

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: ED

Issue: FFEL - Loan Limits

Regulatory Cite: §682.204

Summary of Change: The proposed change would clarify: (1) with one exception, a borrower who is enrolled in a one-year program of study may not borrow more than the amounts allowed under the first-year undergraduate annual loan limits, and (2) with one exception, a borrower who is enrolled in a two-year program of study may not borrow more than the amounts allowed under the second-year undergraduate loan limits.

Change:

§682.204 Maximum loan amounts.

(a) Stafford Loan Program annual limits. (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$2,625 for a program of study of at least a full academic year in length.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$2,625 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,625 as the lesser of the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$3,500 for a program whose length is at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$3,500 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the

student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$5,500 for a program whose length is at least an academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,500 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (a)(3) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Federal Direct Stafford/Ford Loan Program, may not exceed \$8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or certificate, the total amount the student may borrow for any academic year of

study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

(i) \$2,625 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,500 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed \$5,500.

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section-

(i) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully

completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (a)(2) of this section.

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(d) Additional eligibility under the Unsubsidized Stafford Loan Program. In addition to any amount borrowed under paragraphs (a) and (c) of this section, an independent undergraduate student, graduate or professional student, and certain dependent undergraduate students under the conditions specified in Sec. 682.201(a)(3) may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program in combination with the Federal Direct Unsubsidized Stafford/Ford Loan Program, in addition to the amounts allowed under paragraphs (b) and (c) of this section for any academic year of study--

(1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, may not exceed the following:

(i) \$4,000 for a program of study of at least a full academic year.

(ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$4,000 as the--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}}$$

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$4,000 as the lesser of--

$$\frac{\text{Number of semester, trimester, quarter, or clock hours enrolled}}{\text{Number of semester, trimester, quarter, or clock hours in academic year}} \text{ or } \frac{\text{Number of weeks enrolled}}{\text{Number of weeks in academic year}}$$

(2) In the case of a student who has completed the first year of a program of undergraduate education but has not successfully completed the second year of a program of undergraduate education may not exceed the following:

(i) \$4,000 for a program of study of at least a full academic year in length.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$4,000 as the--

Number of semester, trimester, quarter, or clock hours enrolled
Number of semester, trimester, quarter, or clock hours in academic year

(3) In the case of a student who has successfully completed the second year of a program of undergraduate education, but has not completed the remainder of the program, may not exceed the following:

(i) \$5,000 for a program of study of at least a full academic year.

(ii) For a program of study with less than a full academic year remaining, an amount that is the same ratio to \$5,000 as the--

Number of semester, trimester, quarter, or clock hours enrolled
Number of semester, trimester, quarter, or clock hours in academic year

(4) In the case of a student who has an associate or baccalaureate degree that is required for admission into a program and who is not a graduate or professional student, the total amount the student may borrow for any academic year of study may not exceed the amounts in paragraph (d)(3) of this section.

(5) In the case of a graduate or professional student, may not exceed \$10,000.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate may not exceed the following:

(i) \$4,000 for coursework necessary for enrollment in an undergraduate degree or certificate program.

(ii) \$5,000 for coursework necessary for enrollment in a graduate or professional degree or certificate program for a student who has obtained a baccalaureate degree.

(iii) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in a program necessary for a professional credential or a certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, \$5,000.

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section-

(A) An undergraduate student who is enrolled in a program that is two academic years in length and who has not successfully completed the first year of the program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(B) An undergraduate student who is enrolled in a program that is two academic years in length and who has successfully

completed the first year of the program may not borrow an amount for any academic year of study in the remaining portion of the program that exceeds the amounts in paragraph (d)(2) of this section.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #33

Issue: FFEL - Anticipated Graduation Date

Regulatory Cite: §682.209(a)(2)

Summary of Change: The proposed change would clarify that if a lender has already disclosed repayment terms to the borrower, it is not required to change the borrower's anticipated graduation date or last date of attendance if a new date reported by the school is in the same month and year as the most recent date reported by the school. This proposed change would codify, in part, existing Departmental policy.

Change:

§682.209(a) Conversion of a loan to repayment status.

* * * * *

(2)

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(vi) The lender must change the borrower's anticipated graduation date, or withdrawal date as determined in accordance with 682.605, based on new information from the school, unless the lender has already disclosed repayment terms to the borrower, and the new date is within the same month and year as the most recent date reported by the school.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #26

Issue: FFEL - Repayment - "Three Times Rule"

Regulatory Cite: §682.209(a)(7)(ii)

Summary of Change: The proposed change would give lenders and borrowers more flexibility in establishing repayment schedules by allowing an installment payment to be up to five times greater than the smallest scheduled installment payment.

Change:

§682.209 Repayment of a loan.

(a) Conversion of a loan to repayment status.

* * * * *

(7) * * * * *

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than ~~three~~five times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No
Origin: 1/7/02 Suggestion
Issue: FFEL - Unemployment Deferment
Regulatory Cite: 682.210(h)

Summary of Change: Simplifies the unemployment deferment rules, and clarifies the requirement that the borrower register with an employment agency if one exists within 50 miles of the borrower's address.

Change:

§682.210 Deferment.

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(h) Unemployment deferment.

(1) A borrower qualifies for an unemployment deferment by providing evidence of eligibility for unemployment benefits to the lender.

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a ~~written~~ certification that --

~~_(i) Describing the borrower's diligent search for full-time employment during the preceding 6 months, except that a borrower requesting an initial period of unemployment deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. The initial period of unemployment deferment can be granted for a period of unemployment beginning up to 6 months before the date the holder~~

~~receives the borrower's request and documentation for the deferment, and can be granted for up to 6 months after that date. For a continuation of an unemployment deferment following the initial period, the borrower's written certification must include information showing that the borrower made at least six diligent attempts to secure employment to support the prior 6-month period covered by the certification. This information could be the name of the employer contacted and the employer's address and telephone number, or other information acceptable to the holder showing that the borrower made six diligent attempts to obtain full-time employment;~~

~~(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and~~

~~(iii) Affirming that tThe borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, ~~specifying the agency's name and address and date of registration.~~; and~~

~~(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts to secure full-time employment.~~

(3) For purposes of obtaining an unemployment deferment under paragraph (h)(2) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

~~_(iv) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(2)(i) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, if it shows the same number of contacts and contains the same information the borrower would be required to provide under this section.~~

(iv) A borrower requesting an initial period of unemployment deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. The initial period of unemployment deferment can be granted for a period of unemployment beginning up to 6 months

before the date the holder receives the borrower's request, and
can be granted for up to 6 months after that date.

(4) A lender may not grant a deferment based on a single certification under paragraph (h)(1) or (h)(2) of this section beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the ~~written~~-certification under paragraph (h)(2) of this section.

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: 1/7/02 suggestion

Issue: FFEL - Forbearance Simplification

Regulatory Cite: §682.211(b)-(e)

Summary of Change: The proposed change would, to the extent permitted by law, eliminate the requirement that a borrower or endorser agree in writing to the terms of the forbearance. It also adds a requirement that, in most cases, the lender must promptly send a notice to the borrower or endorser confirming the terms of the forbearance.

Change:

§682.211 Forbearance.

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(b) A lender may grant forbearance if_

(1) ~~the~~ lender and the borrower or endorser agree ~~in~~ writing to the terms of the forbearance, ~~and the lender promptly sends a notice to the borrower or endorser confirming the terms of the forbearance;~~

(2) ~~In~~ the case of a forbearance granted under paragraphs (h)(1), (h)(2)(i), or (h)(2)(ii)(A) of this section, the lender and the borrower or endorser agree in writing to the terms of the forbearance; or

(3) ~~in~~ the case of forbearance of interest during a period of deferment, ~~if~~ the lender informs the borrower at the

time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree ~~in writing~~ to the terms of the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The terms of the forbearance agreement in this situation must include a new signed agreement to repay the debt.

(e) Except in the case of forbearance of interest payments during a deferment period if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser ~~by telephone or send a written notice to the borrower or endorser~~ at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No
Origin: 1/7/02 Suggestion
Issue: FFEL - Administrative Forbearances
Regulatory Cite: §682.211(f)

Summary of Change: The proposed change would expand a lender's authority to grant administrative forbearances for a local or national emergency, or a military mobilization.

Change:

§682.211 Forbearance.

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(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due -

(1) * * * * *

(11) For a period not to exceed 3 months ~~for a borrower who is affected by a natural disaster.~~ when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #52

Issue: FFEL - Disability Discharge on Consolidation Loans

Regulatory Cite: §682.402(a)-(b)

Summary of Change: The proposed change would permit a proportional discharge of a joint Consolidation loan if one of the borrowers would qualify for a discharge. It would also permit a proportional discharge if a PLUS loan had been included in the Consolidation loan and the student for whom the PLUS loan was obtained dies.

Change:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) General. (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple-, the
(i) The amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance

of the Consolidation loan attributable to any of that borrower's loans that would have been eligible for discharge.

~~(ii) If one of the borrowers has his or her loan obligation stayed by a bankruptcy filing or discharged in bankruptcy, the other borrower may receive a discharge under §682.402(f) in accordance with the provisions of the Bankruptcy Code.~~

(3) If a PLUS loan was obtained by two parents as co-makers, ~~or a Consolidation loan was obtained by a married couple,~~ and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(34) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(45) For purposes of this section --

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative

tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(45) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) Death.

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(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #57

Issue: FFEL - Reinsurance

Regulatory Cite: 682.412

Summary of Change: The requested change would provide for 100 percent reinsurance for ineligible borrower claims.

Change: None.

The Department believes that the Higher Education Act does not support a change in the reinsurance percentage. The HEA provides that a guaranty agency receives 95 percent reinsurance on all default claims except for loans made under a lender of last resort program and loans transferred from a closing guaranty agency to another agency. See §428(c)(1) of the HEA. These limitations are also in the Department's regulations at 34 CFR §682.404(a). The regulations in 34 C.F.R. §682.412(e), which establishes the rules for "ineligible borrower" claims, specifically tell the lender to treat the loan as in default and to file a default claim. Thus, these claims are subject to the 95 percent reinsurance level. It has been proposed to change the regulations to treat these claims as "special claims" and to provide 100 percent reinsurance to the guaranty agency. The HEA does not authorize the creation of a "special claim" category; the only claim categories are default, death, disability, closed school, false certification and unpaid refund. As the regulations indicate, the only category that these claims can fit in is "default" and the claims are subject to the 95 percent rate.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FFEL Community

Issue: FFEL - Promissory Notes

Regulatory Cite: 682.414(a)(5)

Summary of Change: Allow for the destruction of paper promissory notes when the paper note has been electronically imaged, provided that adequate measures are taken in order to ensure that the imaged notes accurately reflect the information in the document, are accessible, and are capable of being reproduced.

Change: None at this time.

Committee I felt it would be helpful to know of similar instances of this proposal in the commercial lending industry. The Committee's lender and guaranty agency representatives agreed to investigate current practices in this area and share their findings.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP (not on 12/14/01 list)

Issue: FFEL - Entrance and Exit Counseling

Regulatory Cite: §682.604(f) and (g)

Summary of Change: The proposed changes would update the counseling requirements, ensure consistency among the FFEL, Perkins, and Direct loan programs, and clarify that parties other than the school may provide the counseling.

Change:

§682.604 Processing the borrower's loan proceeds and counseling borrowers.

(f) Initial counseling. (1) A school must ~~conduct~~ ensure that initial counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that

the home institution approves for credit, ~~the school may provide~~ the counseling may be provided through written materials, prior to releasing those loan proceeds.

(2) ~~In conducting the~~ The initial counseling, ~~the school~~ must--

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(iii) Describe ~~in forceful terms~~ the likely consequences of default, including adverse credit reports, Federal offset, and litigation; ~~and~~

(iv) In the case of a student borrower of a Stafford loan (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(v) Provide the student borrower with general information with respect to the average indebtedness of student borrowers who have obtained a Stafford loan for attendance at that school or in the student borrower's program of study at that school; and

(vi) Inform the student borrower as to the average anticipated monthly repayment amount for student borrowers based

on the average indebtedness provided under paragraph (f)(2)(v) of this section.

(3) If A school that conducts initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

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(g) Exit counseling. (1) A school must ensure that ~~conduct~~ exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that ~~conduct~~ this counseling is conducted shortly before the student borrower ceases at least half-time study at the school. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, the school may provide written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide ~~ensure that~~ exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at

the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) ~~In conducting the~~ The exit counseling, ~~the school~~ must--

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(ii) Review for the student borrower available repayment options, ~~(e.g., including standard, graduated, and income-sensitive repayment plans and loan consolidation refinancing of SLS loans);~~ income-sensitive repayment plans and loan consolidation

(iii) Suggest to the student borrower debt-management strategies that ~~the school determines~~ would ~~best assist~~ facilitate repayment by the student borrower;

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(v) Review with the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial ~~cancellation~~ discharge of a loan;

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(3) ~~If A school that conducts~~ exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: 1/7/02 suggestion

Issue: FFEL - Extend the time frame for guaranty agency review and payment of disability claims.

Regulatory Cite: 682.402(h)

Summary of Change: Currently, a guaranty agency must review and pay a disability claim within 45 days. The proposed change would increase this time period to 90 days.

Change:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

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(h) Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency-

(1) General. (i) The guaranty agency shall review a death, bankruptcy, disability, closed school and false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraph (h)(2) and (h)(3) of this section-

(A) not later than 45 days after the claim was filed by the lender for death and bankruptcy claims, and

(B) not later than 90 days after the claim was filed by the lender for disability, closed school and false certification claims.

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(3) Payment of interest. If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

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(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed--

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school and false certification claims.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: Fed Up #35 and #36

Issue: Late Disbursements

Regulatory Cite: 668.164(g)

Summary of Change: The changes to this section would (1) clarify that an institution must make a post-withdrawal disbursement, if applicable, to a student who withdrew and was subject to the provisions of §668.2, (2) provide that an institution must offer a late disbursement to a student who completed the payment or loan period, as applicable, (3) allow the submission of a PLUS application to meet the initial requirement for eligibility for a late disbursement of a PLUS loan, and (4) allow, under exceptional circumstances for a late disbursement to be made after the normal 90 day period.

Change:

(g) Late disbursements -- (1) Ineligible students who may receive a late disbursement. (i) An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because --

(A) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(B) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(ii) Notwithstanding paragraph (g)(1)(i) of this section ---

(A) If a student ~~who~~ withdraws from an institution during a payment period or period of enrollment, the institution

(B) must make a post-withdrawal disbursement, if applicable, under the provisions of §668.22(a); or can receive additional disbursements of title IV, HEA program funds in accordance with the requirements of § 668.22 only.

(C) If a student graduates or successfully completes the payment period or period of enrollment, the institution must, at the student's or parent's request, make the late disbursement for the amount the student or parent was eligible to receive while the student was enrolled at the institution.

(2) *Conditions for late disbursements.* An institution may disburse funds under a title IV, HEA program to an ineligible student and to the parent of an ineligible student as described in paragraph (g)(1) of this section if, before the date the student became ineligible --

(i) (A) The institution received a SAR from the student or an ISIR from the Secretary and the SAR or ISIR has an official expected family contribution calculated by the Secretary; or;

(B) For a PLUS loan the student's parent submitted the loan application or otherwise requested the PLUS loan; and

(ii)(A) For a Direct Loan Program loan, the institution created the electronic origination record for that loan. An institution may not make a late second or subsequent disbursement of a Direct Subsidized or Direct Unsubsidized loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(B) For an FFEL Program loan, the institution certified an application for that loan. An institution may not make a late second or subsequent disbursement of a Stafford loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(C) For a Direct Loan or FFEL Program loan, the student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in 34 CFR 682.604(c)(5) or 685.303(b)(4);

(D) For a Federal Pell Grant Program award, the institution received a valid SAR from the student or a valid ISIR from the Secretary; and

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the student was awarded a loan or grant.

(3) *Making a late disbursement.* (i) If a student or a parent borrower qualifies for a late disbursement under paragraphs (g) (~~12~~) and (~~23~~) of this section, the institution --

(~~A~~) Except in the cases described in paragraph (g)(1)(B), May make that late disbursement of title IV, HEA program funds only if the funds are used to pay for educational costs that the institution determines the student incurred for the period in which the student was enrolled and eligible; and

(B) The institution must generally make the late disbursement no later than 90 days after the date it determines the student withdrew as provided under §668.22 or 90 days after the student otherwise becomes ineligible under this paragraph.

(ii) On an exception basis, the institution may make the late disbursement after the end of the applicable 90 day period provided in paragraph (g)(4)(i) of this section, if the reason

the late disbursement was not made during that period was not the fault of the student or parent, and the institution documents the reason why the late disbursement was not made during the applicable initial 90 day period.~~(ii) Must make the late disbursement no later than 90 days after the date that student becomes ineligible under paragraph (g)(1) of this section.~~

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP #17

Issue: FFEL - The proposed change would no longer entitle a borrower to rehabilitate a defaulted FFEL loan for which a judgment has been secured. [This is a conforming change to make the FFEL regulations consistent with the Perkins regulations.]

Regulatory Cite: §682.405

Summary of Change: Current FFEL regulations permit rehabilitation of a loan on which a judgment has been entered if the borrower signs a new promissory note prior to the sale of the loan to an eligible lender. That provision will be deleted.

Change:

§682.405 Loan rehabilitation agreement.

(a) General. (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans, except for loans for which a judgment has been obtained, so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month and the payment is received by a guaranty

agency or its agent within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation.

~~(4) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note prior to the sale of the loan to an eligible lender.~~

(b) Terms of agreement. In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one on-time voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, ``full payment'' means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower ~~regardless of~~

~~whether there is a judgment against the borrower~~, and do not include payments obtained by income tax off-set, garnishment, income or asset execution or after a judgment has been entered on the loan. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-)month payment period.

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