



August 21, 2009

Ms. Pam Moran
U.S. Department of Education
1990 K Street, NW
Room 8033
Washington DC 20006-8502

RE: Docket ID ED-2009-OPE-0004

Dear Ms. Moran:

As the trade associations representing the majority of student loan providers in the Federal Family Education Loan Program (FFELP), and having had colleagues act as negotiators during the recent negotiated rulemaking sessions for the “Team I—Loans-Lender General Loan Issues,” we write to express both appreciation for the opportunity to contribute to this essential process and great satisfaction that negotiators on all sides of the table were able to come together and reach consensus on this important regulatory proposal.

Since reaching consensus on the proposed regulatory package, members of the FFELP community have continued to review and analyze the language as published in the Notice of Proposed Rulemaking (NPRM). Understanding that negotiated rulemaking can be extremely time consuming and at times arduous, members of the FFELP community stand strongly together in our commitment to serve students and to have final regulations that protect students and taxpayers while being workable for all involved.

It is this commitment that led us to further review the topics discussed by the Team I negotiators and to provide the attached responses.

Finally, we extend our appreciation to the Department of Education (Department) staff that spent countless hours with the negotiators to better understand issues, complete research, hear all sides of issues and develop consensus-building positions. We are grateful for the time and commitment put forth by all involved.

We and our colleagues remain committed to working with the Department in the implementation of these regulations and the development of those to come.

Sincerely,
Consumer Bankers Association (CBA)
Education Finance Council (EFC)
National Council of Higher Education Loan Programs (NCHELP)
Student Loan Servicing Alliance (SLSA)

CBA, EFC, NCHelp and SLSA
Detailed Comments on Proposed Regulations
Loan Provisions Published July 23, 2009
Docket ID ED-2009-OPE-0004

COMMENTS BY TOPIC IN ORDER OF PREAMBLE DISCUSSION

I. Total and Permanent Disability (TPD)

1. Effective Date and Trigger Event for TPD Changes

Cite: Not Applicable

Comment: We recommend the Department adopt an effective date and trigger event for the changes to the definition of total and permanent disability and discharge processing changes of “applications received on or after July 1, 2010.”

Utilizing a trigger event of “applications received” for the change in definition will allow physicians to certify borrowers using the new standard established by the Higher Education Opportunity Act (HEOA) provisions as soon as possible, to the benefit of borrowers who may not currently qualify for the discharge based on the current definition.

Adopting a trigger event for the processing changes of “applications received” will allow for consistency for all TPD changes, as well as provide a clear cut-off between processing borrower discharge applications with the current 3-year conditional period and processing with the 3-year post-discharge monitoring period.

2. Veteran TPD Processing

Cite: §682.402(c)(8)(ii)(F); Preamble page 36562

Comment: The preamble language outlines the process to be followed by the guarantor and lender upon the Secretary’s approval of a total and permanent disability discharge based on documentation from the Department of Veterans Affairs (VA). Specifically, it states that if the Secretary determines that the borrower meets the TPD standard based on a determination by the VA, the Secretary would notify the guaranty agency that the borrower is eligible for a total and permanent disability loan discharge. The language further states that the guaranty agency would pay the lender’s claim and notify the borrower that the borrower’s obligation to make any further payments on the loan has been discharged. In addition, the lender would return any payments on the loan received on or after the effective date of the VA’s determination to the person who made the payments.

We recommend aligning the VA TPD procedures with the regular TPD procedures and having the loan holder (lender, or guarantor for defaulted loans) notify the borrower that the borrower’s obligation to make further payments on the loan has been discharged. Although the discussion during the negotiating sessions did not address this notification requirement specifically, we believe that since the loan holder will already be in communication with the borrower to refund any payments received on or after the effective date of the VA determination, it seems more appropriate for the loan holder to also notify the borrower that his/her obligation to make further payments has been discharged. This would align the VA TPD procedures with the notification requirements for the lender for the regular TPD’s as outlined in proposed regulations §682.402(c)(7)(vi) when the guaranty agency pays a TPD claim and assigns the loan to the Secretary.

Recommendation: Address in preamble that the loan holder would notify the borrower that the borrower’s obligation to make any further payments on the loan has been discharged in addition to returning any payments on the loan received on or after the effective date of the VA’s determination to the person who made the payments. Furthermore, modify §682.402(c)(8)(ii)(F) as follows:

“~~§682.402(c)(8)(ii)(F)~~ If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim ~~and notifies the veteran that the veteran’s obligation to make any further payments on the loan has been discharged.~~ Upon receipt of the claim payment from the guaranty agency, the lender notifies the veteran that the veteran’s obligation to make any further payments on the loan has been discharged and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.”

II. Borrower Eligibility for In-School Deferment

3. Borrower Notification Requirements

Cite: §682.210(a)(3)(ii); Preamble page 36566

Comment: During the third negotiated rulemaking meeting, the Department agreed with the non-Federal negotiators that the information about interest and capitalization required in §682.210(a)(3)(ii) would be added to the federal deferment forms. The Department also agreed that use of the federal forms that include such information would be sufficient for compliance with the requirement that information be provided to the borrower “at or before the time the deferment is granted.”

Federal Register page 36566 addresses this and for the most part confirms the agreement referenced in the above paragraph. However, the preamble may be misinterpreted because it states: “The Department also agreed...that it would be helpful to borrowers to provide the required information on capitalization when the borrower applies for the deferment, by including it in standardized deferment forms, rather than *only* [emphasis added] providing the information when the borrower is granted the deferment.” This statement could be misunderstood to mean that use of deferment forms with the required interest and capitalization information would not fully satisfy the requirement in §682.210(a)(3)(ii), but instead be supplemental.

Recommendation: Confirm in the preamble to the Final Rules that if a deferment is granted based on federal deferment forms that include the information about interest and capitalization, a lender is not required to send that information in a separate notice to the borrower after the deferment is granted.

III. Teacher Loan Forgiveness

4. Employment at an Educational Service Agency (ESA)

Cites: §682.216(a)(2) and §685.217(a)(2)

Comment: There appears to be a conflict between the preamble and proposed regulatory language related to the teaching requirement for an employee from an educational service agency. The preamble states, “Under the proposed regulations, qualifying service performed at an eligible educational service agency could be counted toward the required five consecutive complete years of full-time teaching only if the consecutive five-year

period *includes* [emphasis added] qualifying teaching service performed at an eligible educational service agency after the 2007-2008 academic year.” However, the actual proposed regulatory language states, “For teaching service performed by an employee of an eligible educational service agency, *at least one* [emphasis added] of the five consecutive complete academic years must have been after the 2007-2008 academic year.”

We believe the preamble language supports the agreement made during the negotiations to allow teaching performed at an educational service agency prior to the enactment of the HEOA to count toward the required five consecutive complete academic years of service as long as there is a period of qualifying teaching at an educational service agency after the 2007-2008 academic year. In contrast, the proposed regulations could be interpreted to stipulate that in order for service performed at an educational service agency prior to the enactment of the HEOA to count, there would have to be at least a full year of teaching at an educational service agency after 2007-2008. This limitation would mean, for example, that a borrower who completed four years of qualifying teaching service at an educational service agency in the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 academic years could not count those years toward the required five consecutive complete academic years if, during the 2008-2009 academic year, the borrower taught for only half of the year at an eligible educational service agency and taught the other half of the year at an eligible elementary or secondary school.

Recommendation: Confirm in the preamble to the Final Rules that teaching service performed at an eligible education service agency may be counted toward the required five years of teaching only if the consecutive five-year period *includes* qualifying service at an eligible educational service agency performed after the 2007-2008 academic year. Also, we recommend making technical corrections to the regulations to reflect this concept; these appear on pages 6 and 7.

IV. Lender Disclosures

5. Disclosure for Borrowers Having Difficulty Making Payments

Cite: §682.205(c)(4)

Comment: The borrower may advise the lender of difficulty making payments on numerous occasions during a short period of time such that the lender may be repeatedly providing the disclosure under §682.205(c)(4) to the borrower. During Negotiated Rulemaking, the issue of providing the same disclosure to the borrower multiple times was discussed in relation to the 60-day delinquency disclosure required under §682.205(c)(5) when a rolling delinquency occurs. The Department agreed this disclosure may be ineffective if the borrower receives it repeatedly within a short period of time and included an exception under §682.205(c)(5)(ii). The lender does not have to provide the 60-day delinquency disclosure if it has been provided within the prior 120 days. The negotiators representing lenders and servicers intended to mention the disclosure required under §682.205(c)(4) when the borrower advises of difficulty making payments will similarly be ineffective if it is repeatedly provided to the borrower within a short time period. We request the Department add a similar exception in the Final Rule for this disclosure.

Recommendation: Revise the structure of §682.205(c)(4) as indicated and insert a new paragraph (ii).

“§682.205(c)(4) *Required disclosures for borrowers having difficulty making payments.* (i) The lender shall provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(i) (A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(ii) (B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(iii) (C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) The lender is not required to provide the borrower with the information in paragraph (c)(4)(i) of this section if the lender has provided such information within the previous 120 days.”

TECHNICAL CORRECTIONS

1. Technical Correction – Employment at an Educational Service Agency (ESA)

Cites: §682.216(a)(2), §682.216(c)(3)(iii) and §682.216(c)(4)(iii); §685.217(a)(2), §685.217(c)(3)(iii) and §685.217(c)(4)(iii)

Comment: The proposed regulatory language regarding a borrower’s service at an educational service agency is inconsistent in §682.216(c)(3)(iii) and §682.216(c)(4)(iii) and may cause confusion. Although the proposed language means the same thing, it would provide greater clarification if the Department stated the requirement for employment at an ESA the same throughout the TLF regulations. We suggest revising the language back to the agreed-upon language provided at the third negotiated rulemaking meeting.

Recommendation: Revise §682.216(a)(2), §682.216(c)(3)(iii), §682.216(c)(4)(iii), §685.217(a)(2), §685.217(c)(3)(iii) and §685.217(c)(4)(iii) as follows:

“§682.216(a)(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. ~~For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been which was after the 1997–1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.~~ The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible education service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”

“§682.216(c)(3)(iii) ~~For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007–2008 academic year.~~ Teaching service performed at an eligible education service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”

~~“§682.216(c)(4)(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been the 2008-2009 academic year or a subsequent academic year. Teaching service performed at an eligible education service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”~~

~~“§685.217(a)(2) The borrower must have been employed at an eligible elementary or secondary school that serves low-income families or by an educational service agency that serves low-income families as a full-time teacher for five consecutive complete academic years. For teaching service performed at an eligible elementary or secondary school, at least one of the academic years must have been after the 1997-1998 academic year. For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007-2008 academic year. The required five years of teaching may include any combination of qualifying teaching service at an eligible elementary or secondary school or an eligible education service agency, but teaching at an educational service agency may be counted toward the five years only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”~~

~~“§685.217(c)(3)(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been after the 2007-2008 academic year. Teaching service performed at an eligible education service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”~~

~~“§685.217(c)(4)(iii) For teaching service performed by an employee of an eligible educational service agency, at least one of the five consecutive complete academic years must have been the 2008-2009 academic year or a subsequent academic year. Teaching service performed at an eligible education service agency may be counted toward the required five years of teaching only if the consecutive five-year period includes qualifying service at an eligible educational service agency performed after the 2007-2008 academic year.”~~

2. Technical Correction—Teacher Loan Forgiveness

Cite: Preamble comment – page 36567; §682.216(c)(11); §685.217(c)(11)

Comment: Technical corrections bill H.R. 1777 clarified that borrowers with loans in both the Direct and FFEL programs may utilize the same period of qualifying teaching service to receive forgiveness in both programs as long as the total forgiveness benefit does not exceed the statutory or regulatory maximum per eligible borrower.

Recommendation: Add clarification in the preamble language to reflect statutory change. Amend regulatory language located in §682.216(c)(11) and §685.217(c)(11) as follows:

~~“§682.216(c)(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—~~

~~(i) 34 CFR 685.217;~~

~~(ii)(i) Subtitle D of title I of the National and Community Service Act of 1990;~~

~~(iii)(ii) 34 CFR 685.219; or~~

~~(iv)(iii) Section 428K of the Act.”~~

“§685.217(c)(11) A borrower may not receive loan forgiveness for the same qualifying teaching service under this section if the borrower receives a benefit for the same teaching service under—

~~(i)~~ 34 CFR 682.216;

~~(ii)~~(i) Subtitle D of title I of the National and Community Service Act of 1990;

~~(iii)~~(ii) 34 CFR 685.219; or

~~(iv)~~(iii) Section 428K of the Act.”

3. Technical Correction—Entrance Counseling

Cite: §682.200(b) *Lender* (5)(i)(A)(10), (5)(ii)(B); §682.401(e)(i)(F), (e)(2)(iii)

Comment: Technical corrections bill H.R. 1777 permits lenders and guarantors to perform in-person entrance counseling as long as the school is in control of the session.

Recommendation: Amend preamble language to reflect the statutory change. Amend regulatory language located in §682.200(b) *Lender* (5)(i)(A)(10) and (5)(ii)(B) and §682.401(e)(1)(i)(F) and (e)(2)(iii) as follows:

“§682.200(b) *Lender* (5)(i)(A)(10) Performance of, or payment to another third-party to perform, any school function required under title IV, except that the lender may perform initial counseling as provided under §682.604(f) and exit counseling as provided in §682.604(g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer;”

“§682.200(b) *Lender* (5)(ii)(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, ~~excluding~~ including in-person school-required entrance and exit counseling...”

“§682.401(e)(1)(i)(F) Performance of, or payment to a third-party to perform, any school function required under title IV, except that the guaranty agency may provide initial counseling as provided in §682.604(f) and exit counseling as provided in §682.604 (g), and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer.”

“§682.401(e)(2)(iii) Student aid and financial-literacy related outreach activities, ~~excluding~~ including in-person school-required entrance and exit counseling...”

4. Technical Correction – Reporting New Loan to Consumer Reporting Agency

Cite: §682.205(a)(2)(xvi); §682.208(b)(1)

Comment: The regulations indicate the initial disclosure sent prior to or at the time of the first disbursement must advise the borrower that a default on the loan will be reported to each of the nationwide consumer reporting agencies. This change aligns the regulatory language with the statute. A conforming change is needed to §682.208(b)(1) to align it with the statute and clarify the lender must report the new loan to *all* “nationwide consumer reporting agencies.” This change is provided only as one example. There are several other references to “national credit bureau” throughout the regulations that also need this conforming change.

Recommendation: Revise §682.208(b)(1) as follows:

“§682.208(b)(1) An eligible lender of a FFEL loan shall report to each nationwide consumer reporting agency at least one national credit bureau –”

5. Technical Correction – Exception for Disclosing Total Amount of Interest to be Paid

Cite: §682.205(d)

Comment: The regulation needs to clarify that the Stafford MPN and related materials fulfill the requirement in §682.205(c)(2)(viii) that the lender provide the borrower with the estimated total amount of interest to be paid. The regulation in §682.205(d) references the PLUS MPN and related materials fulfilling this requirement for PLUS loans but fails to mention the Stafford MPN and related materials.

Recommendation: Revise §682.205(d) as follows:

“**§682.205(d) Exception to disclosure requirement.** In the case of a Federal Unsubsidized Stafford loan or a Federal PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower or student on whose behalf the loan is made is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the Stafford and PLUS promissory notes and associated materials approved by the Secretary for purposes of complying with this section.

6. Technical Correction – Basic Program Agreement

Cite: §682.401(e)(2)(vi)

Comment: *Federal Register* page 36594, instruction 19 states that §682.401 is amended by “K. Revising paragraph (e)(2)(vi).” However, there is no proposed regulatory language provided.

Recommendation: Revise §682.401(e)(2)(vi) with the April 27, 2009, amendatory language that was agreed upon by Team I during the third negotiated rulemaking meeting, as follows:

“**§682.401(e)(2)(vi)** ~~Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or~~ Reimbursement of reasonable expenses incurred by school employees to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;”

OTHER TECHNICAL CORRECTIONS (due to integrating the proposed regulations with the GPO compilation updated through July 1, 2008)

1. Technical Correction—Disclosure Requirements for Lenders

Cite: §682.205(c)(2)(viii)

Comment: The semi-colon before “and” should be a comma, and there is a missing semi-colon at the end of the new text.

Recommendation: Revise §682.205(c)(2)(viii) as follows:

“§682.205(c)(2)(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule₂, and if interest has been paid, the amount of interest paid₂.”