveness processing for them. The commenter stated that the compliance impact of this policy applies to guarantors alone, and that with this policy, the guarantors seem to be using the *Common Manual* to regulate themselves. However, it has been a long-standing policy of the *Common Manual* guarantors that the Manual does not contain policies regulating guarantors. This commenter also specifically requested that the effective date of this proposal be changed to make it retroactive to the effective date of the initial policy that it clarifies. This commenter also requested that the Committee add “Teacher Loan Forgiveness” in front of “or forbearance requests” so readers do not assume that this guidance applies to any other type of forbearance request.

A fourth commenter specifically commented in agreement with the effective date/trigger event in the proposal. The commenter stated that, based on extensive research, the commenter believes there is enough ambiguity and inconsistency in Congress’ and the Department’s characterizations of the term “new borrower” to warrant a prospective effective date/trigger event. This will allow lenders and servicers time to update their policies and systems to accommodate this clarification of the teacher loan forgiveness, in the event they were operating on a different understanding. The commenter opined that making the effective date/trigger event retroactive could result in unintended negative consequences for those lenders/servicers.

All four of these commenters expressed support for changing the proposal type from “guarantor” to “federal,” since all of the suggested changes and clarifications are based on the HEA, federal regulations, and federal guidance. One of the four commenters suggested that, if not a “federal” proposal, the Committee should consider instituting a new type of proposal—a “clarification” proposal.

Response:

The Committee is aware that a significant number of industry participants were not aware of the “new borrower” interpretation provided in the Department’s private guidance dated May 10, 2010. For this segment of the community, applying the “new borrower” concept described in this private guidance constitutes a change. While guarantors may be ultimately responsible for teacher loan forgiveness eligibility determinations, lender/servicers assume responsibility for making preliminary eligibility determinations so as to make appropriate referrals to guarantors and counsel borrowers accurately. Lender/servicers rely upon the Manual text for this purpose. Thus, this policy proposal was requested by such a lender/servicer.

The Committee believes it is important to achieve a common application of the “new borrower” definition for teacher loan forgiveness eligibility among all participants so that borrowers are treated equitably. Therefore, the Committee agrees to change the proposal type from “guarantor” to “federal.” The Committee also agrees to relinquish the future effective date/trigger event. In keeping with long-standing policy proposal precedent, the Committee proposes to establish a retroactive effective date/trigger event that aligns with the date of the federal guidance that is the proposal’s Basis.

The absence of implication statements for participants in the “guarantor” iteration of this proposal was an error of omission and not intended to imply that implications were nonexistent.

Change:

The effective date/trigger event has been modified as follows:

Teacher loan forgiveness applications or teacher loan forgiveness forbearance requests received by a lender on or after ~~January 1, 2011~~, May 14, 2010, for new borrowers after October 1, 1998, unless implemented earlier by the guarantor or lender.

The policy proposal type has been changed from “guarantor” to “federal” and implications statements have been added.

COMMENT:

One commenter requested that the Committee change references to “on or after” or “after” (they are presented differently in different parts of the proposal) to indicate that a borrower who had no loan balance on 10/1/1998 but borrowed his/her first loan on 10/1/1998 is eligible for teacher loan forgiveness. This commenter opined that this interpretation is consistent with the Higher Education Act (HEA) and the commenter provided a supporting statutory citation. The commenter stated that the Department’s comments to the forms workgroup that cite the generic definition of “new borrower” in HEA §103 do not outweigh clear congressional intent as expressed in §428J(b). Congress included specific trigger language and a specific effective date in the statute that created the teacher loan forgiveness program in the 1998 reauthorization of the HEA.

The commenter requested that, if the Committee elects to retain this language, the policy proposal should cite the guidance to the workgroup under the Basis statement, since the Jon Utz letter did not speak to this issue and it is listed as the sole basis for the proposal.

Response:

The Committee acknowledges that statutory and regulatory language providing an effective date for teacher loan forgiveness eligibility do not agree. However, the Committee believes that this disparity has been vetted through the NCHELP Program Operations Committee forms workgroup and is advised that the Department is firm in its interpretation that a new borrower for teacher loan forgiveness is one who obtains a new loan *after* October 1, 1998.

Change:

The Basis has been modified to include private guidance provided by Jon Utz of the Department to the NCHELP Program Operations Committee Forms Workgroup, Teacher Loan Forgiveness Application subgroup, dated February 6, 2008.

Note: Because of additional, substantive changes made to this proposal as the result of comments received in Batch 172, the Committee will redistribute the proposal for a third community comment period in Batch 173.

jcs/edited-ch

COMMON MANUAL - ORGANIZATIONAL POLICY PROPOSAL

Date: October 29, 2010

X	DRAFT	Comments Due	Nov 19
	FINAL	Consider at GB meeting	
	APPROVED	with changes/no changes	

SUBJECT: Prior Overpayment and Prior Default Data Matches and Reinstatement of Title IV Funds

AFFECTED SECTIONS: 5.2.D NSLDS Data Match
5.2.E Department of Justice Data Match
5.2.F Department of Veterans Affairs Data Match

POLICY INFORMATION: 1228/Batch 173

EFFECTIVE DATE/TRIGGER EVENT: None.

BASIS:
None.

CURRENT POLICY:

Current policy in Subsection 5.2.D, NSLDS Data Match, contains subtitles for information about prior overpayment, prior default, reinstatement of Title IV eligibility after default, and documentation required to prove default resolution.

REVISED POLICY:

Revised policy reorganizes Subsection 5.2.D by creating separate subsections for prior overpayment and prior default and retains information about documentation required to prove default resolution in the new subsection for prior default. Revised policy moves information about reinstatement of Title IV funds to a newly created section and rennumbers subsequent sections and subsections accordingly.

REASON FOR CHANGE:

Creating separate subsections for prior overpayment and prior default and creating a new section for reinstatement of Title IV funds will allow these topics to appear in the table of contents which will make the information easier for a reader to find. These changes also separate the topics into more logical groupings.

PROPOSED LANGUAGE - COMMON MANUAL:

5.2.D

NSLDS Data Match-Prior Overpayment Data Match

~~Another data match that is conducted w~~When a student submits a Free Application for Federal Student Aid (FAFSA), the Department will conduct a data match is with the National Student Loan Data System (NSLDS). The Central Processing System (CPS) matches the student's information against the NSLDS to see if the student is in default on a Title IV loan, owes a Title IV overpayment, or has exceeded applicable Stafford loan limits. The CPS matches the student's FAFSA information with his or her financial aid history in the NSLDS database. The school must resolve any conflict between the NSLDS and other information prior to delivering Title IV aid. For more information on the NSLDS, see the 09-10 FSA Handbook, Volume 1, Chapter 3 and the NSLDS Reference provided on the Information for Financial Aid Professionals (IFAP) Website.

Prior Overpayment

A borrower is ineligible for a FFELP loan if he or she is liable for an overpayment to any Title IV program. . . .

5.2.E

Prior Default Data Match

When a student submits a Free Application for Federal Student Aid (FAFSA), the Department will conduct a data match with NSLDS. CPS matches the student's information against the

NSLDS to see if the student is in default on a Title IV loan. The CPS matches the student's FAFSA information with his or her financial aid history in the NSLDS database. The school must resolve any conflict between the NSLDS and other information prior to delivering Title IV aid. For more information on the NSLDS, see the 09-10 FSA Handbook, Volume 1, Chapter 3 and the NSLDS Reference provided on the Information for Financial Aid Professionals (IFAP) Website.

Prior Default

An individual who is in default on any Title IV loan is ineligible to receive any title IV aid, including the benefit of a parent PLUS loan, until the default is resolved in one of the ways described below. . . .

. . .

Some guarantors have additional eligibility requirements and restrictions on Consolidation loans. These requirements are noted in Appendix C.

Reinstatement of Title IV Eligibility after Default

~~A borrower with one or more defaulted Title IV loans, or defaulted Title IV loans for which a judgment has been obtained, may have his or her eligibility for Title IV aid reinstated by requesting reinstatement and making satisfactory repayment arrangements, and fulfilling those arrangements with the holder of each defaulted loan or with the holder of each defaulted loan for which a judgment has been obtained.~~

~~[\$668.35(a) and (b); §682.401(b)(4)]~~

~~A borrower who receives loan funds for which he or she is ineligible due solely to his or her error may not have Title IV eligibility reinstated until the ineligible funds are repaid in full.~~

~~[\$682.412]~~

~~To have eligibility for Title IV aid reinstated, a borrower must make six consecutive full monthly payments to the appropriate holder for each defaulted loan. These payments must be made on time (within 15 days of the payment due date), voluntarily (directly by the borrower, regardless of whether there is a judgment against the borrower), and must be reasonable and affordable. Any court-ordered payments or involuntary payments obtained by state offsets or federal Treasury offsets, wage garnishment, or income or asset execution will not count toward the six payments required for reinstatement. A lump sum prepayment of future installments does not satisfy the requirement for six consecutive monthly payments and will not reinstate a borrower's Title IV eligibility.~~

~~[\$682.200(b)]~~

~~A borrower may reestablish Title IV eligibility only once. If a borrower has reestablished his or her eligibility and then fails to maintain satisfactory payment arrangements on that defaulted loan, or a defaulted loan for which a judgment has been obtained, the borrower may not reestablish his or her eligibility again under these provisions. An opportunity for reinstatement may be made available to a borrower regardless of whether any of the borrower's defaulted loans have been repurchased by an eligible lender.~~

~~[\$668.35(c); §682.200(b)]~~

~~After a borrower's Title IV eligibility is reinstated, the borrower must continue to maintain satisfactory payment arrangements on each loan that defaulted in order to continue to be eligible for additional Title IV funds. A borrower who makes satisfactory repayment arrangements on a defaulted loan will regain loan eligibility for the academic year in which the borrower satisfies the payment requirements to regain Title IV eligibility. Accordingly, the financial aid administrator may certify a loan for the entire academic year, as long as the student is otherwise eligible.~~

~~[\$682.200(b)]~~

~~To determine whether a borrower qualifies for reinstatement of Title IV eligibility, the guarantor will review the most recent 6-month period. Each of the six required payments must be received within 15 days of the due dates for the 6 months immediately preceding the date the~~

guarantor receives the borrower's new loan request or request for reinstatement.
[§682.200(b)]

See Section H.4 for information about a statutory or regulatory waiver authorized by the HEROES Act that may impact these requirements.

Documentation Required to Prove Default Resolution

If the school learns that the borrower has defaulted on a prior loan, the school must obtain, before awarding additional Title IV aid, documentation from the NSLDS, the borrower, or the holder of the loan, that the borrower has made the required payments on any defaulted loan(s). . . .

5.2.EF

Department of Justice Data Match

. . .

5.2.FG

Department of Veterans Affairs Data Match

. . .

5.3

Reinstatement of Title IV Eligibility after Default

A borrower with one or more defaulted Title IV loans, or defaulted Title IV loans for which a judgment has been obtained, may have his or her eligibility for Title IV aid reinstated by requesting reinstatement and making satisfactory repayment arrangements, and fulfilling those arrangements with the holder of each defaulted loan or with the holder of each defaulted loan for which a judgment has been obtained.
[§668.35(a) and (b); §682.401(b)(4)]

A borrower who receives loan funds for which he or she is ineligible due solely to his or her error may not have Title IV eligibility reinstated until the ineligible funds are repaid in full.
[§682.412]

To have eligibility for Title IV aid reinstated, a borrower must make six consecutive full monthly payments to the appropriate holder for each defaulted loan. These payments must be made on time (within 15 days of the payment due date), voluntarily (directly by the borrower, regardless of whether there is a judgment against the borrower), and must be reasonable and affordable. Any court-ordered payments or involuntary payments obtained by state offsets or federal Treasury offsets, wage garnishment, or income or asset execution will not count toward the six payments required for reinstatement. A lump sum prepayment of future installments does not satisfy the requirement for six consecutive monthly payments and will not reinstate a borrower's Title IV eligibility.
[§682.200(b)]

A borrower may reestablish Title IV eligibility only once. If a borrower has reestablished his or her eligibility and then fails to maintain satisfactory payment arrangements on that defaulted loan, or a defaulted loan for which a judgment has been obtained, the borrower may not reestablish his or her eligibility again under these provisions. An opportunity for reinstatement may be made available to a borrower regardless of whether any of the borrower's defaulted loans have been repurchased by an eligible lender.
[§668.35(c); §682.200(b)]

After a borrower's Title IV eligibility is reinstated, the borrower must continue to maintain satisfactory payment arrangements on each loan that defaulted in order to continue to be eligible for additional Title IV funds. A borrower who makes satisfactory repayment arrangements on a defaulted loan will regain loan eligibility for the academic year in which the borrower satisfies the payment requirements to regain Title IV eligibility. Accordingly, the

financial aid administrator may certify a loan for the entire academic year, as long as the student is otherwise eligible.

[\$682.200(b)]

To determine whether a borrower qualifies for reinstatement of Title IV eligibility, the guarantor will review the most recent 6-month period. Each of the six required payments must be received within 15 days of the due dates for the 6 months immediately preceding the date the guarantor receives the borrower's new loan request or request for reinstatement.

[\$682.200(b)]

See Section H.4 for information about a statutory or regulatory waiver authorized by the HEROES Act that may impact these requirements.

5.34

Prior Loan Written Off

...

Revise the remaining sections and subsections by renumbering them as applicable.

PROPOSED LANGUAGE - COMMON BULLETIN:

Prior Overpayment and Prior Default Data Matches and Reinstatement of Title IV Funds

The *Common Manual* has been revised by reorganizing Subsection 5.2.D, NSLDS Data Match, by creating separate subsections for prior overpayment and prior default information and creating a new section for reinstatement of Title IV funds. This change allows these topics to appear in the table of contents making it easier for the reader to find. As currently constructed, the title for Subsection 5.2.D, NSLDS Data Match doesn't tell the reader what information the NSLDS data match performs. These changes also separate the topics into more logical groupings.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower:

None.

School:

None.

Lender/Service:

None.

Guarantor:

None.

U.S. Department of Education:

None.

To be completed by the Policy Committee

POLICY CHANGE PROPOSED BY:

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

July 1, 2009

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

PROPOSAL DISTRIBUTED TO:

CM Policy Committee

CM Guarantor Designees
Interested Industry Groups and Others

ma/edited-chh