

Affordability and Student Loans Committee

Notice of Proposed Rulemaking

Summary

The Department of Education conducted a negotiated rulemaking session from October – December 2021 to discuss affordability and student loan issues. On July 13th, the Department released a Notice of Proposed Rulemaking (NPRM) on the following topics: total and permanent disability discharge; closed school discharge; false certification discharge; public service loan forgiveness; borrower defense to repayment; and interest capitalization. Below is a summary of what was proposed in the NPRM. Comments are due August 12th.

Total and Permanent Disability Discharge

Department's Proposed Solution

- *Eliminate the three-year post discharge income monitoring period.* Currently, during the three-year post-discharge monitoring period, borrowers must furnish income information annually. Borrowers who do not respond to these requests for earnings information have their loans reinstated.
- *Expand the number of Social Security Administration (SSA) situations that would allow a borrower to qualify for a Total and Permanent Disability (TPD) discharge.* In current regulations, the borrower can only qualify for a discharge if they fall under the Social Security Administration's Medical Improvement Not Expected (MINE) category. The Department proposes to allow borrowers to qualify for discharge if they meet any of the following conditions:
 - The borrower can show that they qualify for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within three years, and that the borrower's eligibility for disability benefits in the three- year review category has been renewed at least once;
 - The borrower has a disability onset date for SSDI or SSI of at least five years prior or has been receiving benefits for a least five years prior to the application for TPD;
 - The borrower qualifies for the SSA compassionate allowance program; or
 - For borrower's currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements above.
- *Expand allowable SSA documentation.* Allow borrowers to submit a Benefit Planning Query (BPQY), which is another form of documentation produced by SSA that contains similar information to the notice of award and is easier to obtain.
- *Accept TPD certifications from certain health care professionals who are not physicians.* Allow, in addition to physicians, nurse practitioners, physician assistants licensed by a State, a licensed certified psychologists at the independent practice level to provide TPD certifications.

- *Extend the period of the first payment due date after a loan reinstatement.* Extend the date the payment is due on a loan that is reinstated from 60 to 90 days after the date of the notification of reinstatement.
- *Conditions of reinstatement of a loan after a TPD discharge.* Allow for a reinstatement of a loan within three years after the discharge is granted if the borrower receives a new TEACH grant or new loan under the Perkins or Direct Loan program, except for Direct Consolidation Loans that include loans that were not discharged. The annual earnings from employment that exceed 100 percent of the poverty level, the requirement that previous disbursements of Title IV loans made prior to the discharge be returned, and the receipt of a notice from SSA that the borrower is no longer disabled is no longer required.

False Certification Discharge

Department Proposed Solution

- *Borrower's status.* Use the borrower's status regarding the requirement to have a high school diploma or its equivalent apply at the time the loan was originated, not at the time the loan was disbursed.
- *Qualification of loans.* Explicitly state in the regulations that all loans may qualify for the discharge based on a false certification of a high school diploma or equivalent by the school.
- *Attestation.* Rescind the provision in the regulations that any borrower who attested to having a high school diploma or equivalent does not qualify for a false certification discharge.
- *Discharge without an application.* Specify that the Secretary may grant a false certification discharge for all loans without an application due to falsification of Satisfactory Academic Progress.
- *Disqualifying status.* Ensure that all borrowers are treated the same as it relates to receiving a discharge due to the inability to meet certain employment requirements due to a physical or mental condition; age; criminal record; or other reason;
- *Application submission.* Require borrowers to submit an application within 60-days of their loan being placed into forbearance but allow borrowers an additional 30-days to submit supplemental information.
- *Signature specimens.* Remove the requirements that borrowers submit signature specimens when applying for discharge due to unauthorized loan, unauthorized payment, or identity theft.
- *Alternative evidence.* Replace the requirement that a borrower provide a judicial determination of identity theft with alternative evidence, such as through the FTC Identity Theft Affidavit process, filing a police report, or disputing the loan through all three credit bureaus.
- *Group process.* Allow for a state attorney general or non-profit legal organization to submit an application for a group process discharge.

Closed School Discharge

Department Proposed Solution

- *Reinstate automatic closed school discharges.* Reinstate the automatic closed school discharges for borrowers who do not enroll elsewhere when an institution closes but reduce the period before automatic discharges occur from three years to one year following a closure. This would apply to borrowers who accepted a teach-out plan but did not complete it.
- *Establish a consistent window of eligibility for students who withdrew from a school before it closed.* Standardize the window of eligibility, regardless of the disbursement date of the loan, to 180 days. (In current regulations, to qualify for a closed school discharge, a borrower must have been enrolled at the institution on the date of its closure or have withdrawn no more than 120 days prior to its closure (180 days for loans made on or after July 1, 2020).
- *Amend the closure date of an institution.* Consider an institution to be closed if most of their programs cease to operate. (Currently, institutions are considered to be closed if all of their programs cease to operate).
- *Expand the definition of school.* Expand the definition of a school to include a branch campus or any additional location regardless of whether or not the branch campus or additional location is considered eligible to participate in Title IV of the Higher Education Act (HEA).
- *Expand the list of exceptional circumstances needed to extend the 180-day look back period.:*
 - An institution is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards;
 - A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;
 - A State or Federal court judgment that a school violated State or Federal law related to education or services to students;
 - The school discontinued a significant share of its academic programs;
 - The school permanently closed all or most of its ground-based locations while maintaining online programs; and
 - The school was placed on the heightened cash monitoring 2 payment method.

Public Service Loan Forgiveness

Department's Proposed Solution

- *Employee or employed definition.* Clarify that an employee is someone who receives an IRS W-2 from a qualifying employer or an organization that has contracted with a qualifying employer to provide payroll or similar services for the qualifying employer and which provides the Form W-2 under that contract.

- *Full-time definition.* Expand the definition of full-time by adding that full-time means working in qualifying employment in one or more jobs at a rate equivalent to 30 hours per week as determined by multiplying each credit or contract hour taught per week by at least 3.35 hours worked each week, in non-tenure track employment at an institution of higher education.
- *Military service definition.* Clarify the current definition to include families or survivors of members of veterans of the U.S. Armed Forces or the National Guard.
- *Qualifying Employer definition.* Allow an employer to attest to the public service nature of the organization on a form approved by the Secretary of Education (Secretary), as long as the organization is still a 501(c)(3).
- *Qualifying repayment plan.* Clarify that all income-driven repayment plans can count towards Public Service Loan Forgiveness (PSLF) instead of just the income-based repayment plan. Allow for a consolidated standard repayment plan with a 10-year repayment term to qualify.
- *Add definitions of the following:*
 - Non-tenure track employment;
 - Other school-based services;
 - Public health;
 - Non-governmental public service;
 - Public service for individuals with disabilities;
 - Public service for the elderly;
 - Public education service;
 - Public library service; and
 - School library services.
- *Receiving forgiveness.* A borrower is able to be eligible for forgiveness as long as they are employed full-time by a qualifying employer at the time they apply. They do not have to be employed full-time by a qualifying employer at the time forgiveness is granted.
- *Qualifying payments.* A borrower is not required to make 120 separate payments but required to satisfy the equivalent of 120 payments. This can be done by doing one of the following:
 - Paying at least the full scheduled amount due for a monthly payment under a qualifying repayment plan;
 - Paying in multiple installments that equal the full scheduled amount due for a monthly payment under the qualifying repayment plan;
 - For a borrower on an income-driven repayment plan, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date;
 - For a borrower on a 10-year standard repayment plan under or consolidation standard repayment plan with a 10-year repayment term, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period

of months not to exceed the period from the Secretary's receipt of the payment until the lesser of 12 months from that date or the date upon which the Secretary receives the borrower's next submission for loan forgiveness;

- Receiving one of the following forbearances or deferments:
 - Cancer treatment;
 - Peace Corps service;
 - Rehabilitation training program;
 - Economic hardship;
 - Military service;
 - Post-active duty student;
 - AmeriCorps;
 - National Guard Duty;
 - U.S. Department of Defense Student Loan Repayment Program; or
 - An administrative forbearance.
- Being employed full-time by a qualifying employer at any point in the month that a payment is made.
- *Forgiveness after loans have been consolidated.* A borrower is able to have previous payments count on Direct loans that have been consolidated into a Direct Consolidation Loan as long as the previous loans meet certain qualifying criteria.
- *No application required.* An application is not required from borrowers if the Secretary has the information it needs to process the forgiveness.
- *Reconsideration process.* A borrower will have 90 days to ask the Secretary to reconsider the application. Borrowers who were denied loan forgiveness after October 1, 2017 will have 180 days from when the new final rule goes into effect to request a reconsideration. A borrower can submit a reconsideration request as long as they have new information.
- *Hold harmless.* A borrower will be considered to have made the qualifying monthly payments if they were in a deferment or forbearance that was not previously listed as long as they either (1) make an additional payment equal to or greater than their monthly payment amount or (2) qualify for a \$0 payment on an income-driven repayment plan.

Borrower Defense to Repayment

Department Proposed Solution

- *Aggressive and deceptive recruiting tactics.* A new section, proposed under Subpart R, was proposed regarding aggressive and deceptive recruiting tactics or conduct that would define these tactics and inform institutions of the consequences of participating in such tactics.
- *New borrower defense process created.* A new borrower defense to repayment (BD) process to strengthen borrower protections was proposed in 34 CFR Part 685, Subpart D, that would begin after July 1, 2023.

- *State requestor.* A new definition of a state requestor was proposed to allow for a state, a state attorney general, a state oversight agency, or a state regulatory agency to submit a borrower defense claim on the behalf of a group of borrowers.
- *Group process.* A group process for borrowers was proposed to state requestors to initiate group claims. A group process could also be initiated by the Department (The individual process for determining a borrower defense to repayment remains).
- *Institutional response.* An institution would be notified when a borrower submits a claim and is given 90 days to respond. When this happens, the 6-year limitation period is paused.
- *Adjudication of borrower defense applications and timelines.* A borrower could submit an individual claim or be a part of a group claim and the Department would adjudicate it based on the information given. The Department would adjudicate group claims in two years from the date it notified the state requestor and adjudicate individual claims in three years from the date the Department official determines a borrower submitted a completed application. These timelines would not apply to a reconsideration process after a borrower is denied a claim. The Department would be required to notify the group or individual at least one year after the dates previously described and if the Department did not respond by the two-, or three-, year time frame, then the loans covered by the claims would be deemed unenforceable.
- *Reconsideration process.* The borrower would have 90 days from the notice given by the Department stating their denial to ask for a reconsideration for the following things:
 - Administrative or technical errors;
 - Consideration under State law; or
 - New evidence.

A state requestor could also ask for a reconsideration under a State law standard.

Borrowers could ask for a reconsideration at any time when there is new evidence.

- *Discharge.* A full discharge amount is the base unless the Department is presented with clear and convincing evidence stating otherwise.
- *Recovery from institutions.* There is a 6-year limitation period placed on institutions. This period is tolled when claims are submitted, and the institution is notified by the Department. Also, this limitation period does not apply at all for borrowers who receive a favorable judgement based on state or federal law in a court or administrative tribunal of competent jurisdiction in connection with the borrower's decision to attend the institution.
- *Misrepresentation.* This definition was proposed to be modified to include the following:
 - Actual institutional selectivity rates, rankings, or student admission profiles if they are materially different from those included in the institution's marketing materials, website, or other communications made to the student or from those provided by the institution to national ranking companies, accrediting agencies, the Secretary, and others;
 - A representation regarding the tax status of the institution if it is different from the tax status as determined by the Secretary for purposes of administering the Title IV, HEA programs under the Higher Education Act of 1965, as amended;

- Specialized, programmatic, or institutional certifications, accreditation, or approvals that were not actually obtained, or that the institution fails to remove from marketing materials, websites, or other communications to students within a reasonable period of time after such certifications or approvals are revoked or withdrawn;
- Assistance that will be provided in securing required externships or the existence of contracts with specific externship sites;
- Assistance that will be provided to obtain a high school diploma or General Educational Development Certificate (GED);
- The pace of completing the program or the time it would take to complete the program contrary to the stated length of the educational program;
- As it relates to an institution's financial charges, the amount, method, or timing of payment of tuition and fees that the student would be charged for the program;
- The licensure passage rates and employment rates around the employability of graduate students; and
- Language regarding the omission of fact.
- *Pre-dispute arbitration.* The 2016 regulatory text regarding agreements between an eligible school and the Secretary for participation in the Direct Loan program was proposed to be reinstated with technical changes.

Interest Capitalization

Department's Proposed Solution

- The Department proposed to eliminate capitalization events where it has the authority to do so. In circumstances where interest capitalization is required by statute, the Department cannot end capitalization for borrowers. Instances where capitalization is required in statute include when the borrower exits a deferment period and when a borrower leaves the Income-Based Repayment plan. The instances where the Department proposed to eliminate interest capitalization are as follows:
 - Failure to recertify enrollment on an income-driven repayment (IDR) plan;
 - Leaving an Income-Contingent Repayment (ICR) plan, Pay As You Earn (PAYE) repayment plan, and Revised Pay As You Earn (REPAYE) repayment plan;
 - Negative amortization under the ICR plan — Under the current ICR plan, borrowers whose payments do not cover accumulating interest see that interest capitalize annually until the capitalized interest reaches 10 percent or more of the original principal balance. Unpaid interest does not capitalize under the other IDR plans unless the borrower leaves those plans;
 - Exiting forbearance;
 - Entering repayment — When borrowers' loans enter repayment for the first time (interest currently capitalizes when borrowers' grace periods end); and
 - When a borrower defaults on a loan.