



May 16, 2024

Via Email: www.regulations.gov

Mr. Rene Tiongquico
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: DOCKET ID ED-2023-OPE-0123 – Response to the Student Loan Relief Notice of Proposed Rulemaking – Federal Family Education Loan (FFEL) lenders, servicers, or guaranty agencies

Dear Mr. Tiongquico:

As the trade associations representing the lenders, servicers, and/or guaranty agencies in the Federal Family Education Loan (FFEL) program, thank you for the opportunity to participate in the 2023-24 negotiated rulemaking activities covering student loan relief. We share the Department's desire to provide targeted debt relief to struggling borrowers authorized by the Higher Education Act (HEA).

Our comments focus on the provisions specific to the FFEL program. We remain concerned that aspects of this proposed rule violate the statute in material and new ways which puts the proposal at risk of legal challenges that could result in implementation delays and possibly its complete undoing. Without addressing the conflicts between statute and regulation in the final rule, the increased legal challenges, regardless of the final determination of legality, would subject borrowers to additional confusion. For the sake of borrowers, we urge the Department to address all potential conflicts between the HEA and the proposed rule to ensure that it complies with the law.

Thank you for this opportunity to comment. On behalf of the borrowers and families we serve, we remain committed to working with the Department on these proposed regulations and any future regulatory and operational efforts.

Sincerely,

Consumer Bankers Association (CBA)
Education Finance Council (EFC)
National Association of Student Loan Administrators (NASLA)
National Council of Higher Education Resources (NCHER)
Student Loan Servicing Alliance (SLSA)

682.403 Waiver of FFEL Program loan debt.

Comment/Rationale

1. We ask the Department to clarify the term “outstanding balance” to include principal, interest, late fees, collection costs as an important technical correction consistent with consensus.
 - a. Consistency with existing references to “entire” outstanding balance.
 - b. 682.403(d)(2) and (8) should be revised to say “entire” outstanding balance and not “full” for consistency purposes and consensus.

682.403(a)(2)(iii) “Outstanding balance” means the entire amount of a loan balance a borrower is obligated to repay including unpaid principal, interest, late fees, and collection costs.

682.403(d)(2) The lender must submit a waiver claim for the ~~full~~ entire outstanding balance of the loan to the guaranty agency.....

682.403(d)(8) The Secretary reimburses the guaranty agency for the ~~full~~ entire amount of the claim paid.....

2. We strongly believe the Department should remove waiver condition (b)(1) “first entered repayment on or before July 1, 2000” to reflect non-consensus vote.
 - a. Conflicts under the law with the maximum repayment period for FFELP loans which can be up to 30 years [HEA 428C(c)(2)(vi)].
 - b. Conflicts with the Department’s position that a Consolidation loan is a new loan. Repayment of a Consolidation loan begins after the discharge of loans selected for consolidation [HEA 428C(c)(4)].
 - c. The maximum repayment period (Stafford, PLUS, Consolidation) excludes any periods when a loan enters deferment, forbearance [HEA 428(b)(7)] and default.
 - d. The Department needs to ensure that to withstand the likely judicial scrutiny, the proposed regulations must be supported by and consistent with the Higher Education Act so regulatory benefits actually reach borrowers. Borrowers need to count on and trust messaging and regulations from the Department and not set up confusion and false hopes.

~~682.403(b)(1) First entered repayment on or before July 1, 2000.~~

3. We ask the Department to clarify the use of mandatory administrative forbearance to manage collection suspension.
 - a. Consistency with borrower defense to repayment regulation [682.211(i)(7)].
 - b. Specifying forbearance authorizes the use of administrative forbearance under 682.211(f)(2) to resolve delinquency upon the beginning of an “authorized period of forbearance”.

682.403(c)(2) Suspend collection activity with a mandatory administrative forbearance, or maintain a suspension of collection activity, on the borrower’s FFEL Program loan until a waiver claim is paid.

4. We request the Department increase the timeframe in 682.403(d)(6) from 30 days to 75 days so it is consistent with the timeframes in (d)(2) and (d)(9). The Department states in the preamble discussion (page 27586) *During negotiated rulemaking, the Department proposed providing more time for the claims process, giving 75 days for a lender to submit a claim, and 75 days for the guaranty agency to pay the claim. The Department believes that timeframes are appropriate, since the Department will have already determined that the borrower qualifies for a waiver before notifying the lender.* Regarding the proposed 75-day timeframe, under normal operating conditions the proposed time frame is reasonable; however, as the Department also states in the preamble discussion (page 27586) “there may be a large volume of FFEL borrowers qualifying for the waivers specified in 682.403”. If large volumes of claim requests were to occur the proposed claim filing timeframe would be unmanageable. We appreciate the Department’s acknowledgment in the preamble discussion that the Department will work with guaranty agencies and lenders and be flexible in enforcing the proposed claim filing requirements. It is our understanding the Department’s flexibility will include the conditions for claim payment and reinsurance coverage under 682.406 and that the Department, guaranty agencies, and lenders will work collaboratively to avoid any instance where a loan could cease to be insured or reinsured because of claim filing and claim documentation requirements under 682.403 that may become unmanageable due to unanticipated large volumes of claim requests.

682.403(d)(6) If the guaranty agency determines the waiver claim meets the requirements of paragraph (d)(3) and (d)(4) of this section, the guaranty agency must pay the claim within ~~30~~ 75 days of the date the claim was received by the guaranty agency.

5. We thank the Department for its preamble comment (page 27585) stating it will provide flexibility if the lender is not in possession of an original or true and exact copy of the promissory note by allowing the lender to provide alternative documentation for purposes of submitting a claim. However, we also still believe since the Secretary is determining the borrower’s eligibility for the waiver, similar to what is being done in borrower defense to repayment discharges, that as long as the lender complies with its obligation to retain the promissory note for the requisite time provided in 682.414 (paid in full + 5 years), the lender should not have to submit the promissory note with the claim file.

6. We believe the Department should clarify that if only a portion of a consolidation loan is waived, the remaining portion stays with the loan holder and is not assigned to the Department.
 - a. This reflects the current process agreed to with the Department to process borrower defense to repayment claims and total and permanent disability discharges.
 - b. In contrast with other proposals looking at underlying loans that would violate legal contractual agreements between lenders and borrowers, this process is appropriate to consider because it is a result of a third-party event (i.e., school failure) outside a borrower's agreement to make payments on a new loan.

682.403(d)(9) Except for the waiver portion of a consolidation loan, ~~T~~the guaranty agency must assign the loan to the Secretary within 75 days of –

682.403(f) If the conditions for waiver in paragraph (b) of this section are met for all underlying loans ~~but the loan has been~~ repaid by a Federal Consolidation Loan that has an outstanding balance, the Secretary may waive the entire portion of the outstanding balance of the consolidation loan ~~attributable to such loan~~ once the loan has been assigned to the Secretary. If the conditions for waiver in paragraph (b) of this section are met for a portion of loans repaid by a Federal Consolidation Loan that has an outstanding balance, the Secretary may waive the portion of the outstanding balance of the consolidation loan by reimbursing the guaranty agency for the amount of a claim paid to the lender.

7. We recommend the regulations include appropriate borrower communication and notification from the Department to ensure the borrower clearly understands what is happening, including realistic processing timelines. We want to continue providing excellent service to all FFEL borrowers and that requires all communication to be clear including appropriate operational timelines to ensure there is no borrower confusion.
8. We encourage the Department to review the cutoff date for differing calculations of when a Direct Consolidation loan originally entered repayment for the purposes of the proposed relief. The proposed regulation uses the earliest date a loan that a consolidation loan repaid for Direct Consolidation loans made prior to July 1, 2023, whereas Direct Consolidation loans after that date would use the latest day that a loan paid via consolidation entered repayment. This could significantly negatively impact borrowers who consolidated for the IDR and PSLF payment count adjustment, which has a consolidation cutoff date of June 30, 2024.