

# **Income-Based Repayment Plan Implementation and Best Practices Guide**

## **Overview and Q&As**

**Version 4.0  
October 2019**

**Developed by the Team FFELP IBR Workgroup**

This *Guide* was developed in order to provide the FFELP community with a resource for implementing and maintaining the Income-Based Repayment (IBR) plan authorized by the College Cost Reduction and Access Act of 2007 and promulgated under the regulations issued by the U.S. Department of Education. This document has been updated with new understandings or guidance obtained since Version 3.0, released in December 2013, including the best practices published in the separate December 2015 Addendum that was released to the community on January 6, 2016. Also new to this version is an addendum (Appendix A) containing all of the Department of Education (ED) e-mails and accompanying attachments referenced throughout Sections I through XII.

The Team FFELP IBR Workgroup was formed in September 2008 and consists of members of NCHER and SLSA. The current represented organizations are:

AES/PHEAA	Navient (formerly Sallie Mae)
Ascendium	NCHER
Brazos Group of Companies	Nelnet
College Foundation	NTHEA
Edfinancial Services	Panhandle-Plains Higher Education Authority
Evidens Group	SLSA
Iowa Student Loan	Trellis Company (formerly TGSLC)
KHESLC	UHEAA
MOHELA	

# IBR Implementation Overview and Q&As

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This *Guide* provides a summary of the statutory (section 493C of the Higher Education Act of 1965 as amended) and regulatory (34 CFR 682.215) provisions for IBR and is not legal advice. Readers should refer to the actual law and regulations and their own legal counsel to determine the issues specific to their own situation(s) and any results that may apply.

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<sup>1</sup> [Note: see updated changes] identifies changes since the publication of the 12.13.2013 Implementation Guide.

<sup>2</sup> Compilation of email exchanges with ED and members of the industry that support the information in the *Guide*.

**Section I: Income-Based Repayment Overview**

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**Background**

The College Cost Reduction and Access Act (CCRAA) introduced a new income-based repayment (IBR) plan under Section 493C of the Higher Education Act (HEA) for FFELP and FDLP loans, except for parent PLUS loans and Consolidation loans that repaid parent PLUS loans. The Higher Education Opportunity Act (HEOA), enacted August 14, 2008, amended certain provisions of IBR. The U.S Department of Education (Department) conducted negotiations with industry representatives to regulate the provisions of the CCRAA. Proposed regulations were issued for public comment on July 1, 2008. Final regulations were issued October 23, 2008, effective July 1, 2009. Additional regulatory changes were made in the Final Regulations that were issued on October 29, 2009, effective July 1, 2010; the HEROES Act waivers issued on September 27, 2012 (and renewed unchanged on September 29, 2017), effective immediately; and Final Regulations issued on November 1, 2012, effective July 1, 2013. This document discusses the IBR plan based on the regulations and subsequent policy guidance from the Department.

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**Eligible Loans**

Beginning on July 1, 2009, a borrower may request to repay the following FFELP and FDLP loans under an IBR plan:

- Subsidized and Unsubsidized Stafford
- Grad PLUS
- SLS and ALAS (student PLUS)
- Federally Insurance Student Loan (FISL)
- Consolidation loans that repaid loans under other programs (e.g., Stafford, SLS, Perkins, HPSL, HEAL, FISL, etc.), other than parent PLUS

Loans not eligible for IBR include:

- Parent PLUS
  - Consolidation loans that repaid parent PLUS
  - Defaulted loans
  - Any other loan type that is not an FFELP or FDLP loan
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**Key Terms**

**Adjusted Gross Income (AGI):** The borrower's adjusted gross income as reported to the Internal Revenue Service (IRS). For a married borrower filing jointly, AGI includes both the borrower's and spouse's income, and for a married borrower filing separately, only the borrower's income.

**Annual Deadline Date:** The date determined by the lender/servicer during the renewal process by which the borrower must provide the most recent income and family size information. The annual deadline date can be no earlier than 35 days prior to the end of the annual payment period.

**Annual Payment Period:** Each 12-month period during which the borrower qualifies for partial financial hardship on the plan.

**Family Size:** The number that is determined by counting the borrower, the borrower’s spouse, and the borrower’s children, including unborn children who will be born during the year the borrower certifies family size, if the children receive more than half their support from the borrower. A borrower’s family size also includes other individuals if, at the time the borrower certifies family size, the other individuals:

- Live with the borrower; and
- Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care and payment of college costs.

**“New” Borrower:** As of July 1, 2014, a borrower who has no outstanding balance on a FFELP or Direct loan at the time he or she obtains a new Direct loan. It is important to note that a borrower cannot become a “new” borrower by consolidating loans obtained prior to July 1, 2014. [§ 685.221(a)(4)]

**Partial Financial Hardship (PFH) [Note: see updated changes]:** A circumstance in which the annual aggregate amount due on all of a borrower’s eligible FFELP and FDLP loans, as calculated under a standard repayment plan based on a 10-year repayment period at the time the borrower initially entered repayment (i.e., “Standard-Standard”), exceeds 15% of the difference between the borrower’s AGI and 150% of the poverty line for the borrower’s family size.

$$\text{Annual Standard-Standard Payment} > 15\%[\text{AGI} - (150\% \text{ Poverty line applicable to family size})]$$

### Regulatory Changes Effective July 1, 2010

1. The PFH formula changed such that either the Standard-Standard Payment or the Permanent-Standard Payment, whichever is the higher, is used.

$$(\text{Greater of Annual Standard-Standard Payment or Annual Permanent-Standard Payment}) > 15\%[\text{AGI} - (150\% \text{ Poverty line applicable to family size})]$$

2. In the case of married borrowers filing a joint tax return, the borrower may include his or her spouse’s eligible loans in the calculation of the Standard-Standard Payment and the Permanent-Standard Payment in order to determine eligibility.

### Statutory Changes Effective July 1, 2014

For new borrowers in the Federal Direct Loan Program on or after July 1, 2014, the PFH formula is 10% of the difference between the borrower’s AGI and 150% of the poverty line for the borrower’s family size.

$$(\text{Greater of Annual Standard-Standard Payment or Annual Permanent-Standard Payment}) > 10\%[\text{AGI} - (150\% \text{ Poverty line applicable to family size})]$$

**Poverty Line Income:** The income categorized by State and family size in the Poverty Guidelines published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the Poverty Guidelines (e.g., a foreign country), the borrower’s poverty line income is the income used for the 48 contiguous States.

**Standard Repayment:** The HEA contemplates three possible types of standard payment amounts associated with the IBR plan:

- **Standard-Standard:** The payment amount calculated for a 10-year repayment period based on the loan balance outstanding when the borrower initially entered repayment on the loan. The 10-year repayment period is used for consolidation loans, regardless as to the original number of years the consolidation loan received.
- **Permanent-Standard:** The payment amount calculated for a 10-year repayment period based on the loan balance outstanding when the borrower begins repayment on the loan under the IBR plan. The 10-year repayment period is used for consolidation loans, regardless as to the original number of years the consolidation loan received.
- **Expedited-Standard:** If the borrower chooses to completely leave the IBR plan, the payment amount calculated over:
  - For Stafford, SLS and eligible PLUS loans, the number of months remaining in the 10-year repayment period, or
  - For a consolidation loan, the number of months remaining in the original loan repayment period, (which could have been a 10 to 30-year repayment period depending on the original term of the Consolidation loan).

**Eligible Borrowers**

A borrower must have a PFH to qualify for the IBR plan. A borrower who at one time had a PFH under the plan, but ceases to have a PFH, will remain in the IBR plan unless the borrower chooses to leave the plan. For a spousal consolidation loan, both borrowers must qualify for IBR. According to guidance from the Department, an incarcerated borrower is eligible for IBR if he or she otherwise qualifies.

**Disclosure of Availability of IBR**

At the time of offering a borrower a loan and at the time of offering a borrower repayment options, a lender/servicer must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation loan borrowers whose loans repaid one or more parent PLUS loans, IBR plans.

This information may be provided in a separate notice or as part of the other required disclosures. The notice must inform the borrower:

- That the borrower is eligible for income-sensitive repayment and may be eligible for IBR, including through loan consolidation;
- Of the procedures by which the borrower can elect income-sensitive or IBR; and
- Of where and how the borrower may obtain more information concerning income-sensitive and IBR plans.

The federal promissory note and associated materials, approved by the Department, satisfy the initial loan origination disclosure notice requirements. However the lender is required to provide a borrower with information about all available repayment plans, including IBR, in other required disclosure documents or informational materials.

**Conversion to Repayment and Repayment Options**

Within six months prior to the date that the borrower's first payment is due, the lender/servicer must offer the borrower a choice of a standard, income-sensitive, income-based, graduated, or, if applicable, an extended repayment schedule.

A lender/servicer must require the borrower to repay the loan under a standard repayment schedule if the borrower:

- Does not select an income-sensitive, IBR, graduated, or if applicable, an extended repayment schedule within 45 days after being notified by the lender/servicer to choose a repayment schedule,
- Chooses an income-sensitive repayment schedule but does not provide the required documentation, or
- Chooses the IBR schedule but does not provide the required income documentation within the time period specified by the lender/servicer.

**IBR Plan Election**

If a borrower elects the IBR plan, the lender/servicer must, unless the borrower requests otherwise, require that all eligible loans owed by the borrower to that lender/servicer be repaid under the IBR plan.

If a borrower has eligible loans held by two or more lender/servicers, the borrower must request IBR from each lender/servicer of eligible loans that the borrower wishes to repay under the IBR plan.

**Regulatory Changes Effective July 1, 2013**

A borrower requesting the IBR plan on or after July 1, 2013, must repay all eligible loans under the IBR plan. A borrower can no longer elect to leave an eligible loan out of the IBR plan.

**IBR Eligibility  
Documentation  
and  
Verification**

The lender/servicer must determine whether a borrower has a PFH to qualify for the IBR plan for the year the borrower elects the plan and at the borrower's request for each subsequent 12-month period ("annual payment period") that the borrower remains on the plan.

However, at the discretion of the lender, if the borrower notifies the lender of a change in circumstances, the lender may recalculate a borrower's PFH payment prior the end of the annual payment period. Such a recalculation resets the borrower's anniversary date of the lender's required annual reevaluation to determine whether the borrower has a PFH.

To make this determination, the lender/servicer must require the borrower to:

- Provide written consent to the disclosure of AGI and other tax return information by the IRS to the lender/servicer. The borrower provides consent by signing a consent form and returning it to the lender/servicer.
- For a spousal consolidation loan, where the borrowers filed separate tax returns, both borrowers must provide written consent to the disclosure of AGI and other tax return information by the IRS to the lender/servicer. Each borrower provides consent by signing a consent form and returning it to the lender/servicer.
- If the borrower's AGI is not available, or the lender/servicer believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the lender/servicer may use other documentation provided by the borrower to verify income.
- In an E-ANN posted June 12, 2009, and in a clarifying email on June 29, 2009, the Department provided guidance that lenders/servicers may accept a signed copy of the borrower's most recent federal tax return in lieu of using the 4506-T form. The signature on the return is not required to be an original "pen and ink" signature.
- In an E-ANN posted April 13, 2012, the Department modified the June 12, 2009 guidance by providing that lenders/servicers may accept an unsigned copy of the borrower's tax return.
- Annually certify the borrower's family size. If the borrower fails to certify family size, the lender/servicer must assume a family size of one for that year.

**Regulatory Changes Effective July 1, 2013**

1. The requirement for the borrower (and the spouse in the case of a spousal consolidation where the borrowers filed separate tax returns) to provide written consent for the disclosure of AGI and other tax return information by the IRS is eliminated. The borrower (and spouse, if applicable) must provide a copy of his or her most recent federal income tax return filed within the two most recently completed tax years.
2. In the case of married borrowers who file a joint federal tax return and the spouse has eligible loans which are not held by the lender/servicer, the borrower must ensure the spouse provides his or her consent for the

**Regulatory Changes Effective July 1, 2013 (continued)**

lender/servicer to access the spouse’s loan information on the National Student Loan Data System (NSLDS). Otherwise, the borrower must provide documentation acceptable to the lender/servicer of the spouse’s eligible loan information.

3. If a married borrower files a federal tax return separately from his or her spouse and indicates he or she resides in a community property state, a borrower is permitted to request that the PFH payment amount be calculated based on the borrower’s earned income that does not reflect a share of the community property income. Community property states consider married couples to have equal ownership of income and property acquired during marriage. A borrower living in a community property state may have a higher PFH payment amount due to the equitable ownership of the couple’s combined income. In this situation, the borrower may provide alternative documentation of income to verify the borrower’s earned income.
4. A borrower who is repaying under another repayment plan prior to electing the IBR plan remains on that other repayment plan if:
  - The borrower fails to provide the required income documentation;
  - The spouse does not provide consent for the lender/servicer to access NSLDS or the borrower does not provide the lender/servicer with other documentation of the spouse’s eligible loan information, and the lender/servicer determines the borrower does not have a PFH on his or her own, if applicable; or
  - The lender/servicer determines the borrower does not have a PFH.

**Monthly Payment Amount Calculation for Period of Partial Financial Hardship**  
*[Note: see updated changes]*

Step 1: Calculate

The monthly payment amount during a period of PFH is one-twelfth of the following:

$$15\%[\text{AGI} - (150\% \text{ Poverty line applicable to family size})]$$

- The monthly payment amount may be equal to or less than accrued interest. In this case, unpaid principal and interest are postponed until the borrower leaves the IBR plan or no longer has a PFH.
- The monthly payment amount may be \$0.

**Statutory Changes Effective July 1, 2014**

For new borrowers in the Federal Direct Loan Program on or after July 1, 2014, the PFH payment amount formula is 10% of the difference between the borrower’s AGI and 150% of the poverty line for the borrower’s family size.

$$10\% [\text{AGI} - (150\% \text{ Poverty line applicable to family size})]$$

Step 2: Prorate

If a borrower’s eligible loans include loans not held by the loan holder, the loan holder will adjust the monthly payment by multiplying the calculated payment by the percentage of total outstanding principal amount of the borrower’s eligible loans that are held by the loan holder. The NSLDS may be used to verify loans held by another holder for this purpose. **Note:** The term “loan holder” by rule is the eligible lender owning a FFELP loan and therefore is the lender and not the servicer.

**Regulatory Changes Effective July 1, 2010**

For married borrowers filing a joint tax return, the PFH payment amount is first apportioned over each borrower’s outstanding loans by determining the percentage of each borrower’s amount of debt over their total combined debt. Then the proration for multiple loan holders is done, if applicable.

Step 3: Round

If the calculated amount, or if applicable, the prorated calculated amount, is less than \$5.00, the borrower’s monthly payment is \$0.00. If the calculated amount is equal to or greater than \$5.00 but less than \$10.00, the borrower’s monthly payment is \$10.00.

**General Rounding Rule Exception**

Generally, a lender/servicer may round a monthly payment to the next highest whole dollar amount that is a multiple of five dollars. This general rule **does not** apply to payments established for the IBR plan.

**Payment Amount Notice**

**Regulatory Changes Effective July 1, 2013**

After making a determination that the borrower has a PFH, the lender/servicer must send a written notice to the borrower. The notice must contain the following information and be sent for the initial year the borrower elects the IBR plan and any subsequent year the borrower has a PFH:

- The scheduled PFH payment amount and the time period during which the scheduled monthly payment amount will apply (i.e., the annual payment period).
- The borrower must annually provide either documentation of his or her AGI or other documentation of income if the borrower’s AGI is not available or if the borrower’s reported AGI does not reasonably reflect his or her current income.
- The borrower must ensure his or her spouse annually provides consent for the lender/servicer to access the spouse’s loan information on NSLDS if the borrower is married, files a joint federal income tax

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**Regulatory Changes Effective July 1, 2013 (continued)**

return with his or her spouse, the spouse has eligible loans, and the lender/servicer does not hold at least one of the spouse’s loans. Otherwise, the borrower must provide documentation acceptable to the lender/servicer of the spouse’s eligible loan information. If the spouse’s information is not provided, the PFH determination will be based on the borrower’s loans only.

- The borrower must certify his or her family size, and if the borrower does not provide this certification, a family size of one will be assumed for that year.
- An explanation that the borrower will be notified in advance of the date (i.e., annual deadline date) by which to provide the income documentation, family size certification, and if applicable, either the spouse’s consent for the lender/servicer to access NSLDS to obtain the spouse’s loan information or other documentation of the spouse’s eligible loan information.
- An explanation of the consequences if the borrower does not provide within 10 days after the annual deadline date the required income documentation, family size certification, and if applicable, either the spouse’s consent for the lender/servicer to access NSLDS to obtain the spouse’s loan information or other documentation of the spouse’s eligible loan information (i.e., the payment will increase to the Permanent-Standard payment amount if the income documentation is not provided or a family size of one will be assumed if the borrower does not certify the family size).
- An explanation of the consequences if the borrower no longer wants to repay under the IBR plan.
- Information about the borrower’s option to request, at any time during the current annual payment period, that the monthly payment amount be recalculated if the borrower’s financial circumstances have changed such that the income amount which was used to calculate the current monthly payment amount no longer reflects the borrower’s current income.

**Payment Application Order**

The lender/servicer must apply any payment made under the IBR plan in the following order:

- Accrued interest.
- Collection costs.
- Late charges.
- Loan principal.

The borrower may prepay the whole or any part of a loan at any time without penalty.

**Advancing the Due Date for Prepayments**

A borrower’s next payment due date is advanced if a prepayment equals or exceeds a scheduled monthly PFH payment amount of \$10 or more, unless the borrower requests otherwise. The next payment due date is not advanced

when the borrower sends a prepayment at a time when the borrower’s PFH monthly payment is \$0.

**Repayment  
Interest  
Subsidy**

If the borrower’s scheduled monthly payment amount applicable to the loan is insufficient to pay the accrued interest on the borrower’s subsidized Stafford loan(s) or the subsidized portion of the borrower’s Federal Consolidation loan(s), the Department pays to the holder the remaining accrued interest for a period not to exceed three consecutive years from the established IBR repayment period start date on each loan repaid under the IBR plan. The Department will pay the calculated IBR interest subsidy regardless of the actual amount the borrower pays.

Except as noted, the 3-year subsidy period is consecutive, which means the counter continues no matter the status of each loan in IBR.

Exceptions

- Economic Hardship Deferment: The three consecutive year subsidy period excludes any period during which the borrower receives an economic hardship deferment.
- Consolidation: The three consecutive year subsidy period does **not** re-start when a loan is consolidated, that is, it includes periods of the 3-year eligibility on the underlying loans.

**Annual  
Renewal  
Process and  
Notice**

The borrower’s PFH payment amount is in effect for the annual payment period. The annual payment period begins on the date the borrower enters the IBR plan. For each subsequent year the borrower has a PFH and provides renewal documentation in a timely manner, the new annual payment period begins on the day after the end of the most recent annual payment period.

The borrower’s PFH payment amount is determined annually and may be adjusted based on any changes to the borrower’s income, the borrower’s family size, and the poverty guidelines.

**Regulatory Waivers Effective September 27, 2012**

The lender/servicer must maintain the most recently calculated PFH payment amount for up to three years, including a three-month transition period immediately following, if the borrower’s status as an affected individual under the HEROES Act prevents him or her from providing updated documentation of income and family size by the annual deadline date. *Note: The industry created a Best Practices document to assist with implementation of HEROES Act.*

**Regulatory Changes Effective July 1, 2013**

The lender/servicer begins the renewal process by sending the borrower a written notice to collect the borrower's most recent income and family size information in advance of the annual deadline date. The annual deadline date can be no earlier than 35 days prior to the end of the annual payment period.

The notice must be sent no earlier than 90 days and no later than 60 days prior to the annual deadline date. The notice must inform the borrower of the following:

- The requirement for the borrower to provide documentation of his or her AGI by the annual deadline date. The annual deadline date must be specified.
- If the borrower's AGI is not available or if the borrower's reported AGI does not reasonably reflect his or her current income, the borrower must provide other documentation of income.
- If the borrower is married, files a joint federal income tax return with his or her spouse, the spouse has eligible loans, and the lender/servicer does not hold at least one of the spouse's loans, the borrower must ensure the spouse provides his or her consent for the lender/servicer to access the spouse's loan information on NSLDS. Otherwise, the borrower must provide documentation acceptable to the lender/servicer of the spouse's eligible loan information.
- The borrower must certify his or her family size, and if the borrower does not provide this certification, a family size of one will be assumed for that year.
- The consequences if the documentation is not received within 10 days after the annual deadline date, including conversion to the Permanent-Standard monthly payment amount, the effective date of the Permanent-Standard payment amount, and the fact that unpaid accrued interest will be capitalized at the end of the current annual payment period.

If documentation of the borrower's income is received within 10 days of the annual deadline date, the lender/servicer must promptly determine the new PFH payment amount. If the lender/servicer does not determine the new PFH payment amount by the end of the annual payment period, the current PFH payment amount must be maintained until the new PFH payment amount is determined. The lender/servicer must prevent the Permanent-Standard payment amount from being established.

If the new PFH payment amount is less than the previously calculated PFH payment amount and the borrower made payments at the previously calculated PFH payment amount after the end of the most recent annual payment period, the borrower's account is adjusted. Unless the borrower requests otherwise, the additional payment amounts made after the most recent annual payment period are not considered prepayments and do not

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**Regulatory Changes Effective July 1, 2013 (continued)**

advance the next payment due date. The additional payment amounts are applied in the order outlined in the “Payment Application Order” section. If applicable, the lender/servicer must make appropriate adjustments to interest subsidy and special allowance billing.

If the new PFH payment amount is equal to or greater than the previously calculated PFH payment amount and the borrower made payments at the previously calculated PFH payment amount after the end of the most recent annual payment period, no adjustments are made to the borrower’s account.

If documentation of the borrower’s income (or, if applicable, either the spouse’s consent for the lender/servicer to access NSLDS to obtain the spouse’s loan information or other documentation of the spouse’s eligible loan information) is received more than 10 days after the annual deadline date and the borrower’s monthly payment has been set to the Permanent-Standard amount, a new annual payment period and corresponding annual deadline date is established based on the date the new PFH payment amount is determined.

**Special Allowance on Unpaid Interest During Partial Financial Hardship Period**

During a period of PFH, special allowance is paid on an average daily balance of the outstanding accrued interest that includes the accrued interest that is the borrower’s responsibility and the accrued interest that is the Department’s obligation to pay. If the borrower’s PFH period ends prior to the end of a quarter, the average daily balance calculation will stop as of that date.

To compute the average daily balance of unpaid accrued interest, the lender/servicer adds the unpaid accrued interest on such loans for each eligible day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter.

The special allowance rate is calculated as follows:

- Determine the applicable special allowance rate based on regulatory requirements.
- For purposes of subtracting the applicable interest rate, the rate is deemed to be **zero**.
- Divide by four.

**Collection Letters**

Collection letters sent during 16-180 days of delinquency must include information for a borrower regarding the IBR plan in addition to the other repayment and default avoidance options.

**Administrative Forbearance**

A lender/servicer 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:

- For a period of delinquency at the time a borrower makes a change to the repayment plan.
- For a period not to exceed 60 days necessary for the lender/servicer to collect and process documentation supporting the borrower’s eligibility for loan forgiveness under the IBR plan. The lender/servicer must notify the borrower that the requirement to make payments on the loans for which forgiveness was requested has been suspended pending approval of the forgiveness by the guaranty agency.

**Regulatory Changes Effective July 1, 2013 [§ 682.211(f)(16)]**

During the annual renewal process in the situation where documentation of the borrower’s income (or, if applicable, either the spouse’s consent for the lender/servicer to access NSLDS to obtain the spouse’s loan information or other documentation of the spouse’s eligible loan information) is received more than 10 days after the annual deadline date and the borrower’s monthly payment has been set to the Permanent-Standard amount, a lender/servicer may grant forbearance to resolve any delinquency of payments that are past due or would be past due by the time the new PFH payment is determined, provided the new PFH payment amount is \$0 or less than the previously calculated PFH payment amount. If this forbearance is granted, the interest accrued from the date the payment was changed to Permanent-Standard to the date the forbearance period ends cannot be capitalized.

**Loan Forgiveness Criteria**

*[Note: see updated changes]*

To qualify for loan forgiveness after 25 years, the borrower must have participated in the IBR plan and satisfied at least one, or a combination, of the following monthly conditions for a 25-year period:

- Made monthly payments calculated on the basis of the borrower having a PFH, (includes a calculated amount of \$0).
- Made monthly “Permanent-Standard” payments.
- Made monthly payments under any repayment plan other than the 10-year standard plan (i.e., income-sensitive, graduated, or extended repayment) that were not less than the calculated “standard-standard” payment amount.
- Made monthly payments under the 10-year standard repayment plan, even if they were less than the Standard-Standard payment amount due to interest rate changes (based on guidance from the Department).
- Received economic hardship deferment.

Payments During Default

- Payments made on a defaulted loan are not counted as qualifying payments toward the 25-year forgiveness period.

Beginning Date

- The beginning date for purposes of counting the 25-year forgiveness period is the date the borrower made a qualifying payment or received an economic hardship deferment on that loan (even payments made or economic hardship deferment periods prior to the borrower entering IBR), but can be no earlier than July 1, 2009.
- The 25-year forgiveness period re-starts when a loan is paid by consolidation.
- A lender is to count all qualifying payments a borrower makes on a Consolidation loan that is made on or after July 1, 2009, which means that qualifying payments made prior to the borrower entering IBR and made after the borrower enters IBR on the consolidation loan would count toward the 25-year forgiveness period.

**Statutory Changes Effective July 1, 2014**

For new borrowers in the Federal Direct Loan Program on or after July 1, 2014, the forgiveness period is 20 years instead of 25 years.

**Loan  
Forgiveness  
Payment  
Processing and  
Notices**

A borrower is not required to submit a request for loan forgiveness. No later than 60 days after the lender/servicer determines that a borrower qualifies for loan forgiveness the lender/servicer must request payment from the guaranty agency.

If the lender/servicer requests payment from the guaranty agency later than 60 days after the lender/servicer makes the determination that the borrower qualifies for forgiveness, interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Department, and the holder must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period. The holder cannot collect from the borrower any interest that is not paid by the Department.

Within 45 days of receiving the holder's request for payment, the guaranty agency must determine if the borrower meets the eligibility requirements for loan forgiveness and must notify the holder of its determination. If the guaranty agency approves the loan forgiveness, it must, within the same 45-day period, pay the holder the amount of the forgiveness.

After being notified by the guaranty agency of its determination of the eligibility of the borrower for loan forgiveness, the holder must, within 30

days, inform the borrower of the determination and that the borrower's repayment obligation on the loans is satisfied. The lender/servicer must also provide the borrower general information on the current treatment of the forgiveness amount for tax purposes and instructions for the borrower to contact the IRS for further information.

The holder must apply the proceeds of the IBR loan forgiveness amount to satisfy the outstanding balance on those loans subject to IBR forgiveness.

If the forgiveness amount exceeds the outstanding balance on the eligible loans subject to forgiveness, the lender/servicer must refund the excess amount to the guaranty agency.

The lender/servicer must promptly return to the sender any payment received on a loan after the guaranty agency pays the amount of loan forgiveness.

If the guaranty agency does not pay the forgiveness claim, the lender/servicer will continue the borrower in repayment on the loan. The lender/servicer is deemed to have exercised forbearance of both principal and interest from the date the borrower's repayment obligation was suspended until the new payment due date. Unpaid interest during this period may be capitalized, unless the claim denial is due to an error by the lender/servicer.

#### **Regulatory Changes Effective July 1, 2013**

No later than six months prior to the anticipated date that the borrower will meet the loan forgiveness requirements, a lender/servicer must send the borrower a written notice that includes the following:

- An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness.
- A reminder that the borrower must continue to make the scheduled monthly payments.
- General information on current treatment of the forgiveness amount for tax purposes and instructions to contact the IRS for more information.

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#### **Borrower Ceases Partial Financial Hardship and Notices**

If a borrower no longer has a PFH, chooses to stop making PFH payments, fails to renew the required written consent for income verification, or withdraws consent and does not select another repayment plan, the borrower remains under the IBR plan (or IBR "umbrella") but the lender/servicer must recalculate the borrower's monthly payment. In either case, the monthly payment amount is the "Permanent-Standard" payment amount. Except for periods of PFH or reduced payment forbearance, the loan once again is required to meet the annual \$50 minimum monthly and \$600 annual payment amount.

**Regulatory Changes Effective July 1, 2013**

1. The references to the Permanent-Standard payment amount being established if the borrower fails to renew the required written consent for income verification or the borrower withdraws consent is deleted. The Permanent-Standard payment amount is established if the borrower does not provide the required income documentation within 10 days of the annual deadline date such that the lender/servicer cannot determine the new PFH payment amount before the end of the current annual payment period.
2. When the lender/servicer determines a borrower no longer has a PFH, it must send a written notice to the borrower containing the following information:
  - The Permanent-Standard monthly payment amount.
  - An explanation that any unpaid accrued interest will be capitalized.
  - Information about the borrower's option to request, at any time, that the lender/servicer determine whether the borrower has a PFH if the borrower's financial circumstances have changed such that the income amount used to determine the borrower no longer has a PFH does not reflect the borrower's current income.
  - An explanation that the borrower will be notified annually of the option to have the lender/servicer determine whether he or she has a PFH.
3. For each year after the borrower no longer has a PFH but remains on the IBR plan, the lender/servicer must send a written notice to the borrower containing the following:
  - Information about the borrower's option to request, at any time, that the lender/servicer determine whether the borrower has a PFH if the borrower's financial circumstances have changed such that the income amount used to determine the borrower no longer has a PFH does not reflect the borrower's current income.
  - An explanation that the borrower will be notified annually of the option to have the lender/servicer determine whether he or she has a PFH.

**Capitalization**

Accrued interest is capitalized at the time the borrower chooses to leave the IBR plan or no longer has a PFH. If a borrower alternates between periods of PFH and "Permanent-Standard" unpaid interest must be capitalized each time the borrower no longer has a PFH.

**Borrower No Longer Wishes to Pay under IBR**

If a borrower no longer wishes to pay under the IBR plan, the borrower must pay under a standard repayment plan based on an “Expedited-Standard” payment amount.

**Regulatory Changes Effective July 1, 2013**

If the borrower wishes to switch to a different repayment plan (e.g., graduated or extended), the borrower must make either one Expedited-Standard payment or one payment under a reduced payment forbearance agreement with the lender/servicer. A payment made under a reduced payment forbearance agreement must be greater than \$0.

**Section II: Eligible Loans Q&As**

**Q1.** How are borrowers notified of the IBR plan?

**A1.** Lender/servicers are required to disclose certain information at certain time, e.g., prior to disbursement disclosures, prior to repayment disclosures, 60-day delinquent disclosures, monthly billing disclosures, difficulty making payment disclosures and any other times that repayment options are discussed and offered. Students will also hear about the IBR plan during exit counseling which is required when the student loan borrower graduates, drops below half-time enrollment or withdraws from school.

**Q2.** Regarding the disclosure that is required for lenders to inform the borrower of the availability of IBR, is there a "Sample" of the notice available to ensure proper/correct legal wording?

**A2.** No. As with other disclosure requirements, the lender/servicer should consult their legal counsel for proper disclosure wording.

**Q3.** If parent PLUS loans are not eligible for IBR, are Consolidation loans that repaid underlying parent PLUS loans also not eligible for IBR? If the Consolidation loan is not eligible for IBR, is the entire Consolidation loan not eligible, or only the parent PLUS loan portion of the Consolidation loan not eligible?

**A3.** If a Consolidation loan repaid a parent PLUS loan, the entire Consolidation loan would not be eligible for IBR. However, the Department clarified on March 18, 2014 that if the portion of a Consolidation loan attributable to a parent PLUS loan is eliminated due to a discharge (e.g., dependent student death), the Consolidation loan becomes eligible for IBR because IBR will not be used to pay off the portion of the Consolidation loan that rendered it ineligible. ***[Confirmed by the Department, March 18, 2014]*** Furthermore, the Department confirmed on December 22, 2016 that a Consolidation loan is ineligible for IBR only if it **directly** repaid a parent PLUS loan, meaning, for example, that a Direct Consolidation loan that only repaid a FFELP Consolidation loan that repaid parent PLUS loans would be eligible. ***[Confirmed by the Department, December 22, 2016]***

**Q4.** If a Consolidation loan repaid any HEAL, Perkins, and/or HPSL loans (but not any parent PLUS loan) is it eligible for IBR?

**A4.** Yes. A FFELP or FDLP Consolidation loan that repaid any underlying HEAL, Perkins, and/or HPSL loan is deemed eligible for IBR (provided the Consolidation loan did not directly repay any underlying parent PLUS loan).

**Q5.** If a borrower has both parent PLUS loans and other types of loans and wishes to consolidate the loans, may the borrower obtain two Consolidation loans, one for the parent PLUS loans and one for the other loans, to preserve eligibility for IBR on the other loans?

**A5.** Yes. Neither the statute nor regulations prohibit a borrower from obtaining two separate Consolidation loans as long as only one application is pending at a time. This would be a counseling issue between the loan holder and the borrower to review the best options for that particular borrower.

**Q6.** How does a loan holder determine if a PLUS loan being consolidated was made to a Graduate/Professional student or a parent PLUS borrower?

**A6.** Grad PLUS loans carry their own loan type of GB on NSLDS as well as within a lender/servicer system. This loan type is also used when a lender completes the Lender Verification Certificate (LVC) as part of the consolidation loan process.

**Q7.** Is it possible for a parent to remove a parent PLUS loan from a Consolidation loan in order to qualify for IBR?

**A7.** Once consolidated, a Consolidation loan is generally not permitted to be reversed or undone, nor a loan removed. However, the Department clarified on March 18, 2014 that if the portion of a Consolidation loan attributable to a parent PLUS loan is eliminated due to a discharge (e.g., dependent student death), the Consolidation loan becomes eligible for IBR because IBR will not be used to pay off the portion of the Consolidation loan that rendered it ineligible. *[Confirmed by the Department, March 18, 2014]*

**Q8.** Are “re-consolidations” eligible for the IBR plan?

**A8.** If a borrower re-consolidates an underlying Consolidation loan and does not also include a parent PLUS loan, the new Consolidation loan is eligible for the IBR plan. However, if the new Consolidation loan also includes one or more Parent PLUS loans, it is not eligible for the IBR plan. *[Confirmed by the Department, December 22, 2016]*

**Q9.** Are defaulted loans held by a guarantor eligible for IBR?

**A9.** No. The Higher Education Opportunity Act of 2008 (HEOA) provided a technical amendment to the IBR statute to specifically exclude defaulted loans held by the guarantor from eligibility for IBR.

**Q10.** Once a loan is in default and placed with an outside collection agency, is IBR a repayment option for the borrower?

**A10.** No. Defaulted loans are not eligible for the IBR plan.

**Q11.** If a borrower defaulted on a loan a few years ago, entered a rehabilitation program, and the lender bought back the loan from the guarantor, would the borrower have the option of IBR?

**A11.** Yes. The borrower would have the option, but must have a PFH to qualify for IBR.

**Q12.** Are loans with co-makers eligible for IBR? If yes, does the co-maker need to submit income documentation?

**A12.** Yes, co-made loans are eligible for the IBR plan as long as both borrowers qualify individually. If the co-maker is the spouse then yes his or her income would be taken into consideration. If the co-makers are no longer married, each would have to qualify for IBR based on his or her individual circumstances in regard to family size, tax filing status, and income.

**Q13.** How delinquent can a borrower be and still be eligible for IBR?

**A13.** A borrower is eligible for IBR until the loan is in default status. This means a borrower may be able to resolve the default *prior to claim payment* and obtain IBR. For example, a lender may recall the claim, use forbearance to cover the delinquency, and place the borrower into IBR.

The Department has subsequently clarified that the administrative forbearance for delinquency prior to a repayment plan change may not be used after day 270, but before the claim is paid. In this case, the lender/servicer will need to obtain a discretionary forbearance in accordance with §682.211(d).

**Q14.** Can a borrower exclude IBR-eligible loans from the IBR plan?

**A14.** A borrower who requests IBR on or after July 1, 2013 may no longer choose to exclude FFELP IBR-eligible loans from the IBR plan based simply on the borrower's choice. Only loans that are ineligible for IBR (parent PLUS or Consolidation that repaid a parent PLUS) are excluded from the IBR plan. However, a FFELP borrower who has already established an IBR plan based on the exclusion of IBR-eligible loans may continue to exclude those loans as long as the borrower remains under IBR. [*Federal Register* dated November 1, 2012, Final Rule page 66113; §682.215(b)(3)]

#### **From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q15.** Is a borrower on the IBR plan with loans in PFH status and who is 270 days or more delinquent, still eligible for benefits under the IBR plan?

**A15.** Yes. Under the IBR plan, when a borrower is 270 days or more past due on repayment of his or her FFELP loans but whose loans have not been claim paid by the guaranty agency, the IBR "benefits"—including interest subsidy on a loan in PFH status—continue. However, once the default claim is paid by the guaranty agency, there are no IBR benefits. [*Confirmed by the Department and Office of General Counsel, February 19, 2015<sup>2</sup>*]

**Q16.** Can a servicer allow a borrower to sign up for IBR after 270 days of delinquency?

**A16.** Yes. Lenders would follow existing practices to cover the delinquency period prior to approving IBR.

**Q17.** If a Consolidation loan that initially paid off one or more parent PLUS loans later becomes eligible for IBR due to the parent PLUS portion being fully discharged (e.g., discharge due to death of dependent student), at what point should the servicer begin counting qualifying payments toward loan forgiveness?

**A17.** The servicer should begin their forgiveness payment counter on July 1, 2009, or on the date the first qualifying payment was posted to the Consolidation loan, whichever is later, regardless of when the Parent PLUS loan portion of the Consolidation loan was discharged.

*Continued on next page*

**Section III: Monthly Payment Amount O&As**

**Q1.** For purposes of the partial financial hardship (PFH) calculation, are FDLP loans held by the Department included in the prorated monthly payment amount?

**A1.** Yes. FDLP loans are deemed eligible for IBR (except FDLP Parent PLUS and Consolidated FDLP Parent PLUS loans). In this case, if a loan holder is aware that a FFELP borrower also has FDLP loans held by the Department, the total calculated PFH payment must be prorated, that is, multiplied by the percentage of the total outstanding principal amount of IBR eligible loans that represents the amount of IBR eligible loans that are held by the loan holder.

**Q2.** If at the time a borrower requests IBR the loan payments have been prepaid sufficient to advance the due date more than 11 months in the future, should the borrower be placed in IBR or wait until the next payment is due?

**A2.** As in place today for repayment plan changes, this may be a counseling matter.

**Q3.** If a borrower's calculated PFH payment is \$0, and the borrower makes a payment greater than \$0, how should the loan holder handle the advancement of the next payment due date?

**A3.** The loan holder may not advance the next payment due date. In addition, §682.215(c)(4) states that if the borrower makes a payment while the PFH payment amount is \$0, the loan holder must apply it consistent with the IBR provisions regarding the order of payment allocation.

**Q4.** What if a borrower is on IBR and at some point asks for his monthly PFH payment amount to be increased? Is the loan holder required to remove the PFH schedule, as a request to increase the payment amount would seem to indicate that the borrower no longer wants the PFH payment and implies he no longer has a PFH?

**A4.** Under federal regulations, the loan holder is not permitted to increase the PFH payment amount. Any extra amount over the required payment amount should be handled just as such payments are handled today. The borrower also has the option to (1) ask for a re-evaluation which may result in a higher scheduled payment amount; (2) get out of PFH and move to the Permanent-Standard payment amount; or (3) voluntarily leave IBR and go to the Expedited-Standard payment amount, and then change to a different repayment plan.

**Q5.** For the loans held by the loan holder, is the payment amount subject to the \$0 and \$10 payment tolerances at the loan level?

**A5.** No. The \$0 and \$10 payment tolerances are applied at the loan holder level for all the loans held by that loan holder. If the prorated or straight math method of determining the payment amount for each loan results in a payment that is within the tolerances, the loan holder must apply that calculated payment amount to the individual loan to ensure that the borrower's payment does not exceed the total PFH payment amount applicable to the borrower for the loans held by that loan holder.

**Q6.** May the \$0 and \$10 tolerances be applied at the servicer level?

**A6.** No. The Department provided guidance that the regulatory term "holder" means "lender", not "servicer". The tolerances may only be applied at the loan holder level. The Department

expects loan servicers that are servicing a borrower's loans for multiple holders to comply by the applicable effective date with the payment adjustment requirements of the regulations. The Department believes this is critical to ensure that borrowers under IBR are treated consistently by all loan holders and are not overbilled. The Department will take steps to ensure that IBR payments are calculated correctly for the FFELP and FDLP loans it holds.

Following are some examples of how this would apply:

**Example 1: Calculated PFH payment \$8, multiple holders that service own loans**

Borrower has 50% of loans held/serviced by Lender A and 50% of loans held/serviced by Lender B. Borrower's total calculated monthly PFH payment is \$8. After proration between holders the amounts are \$4 for Lender A and \$4 for Lender B. Under the \$5/\$10 rule, borrower would have a monthly payment of \$0 for Lender A and \$0 for Lender B.

**Example 2: Calculated PFH payment of \$8, multiple holders that use same servicer**

Same as Example 1 except all of the borrower's loans are serviced by Servicer A for both Lender A and Lender B. Proration is done for each loan holder regardless of single servicer; the borrower would pay \$0 to both Lender A and Lender B.

**Example 3: Calculated PFH payment of \$8, one holder that uses two servicers**

Same as Example 1 except Lender A holds all of the borrower's loans and 50% are serviced by Servicer A and 50% serviced by Servicer B. Borrower's total calculated monthly PFH payment is \$8. No proration is necessary so the borrower would owe a PFH payment of \$10, which will be split \$5 for Servicer A and \$5 for Servicer B. In this case the \$5 PFH payment per servicer is an acceptable amount even though it falls between \$0 and \$10.

**Q7.** Please explain the disclosure of repayment terms when disclosing PFH.

**A7.** This is really up to the lender/servicer on how they will disclose. One method is that the repayment schedule would reflect the first 12 months at the PFH payment amount then the remaining term at the Permanent-Standard payment amount.

**Q8.** If a borrower elects Expedited-Standard repayment, is the number of months in repayment under IBR counted when determining the maximum remaining months available under the Expedited-Standard repayment plan?

**A8.** Yes. The number of months in repayment used under IBR does count against the remaining months available.

**Q9.** If the borrower elects Expedited-Standard repayment, and the borrower qualifies for extended repayment, may the loan holder use a 25-year repayment term when determining the remaining months available under the Expedited-Standard repayment plan?

**A9.** No. The Expedited-Standard repayment amount must be calculated using the remaining months in a 10-year period for all loans but Consolidation loans. Based on guidance from the Department and technical corrections to the regulations in the November 1, 2012, Final Rules, the Expedited-Standard repayment amount for a Consolidation loan must be calculated on the remaining months in the original Consolidation loan repayment period but based on the amount of the Consolidation loan outstanding at the time the borrower leaves IBR.

**Q10.** If a borrower elects IBR while he or she is on another repayment plan and the borrower fails to provide the required documentation, or does not qualify for PFH, does the loan holder maintain the current repayment plan or is the loan holder required to convert the borrower to a standard plan as outlined in §682.209(a)(6)(v)?

**A10.** The borrower would continue in the current repayment plan. [Note: The November 1, 2012 Final Rule confirmed this response in §682.215(e)(6).] In the case of initial repayment, if the borrower does not select another plan, the borrower would receive the standard repayment plan, as occurs today.

**Q11.** If a PFH payment calculates to \$10.35, can the loan holder round it up to the next highest dollar amount of \$11.00?

**A11.** No. §682.215(b)(1) states that the loan holder adjusts the calculated amount only in the four listed instances.

**Q12.** If a borrower's AGI is less than 150% of the borrower's applicable poverty level, then the calculated payment would be a negative number. In this case, is the PFH payment amount set at \$0?

**A12.** Yes.

**Q13.** The loan holder initially disclosed to a borrower using a 9-year repayment term when the borrower initially entered repayment. The borrower subsequently selects IBR, chooses to leave the plan, and the loan holder is required to recalculate the payment amount using an Expedited-Standard repayment plan. Is the loan holder required to recalculate the payment amount using the remainder of 10 years or the remainder of 9 years as initially disclosed?

**A13.** §682.215(d)(2)(i) states "The time remaining under the maximum ten-year repayment period" for any loan except a Consolidation loan. Since it specifically states "the maximum ten-year repayment period" and not "up to a maximum ten-year repayment period" the loan holder would use the remaining payments out of 10 years to determine the Expedited-Standard payment amount, subject to the \$50 minimum monthly payment.

**Q14.** In calculating the proration of the PFH payment amount between loan holders, does the loan holder exclude from the calculation the balance of any loan(s) that the borrower chooses not to repay under IBR?

**A14.** *[Revised by November 2012 Final Rule, effective July 1, 2013]:* A borrower requesting the IBR plan must include all eligible loans.

*[Prior to July 1, 2013]:* No. §682.215(b)(1)(i) requires the loan holder to prorate the payment based on the outstanding balances of all eligible loans. "Eligible loan" is defined in §682.215(a)(2) and it does not exclude loans that a borrower does not wish to repay under IBR.

**Q15.** If a borrower elects to not pay a particular loan(s) under IBR, but wishes to repay another loan(s) under IBR, is the Standard-Standard payment amount on the excluded loan(s) used to determine PFH eligibility?

**A15.** *[Revised by November 2012 Final Rule, effective July 1, 2013]:* A borrower requesting the IBR plan must include all eligible loans.

[Prior to July 1, 2013]: Yes. §682.215(a)(4) requires that in determining whether a borrower has a PFH, the loan holder must use the annual amount due on “all of a borrower’s eligible loans.” “Eligible loan” is defined in §682.215(a)(2) and it does not exclude loans that a borrower does not wish to repay under IBR.

**Q16.** If the borrower elects to exclude some loans from IBR, but chooses to repay other loans under IBR, how is the PFH payment amount allocated across those loans?

**A16.** [Revised by November 2012 Final Rule, effective July 1, 2013]: A borrower requesting the IBR plan must include all eligible loans.

[Prior to July 1, 2013]: The PFH payment amount is allocated to all of the borrower’s eligible loans, including any that the borrower has chosen to exclude from IBR. The portion of the PFH payment amount attributable to the excluded loans is not reallocated among the other loans; it stays with the excluded loans and covered by whatever alternate repayment plan the borrower chooses on those loans. This policy prevents potentially disparate treatment of different borrowers in different loan holder/servicer situations. The following illustrates this concept.

Two borrowers, each has six IBR-eligible loans but wants one of them left out of IBR because it is being repaid by a parent on a different schedule. Here is the vital information:

Total outstanding balance of eligible loans: \$50,000  
 Initial PFH payment amount (15% of AGI – PLI): \$100.00

Loan breakdown (all loans are owned by the same holder):

Loan 1 = \$1,500 (3% of \$50,000); PFH payment is 3% of \$100 or <b>\$3.00</b>
Loan 2 = \$2,000 (4% of \$50,000); PFH payment is 4% of \$100 or <b>\$4.00</b>
Loan 3 = \$8,000 (16% of \$50,000); PFH payment is 16% of \$100 or <b>\$16.00</b>
Loan 4 = \$10,000 (20% of \$50,000); PFH payment is 20% of \$100 or <b>\$20.00</b>
Loan 5 = \$21,000 (42% of \$50,000); PFH payment is 42% of \$100 or <b>\$42.00</b>
<b>Loan 6 = \$7500*</b> (15% of \$50,000); PFH payment is 15% of \$100 or <b>\$15.00</b>

\*This is the loan being voluntarily excluded from IBR repayment. The borrower’s standard payment amount on this loan, based on a ten-year term and a 6.8% fixed interest rate, is **\$86.31**.

**BORROWER 1:** All six loans are handled by one servicer:

<b>SCENARIO 1: Applying the full PFH payment on 5 non-excluded loans.</b> In this case, since the same servicer has all of the loans, they would need to reallocate the \$15 payment on loan 6 proportionally among the other 5.					
Loan 1	Loan 2	Loan 3	Loan 4	Loan 5	Loan 6
\$3.00 + \$0.53	\$4.00 + \$0.71	\$16.00 + \$2.82	\$20.00 + \$3.53	\$42.00 + \$7.41	\$86.31
<b>Borrower’s total monthly payment amount: \$186.31</b>					
<b>SCENARIO 2: Leave PFH payment for loan 6 as part of loan 6</b>					
Loan 1	Loan 2	Loan 3	Loan 4	Loan 5	Loan 6
\$3.00	\$4.00	\$16.00	\$20.00	\$42.00	\$86.31
<b>Borrower’s total monthly payment amount: \$171.31</b>					

**BORROWER 2:** Loans 1 and 2 under servicer 1, Loans 3, 4 and 5 under servicer 2, Loan 6 under servicer 3

<b>SCENARIO 1: Applying the full PFH payment on 5 non-excluded loans.</b> In this case, servicers 1 and 2 won't know that Loan 6 was excluded and therefore won't know to reallocate the PFH payment among the loans they're servicing.					
Loan 1	Loan 2	Loan 3	Loan 4	Loan 5	Loan 6
\$3.00	\$4.00	\$16.00	\$20.00	\$42.00	\$86.31
<b>Borrower's total monthly payment amount: \$171.31</b>					
<b>SCENARIO 2: Leave PFH payment for loan 6 as part of loan 6</b>					
Loan 1	Loan 2	Loan 3	Loan 4	Loan 5	Loan 6
\$3.00	\$4.00	\$16.00	\$20.00	\$42.00	\$86.31
<b>Borrower's total monthly payment amount: \$171.31</b>					

These examples show that reapportioning the PFH payment for the excluded loan among the other loans could result in different payment amounts for different borrowers, depending on how the ownership and servicing of their loans is allocated. So, the only policy that does not result in potentially disparate treatment, with regard to the total monthly payment amount, is to not reallocate the calculated PFH payment amount on the excluded loan among the other loans. The borrower is still, in essence, paying at least the minimum PFH payment amount of \$100; it's just that part of that \$100 is being paid under a different plan in one case.

**Q17.** If a borrower has loans in default and non-default status, are the defaulted loans used to determine the borrower's PFH eligibility and pro-rated payment amount?

**A17.** No. §682.215(a)(2) defines "Eligible loan" which states that the term does not include a defaulted loan. Then §682.215(a)(4) defines "Partial financial hardship" which uses the phrase "all of a borrower's eligible loans." The PFH determination would not take into account the payments due on the defaulted loans and if the borrower qualifies on the non-defaulted loans, the PFH payment is only applied to the non-defaulted loans. In other words, the PFH payment is not prorated across the defaulted loans. This same concept would apply to borrowers with other types of loans that are not eligible for IBR, such as parent PLUS, Perkins, NDLS, etc. and consolidation loans that repaid parent PLUS loans.

**Q18.** Both the Higher Education Opportunity Act (HEOA) and the October 29, 2009 Final Rule state the disclosure before repayment must include "The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments based on the repayment schedule selected by the borrower." If the borrower selects IBR prior to the holder sending the repayment disclosure, how does the holder disclose the number of payments, i.e., 12 payments at the PFH amount, then the remaining number of permanent-standard payments required to pay the loan in full?

**A18.** It depends on the timing of the repayment disclosure in relation to the offering of the repayment options. If both occur at the same time, this would not be an issue. However, some systems may have the capability to offer repayment options first and then disclose the payment amounts that the borrower would pay under IBR as known at that time.

**Q19.** If a borrower has a Consolidation loan, would the Standard-Standard and Permanent-Standard amounts be determined based on a ten (10) year term or on the applicable Consolidation loan term?

**A19.** Federal regulations require that the Standard-Standard and Permanent-Standard payment amounts are based on a 10-year term, regardless of the loan program.

**Q20.** Do loans with a scheduled PFH payment of \$0 have to receive monthly billing statements?

**A20.** The Department has clarified that the monthly disclosure during repayment required under the HEOA must be provided to the borrower even if the payment amount is \$0 under IBR. This disclosure of information may or may not be in the form of a billing statement.

**Q21.** How do lenders count loans with a scheduled PFH payment of \$0 against the number of payments made if a payment is not being sent by the borrower?

**A21.** The lender/servicer would automatically bank each month that has a zero payment as that month passes.

**Q22.** If a borrower elects to leave the IBR plan and enters into an Expedited-Standard repayment plan, can the borrower subsequently apply for a different repayment option, (e.g., graduated, extended, etc.)?

**A22.** Yes, to the extent the borrower still has time available under the chosen plan. Note that the time remaining under another plan would exclude any prior months in repayment both before and during IBR.

**Q23.** If a borrower leaves the IBR umbrella and enters Expedited-Standard, does he or she need to make one payment before switching to a different repayment plan?

**A23.** Prior to implementation of the November 1, 2012 Final Rule, the borrower was only required to be set up for one payment. However, the November 1, 2012 Final Rule, effective July 1, 2013, now requires at least one payment to be made on the Expedited-Standard repayment plan, but the payment may be made under a reduced-payment (other than \$0) forbearance agreement.

**Q24.** If a borrower is in IBR for five (5) years and then leaves IBR, can he or she enter the extended repayment plan if the loan balance qualifies? Would it be the original loan balance or the current loan balance that would be used to see if the borrower has the \$30,000 in federal debt to qualify for extended repayment?

**A24.** The borrower would have to first "pass-through" Expedited-Standard then could be placed on an extended repayment plan. The ability to obtain the extended plan would be based on the borrower's CURRENT loan balance. *[Note: See A23. regarding November 1, 2012 Final Rule]*

**Q25.** If a borrower leaves IBR and the lender recalculates the monthly payment, can it be higher than the payment amount before the borrower entered IBR?

**A25.** Yes, especially since the IBR months used will have counted against the maximum repayment months available.

**Q26.** Under §682.215(d)(2), what would a borrower's initial monthly payment be if he wished to exit IBR in order to obtain a lower monthly payment under another repayment plan (e.g., Extended) but had no time remaining under the maximum repayment period applicable to the loan type (e.g., 120 months for a Stafford, SLS, or PLUS loan or 240 months for a Consolidation loan)?

**A26.** As an alternative to requiring a very large payment under §682.215(d)(2), the lender may, under §682.215(d)(3), accept a lower payment under a reduced-payment forbearance agreement and then move the borrower to another repayment plan that gives him more time to make a more affordable monthly payment. As a practical matter, changing to Extended (after making the one payment) would be the borrower's only viable repayment option. [*Note: This was confirmed by the Department in an email on July 22, 2013.*]

**Q27.** Let's say a borrower had a \$45,000 Grad PLUS loan. He chooses to leave IBR after 5 years, receives the Expedited-Standard payment, and then requests the Extended repayment plan. Would this borrower have 20 years to pay off the balance or 25 years?

**A27.** The borrower would have 20 years to pay off the balance (25 year term minus 5 years in IBR).

**Q28.** Medical students with well over \$100,000 in eligible loans do a four-year residency during which time they request IBR. When they finish their residency, they no longer have a PFH, but can stay in IBR. Are payments calculated on Expedited 10-year OR can these borrowers take 25 years (extended repayment plan) less 4 years, for a total of 21 years?

**A28.** If they remain under the IBR umbrella and never again have a period of PFH, the payment will remain the Permanent-Standard payment that was calculated based on a 10-year term when the borrower entered IBR. To get the 21 remaining years, they would have to leave the IBR umbrella altogether and initially go into Expedited-Standard repayment (payment amount based on current balance and time remaining of the 10-year term, or the original Consolidation loan term), and then request the Extended repayment plan.

**Q29.** Does the regulation state that borrowers in the IBR plan with a \$0 payment amount cannot have their due date moved forward? Wouldn't that cause problems for consumer reporting agency reporting?

**A29.** The due date can advance as normal; it just cannot be advanced beyond the current month at any point (no prepayments). So, each month the lender/servicer should continue to report to the agencies as a current repayment month or deferred.

**Q30.** What status should be reported to the credit reporting agency when the loan is in an approved period of PFH with a \$0 payment amount?

**A30.** The credit reporting agencies have indicated that the most precise way to report these loans is as in deferment as this would show that a payment is not due. By reporting the accounts as deferred, anyone looking at the credit report is aware that the consumer is not obligated to make payments at this time. However, a lender may also report the loan as in current repayment but should make sure to report a scheduled monthly payment amount of \$0.

**Q31.** For Grad PLUS loans, is a Standard-Standard payment calculated at final disbursement or at the end of an in-school deferment?

**A31.** The Standard-Standard payment will be calculated at final disbursement for a Grad PLUS loan since the borrower can opt to not stay in the in-school deferment period.

**Q32.** If lenders/servicers cannot increase the Permanent-Standard payment amount, how do they account for interest caps that may cause the borrower not to payout in the remaining term?

**A32.** Once the borrower enters IBR and the Permanent-Standard payment amount established, there's no longer a maximum term remaining unless the borrower voluntarily leaves the IBR umbrella. The payment amount would stay at the Permanent-Standard payment amount and the loan will pay out when satisfied. And, if a balance is still remaining at the end of the 25 years it would be forgiven.

**Q33.** For variable rate loans, what interest rate is used to calculate the Standard-Standard and Permanent-Standard payment amounts? (i.e. maximum, minimum, current)

**A33.** This is really a lender/servicer decision and can follow their current policy for disclosure of any other repayment plan. Some loan holders calculate and disclose the payment amount at the maximum interest rate possible. Others calculate and disclose the payment amount using the variable rate in effect at the time of disclosure.

**Q34.** What is the interest rate for IBR? How is it determined with multiple loans?

**A34.** Each loan will retain its regulatory interest rate.

**Q35.** Can a borrower be on IBR with scheduled PFH payments of \$0 for 25 years?

**A35.** Yes, if the borrower remains eligible for a PFH with a calculated payment amount that allows for the \$0 payment amount.

**Q36.** If a borrower continues to have a PFH in subsequent years (and does not request an early re-evaluation), how is the borrower's new annual payment period ("anniversary date") determined?

**A36.** For borrowers that recertify in a timely manner, the borrower's new annual payment period begins on the day after the end of the most recent annual payment period. For borrowers who do not recertify in a timely manner such that the lender/servicer cannot process the renewal before the end of the current annual payment period, the new annual payment period will begin upon approval of the new PFH. [§682.215(e)(8)(iii); §685.221(e)(8)(ii)]

**Q37.** Can a borrower request a re-evaluation of the PFH payment amount prior to his/her "anniversary date"?

**A37.** Yes. The newly approved IBR/PAYE/ICR Request form provides borrowers with an opportunity to request early re-evaluation. In addition, the borrower will be reminded of this option by the lender/servicer on an annual basis. [§682.215(e)(2)]

**Q38.** If a borrower pays a loan in full after the lender/servicer has allocated the PFH payment to the borrower's loans, must the lender/servicer reallocate the portion of the PFH payment that was allocated to the paid-in-full loan to the other outstanding loans to ensure that the borrower continues to pay the full PFH payment amount?

**A38.** No. The lender/servicer is not required to adjust the allocation of the PFH payment amount at the time the loan(s) is paid in full. The next renewal will cause the PFH payment to be allocated to the remaining loans.

#### **From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q39.** If a borrower is already on IBR when requesting the 6% interest rate benefit under the SCRA, but the benefit is retroactively applied to cover the date the borrower initially entered repayment and/or the date the borrower first qualified for IBR, must the Standard-Standard and/or Permanent-Standard amounts be recalculated based on the 6% rate?

**A39.** No. The Standard-Standard and Permanent-Standard amounts are based on the interest rate(s) in place at the time the borrower first entered repayment and at the time the borrower first qualified for IBR, and these amounts are not subject to change based on any retroactive interest rate adjustments that reach back to one or both of these points in time.

**Q40.** If a borrower is granted the 6% interest rate benefit under the SCRA while on IBR, must the monthly payment also be lowered by the difference between the monthly interest accrued at the 6% rate and the monthly interest accrued at the otherwise applicable (statutory) rate, as seemingly required under paragraph 207(a)(3) of the SCRA?

**A40.** No. Similar to how section 207 of the SCRA was entirely preempted by section 428(d) of the HEA prior to August 14, 2008, paragraph 207(a)(3) of the SCRA remains preempted by paragraphs 493C(b)(1) and (b)(6)(A) of the HEA. These latter paragraphs require specific calculated payment amounts under IBR, for both PFH and Permanent-Standard, and do not permit subsequent reductions within their respective payment periods. Additionally, PFH is not dictated by interest rate. This reasoning is consistent with confirmation from the Department during the 2015 negotiated rulemaking and in the subsequent NPRM\* that the \$50 month minimum payment rule under paragraph 427(c) of the HEA still applies when the SCRA benefit is granted, even if a re-amortization over the borrower's remaining repayment period based on the reduced interest rate would permit a payment of less than \$50.

**\*From the ED NPRM dated July 9, 2015 (80 FR 39608), page 39615, first column:**

*“Representatives of the FFEL Program community raised several points related to the applicability of current HEA and SCRA statutory provisions during the discussions. First, they asked whether the \$600 annual (\$50 monthly) payment rule in the HEA still applies. We confirmed that the minimum payment amount requirement in the HEA does apply.”*

**Q41.** Does the “poverty guidelines published annually by the United States Department of Health and Human Services” in the rules mean for a borrower who today submits his or her most recent tax returns for AGI from 2013, the lender/servicer must use the poverty guidelines for 2015, or would it be 2013, the year of the borrower’s last tax return?

**A41.** The current poverty guidelines are used to calculate a borrower’s eligibility for IBR. For this question, the lender/servicer would use the 2015 poverty guidelines.

**Section IV: Loan Forgiveness O&As**

**Q1.** What are qualifying payments for purposes of IBR loan forgiveness?

**A1.** First, only payments made on or after July 1, 2009 can be qualifying payments, and the borrower must use IBR at some point. Once both of those criteria are met, qualifying payments include the following:

- Payments outside of IBR totaling at least the Standard-Standard payment amount
- Payments outside of IBR made under a 10-year standard repayment plan
- Months of economic hardship deferment
- Payments under a PFH plan, including a payment amount of \$0
- Payments under IBR, but outside of PFH, totaling at least the Permanent-Standard payment amount

See the November 1, 2012 Final Rule effective July 1, 2013, that provides technical corrections regarding what types of payments qualify for IBR forgiveness.

**Q2.** Would payments made after the borrower has left IBR count toward forgiveness?

**A2.** As long as the payments are not less than the borrower's Standard-Standard payment amount or are based on a 10-year standard repayment plan, they will count toward the 300 payments required for forgiveness.

**Q3.** If a borrower has pre-paid loans before July 1, 2009, such that the due date is extended after July 1, 2009, do the payments count toward forgiveness?

**A3.** Note that it will be possible for certain payments made before entering IBR to count toward forgiveness, provided the payment was made on or after July 1, 2009. However, in this example, since the prepayment is made before July 1, 2009, that payment does not count toward forgiveness even though the prepayment may advance a due date until on or after July 1, 2009.

**Q4.** For a borrower who is in repayment for several years before entering IBR, what kind of payments count toward the 25 years for forgiveness? Would only Standard-Standard payments count, or would payments in other plans like graduated and income-sensitive count?

**A4.** Only payments made on or after July 1, 2009, may be considered for eligibility toward the required number of payments for forgiveness (300 payments). Payments made under a 10-year standard repayment plan would be counted, and payments made under any other type of repayment plan would be counted as eligible payments as long as they are not less than the Standard-Standard payment amount. Although a borrower may request a graduated or income-sensitive repayment plan when initially entering repayment, the loan holder will still need to calculate a Standard-Standard payment amount to measure against in the future.

**Q5.** Can a borrower make a lump sum payment to accelerate the forgiveness of the loan?

**A5.** Lump sum payments may be applied as future payments and, if otherwise eligible, may count toward the 300 payments required for forgiveness. However, the other criterion for forgiveness is that 25 years must have also passed. So a borrower may not accelerate the forgiveness by paying ahead.

**Q6.** Does a payment made on behalf of a borrower, such as a Department of Defense (DOD) loan repayment program payment, AmeriCorps, and Teacher Loan Forgiveness count toward the number of payments required for forgiveness?

**A6.** This type of payment should be treated the same as such a payment is treated today outside of IBR in regard to how it is applied: principal reduction or advancement of monthly payments.

**Q7.** When does the 25-year forgiveness period begin?

**A7.** For loans in repayment on or before July 1, 2009, the 25-year forgiveness period may begin as early as July 1, 2009, if the borrower makes a qualifying payment or receives a period of economic hardship deferment as of that date. For loans that enter repayment after July 1, 2009, the 25-year forgiveness period begins on the date the borrower makes a qualifying payment or receives a period of economic hardship deferment. The earliest any loan could qualify for forgiveness is July 1, 2034. *[Note: For Consolidation loans made on or after July 1, 2009, see Q9 below.]*

**Q8.** Please provide an example of how the 25-year forgiveness period and the 300 payments/deferment requirement interact in regard to forgiveness eligibility.

**A8.** Loan forgiveness eligibility is dependent on both the passage of 25 years of time *and* the occurrence of 25-years' worth of qualifying payments and economic hardship deferment.

*Example 1:* If on or after July 1, 2009, a borrower makes 300 eligible payments, which includes payments deferred by economic hardship deferment, then on or after July 1, 2034 (i.e., 25 years from July 1, 2009), the lender/servicer may file a loan forgiveness claim with the guaranty agency. However, if on July 1, 2034, the borrower only made 290 eligible payments, which includes payments deferred by economic hardship deferment, the borrower must meet 10 more months of qualifying payments or economic hardship deferment to reach the 300-month requirement before qualifying for loan forgiveness.

*Example 2:* The borrower makes his first qualifying payment in July 2009. Occasionally, he doubles up on payments and in January 2034 he has made 300 qualifying payments. The borrower must continue to make payments or qualify for a deferment or forbearance until July 2034 at which time he is eligible for forgiveness.

**Q9.** There seems to be a conflict in §682.215(f)(3) of the October 23, 2008 Final Rule between the 25-year period start-date for Consolidation loans made before July 1, 2009, sub-paragraph (i), and those made after July 1, 2009, sub-paragraph (iv). When does the 25-year forgiveness period start for Consolidation loans made on or after July 1, 2009, on the date the borrower makes a payment on the Consolidation loan or on the date the borrower qualifies for IBR?

**A9.** The Department has stated that the phrase “after qualifying for the income-based repayment plan” is a technical error and will be removed as a technical correction. Any qualifying payment made on the Consolidation loan that meets the requirements in §682.215(f)(1) counts toward forgiveness, not just those qualifying payments made after the borrower qualifies for IBR. *[Note: The technical correction to §682.215(f)(3)(iv) was made in the November 1, 2012 Final Rule]*

**Q10.** Do accumulated partial payments that total a PFH, Standard-Standard, or Permanent-Standard payment amount count toward forgiveness? For example, the borrower has a PFH/Standard-Standard / Permanent-Standard payment of \$100, and the borrower makes multiple \$50 payments.

**A10.** Yes. As is the case for partial payments made today under other repayment plans, partial payments made under an IBR plan may accumulate and apply toward forgiveness.

**Q11.** Are reduced monthly payments agreed to by the borrower and the loan holder, such as those made under a reduced-payment forbearance, either before, during, or after IBR, considered qualifying payments for the IBR forgiveness provision?

**A11.** Scheduled monthly payments made prior to the borrower entering IBR and scheduled monthly payments made after the borrower completely exits IBR must be no less than the Standard-Standard monthly payment amount or based on a 10-year standard repayment plan to qualify for forgiveness. Based on guidance from the Department, scheduled monthly payments made under the umbrella of the IBR plan, i.e., the PFH payment amount (including \$0 monthly payments) or a payment that is equal to the Permanent-Standard payment amount while the borrower remains in IBR (a borrower cannot be required to pay more than the Permanent-Standard amount while in IBR), count toward the number of monthly payments required to qualify for forgiveness.

**Q12.** Does the period of administrative forbearance found under §682.211(f)(13) run concurrently with the 60-day claim filing period found in §682.215(g)(1)?

**A12.** No, they are separate periods. If the loan holder determines borrower does not qualify for IBR loan forgiveness during the 60-day administrative forbearance period, collection activity would resume upon expiration of the 60-day period or earlier upon determination of ineligibility. The 60-day claim filing period in §682.215(g)(1) does not begin until the loan holder's date of determination of the borrower's qualification for forgiveness.

**Q13.** Is the loan holder allowed to suspend collection activity on a borrower, or any endorser, from the date the loan holder determines that a borrower qualifies for IBR loan forgiveness?

**A13.** Yes. To comply with the notice to the borrower in §682.211(f)(13), a loan holder must suspend collection activity on a loan from the loan holder's date of determination of the borrower's qualification until the loan is forgiven or until a new payment due date is established. In accordance with §682.215(g)(6), this period would be covered by forbearance if the guarantor does not pay the forgiveness claim. This is also consistent with other claim filing processes.

**Q14.** Does the forbearance in §682.211(f)(13) and §682.215(g)(6) cover the same time frame?

**A14.** Not always. The forbearance in §682.215(g)(6) could only retroactively cover the same 60-day period of forbearance in §682.211(f)(13) if the loan did not resume repayment after the 60-day administrative forbearance expired, the claim was filed before the administrative forbearance expired, and the claim was subsequently denied.

**Q15.** If a borrower requests and is granted an economic hardship deferment that includes any period of time that equals 3 full years on or after July 1, 2009, and never requests the IBR plan, will the borrower's loan qualify for forgiveness after 25 years of combined deferment and payments assuming a balance remains? Must the borrower request IBR or does an economic hardship deferment act as that request?

**A15.** §682.215(f)(1) states that in order to qualify for forgiveness, "the borrower must have participated in the income-based repayment plan" and then satisfied one of the following conditions, of which economic hardship deferment is one. Economic hardship deferment in and of itself does not qualify the borrower for potential forgiveness.

**Q16.** For periods of economic hardship deferment to count toward 300 payments, must the deferment cover an entire month? For example, the deferment is 6 1/2 months long. Does it count for 6 months or 7 months?

**A16.** It depends on how many payment due dates the deferment covered.

**Q17.** If a borrower qualifies for an economic hardship deferment (EHD) on May 1, 2009, would July 2009 through April 2010 months in EHD count towards the 300 qualifying payments?

**A17.** Yes, these payments would count.

**Q18.** Regarding forgiveness payments, would a lender/servicer use the 1099 form to report to the IRS and would the current \$600 or greater be applicable?

**A18.** As of the date of this version of the Implementation Guide, any amount forgiven may be taxable for the borrower. Who actually reports the amount of forgiveness has not been made clear. The lender is not the one forgiving the amount as the lender is made whole.

**Q19.** When "counting" payments towards forgiveness, are the payments counted when made or when satisfied? For example; a borrower who is delinquent in May & June makes his full payment to become current in July 2009, does this count as one payment or two?

**A19.** The lender/servicer would essentially count the number of full installments that were satisfied by the payment, even if some of those installments were paid late. In this example, the borrower would be credited for two payments and two months satisfied.

**Q20.** With forgiveness, do payments made under an income-sensitive repaying plan count?

**A20.** The payments made under an income-sensitive plan can count as long as the payment amount is not less than the Standard-Standard payment. [*Note: See the November 1, 2012 Final Rule effective July 1, 2013, that provides technical corrections regarding what types of payments qualify for IBR forgiveness.*]

**Q21.** If a borrower had made 300 payments over 25 years, what are some reasons forgiveness will be denied?

**A21.** This is difficult to determine at this time. Generally, the denial by the guaranty agency will probably be the result of a servicer error in determining forgiveness eligibility such as non-qualifying payments.

**Q22.** What happens if the lender does not request the forgiveness payment from the guaranty agency within the required 60-day time frame?

**A22.** The interest that accrues on the discharged amount after the expiration of the 60-day filing period is ineligible for reimbursement by the Secretary, and the servicer must repay all interest and special allowance received on the discharged amount for periods after the expiration of the 60-day filing period, and is not able to collect any interest from the borrower that is not paid by the Secretary.

**Q23.** Who ends up paying the forgiveness claim; lender, guaranty agency, or Department?

**A23.** The guaranty agency will pay the lender. Then the Department will pay the guaranty agency.

**Q24.** When a default, bankruptcy or TPD claim is paid, must the guarantor capture the IBR fields at claim time and store them so that these amounts can be forwarded to the new loan holder either at the point of rehabilitation, repurchase and/or assignment to the Department (Subrogation)?

**A24.** Yes. For purposes of loan forgiveness, the eligible payments made by the borrower must be reported by the loan holder on the claim form, stored by the guarantor, and then forwarded to the new loan holder, if applicable. *[Note: See Section XI: Forms Q&As for additional information]*

**Q25.** If a borrower resolves a default by consolidation vs. rehabilitation, do prior payments made with the lender also count toward the 25-year payment period?

**A25.** No, when consolidating, the 25-year clock starts over.

**Q26.** If a borrower is in default and is starting the rehabilitation process with a collection agency after July 1, 2009, can the payments made to the collection agency be counted towards IBR?

**A26.** No; only the payments subsequently made to the rehabilitation lender will count. *[Note: See the November 1, 2012 Final Rule effective July 1, 2013, that provides a technical correction regarding what types of payments qualify for IBR forgiveness and specifically excludes payments made while the loan is in default (rehabilitation payments would not count)].*

**Q27.** Will the interest that has accrued on the loan also be forgiven after 25 years?

**A27.** Yes, any outstanding accrued interest will be forgiven.

**Q28.** Does Public Service Loan Forgiveness (PSLF) apply to both FFELP and FDLP loans?

**A28.** No. Only FDLP loans are eligible for PSLF. However, if a borrower consolidates his or her FFELP loans and is employed by certain public service organizations, the payments made on the new Direct Consolidation loan may qualify for PSLF.

**From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q29.** If an enrollment update results in **the borrower being returned to an in-school or grace status** on a Stafford loan, would the Standard-Standard and Permanent-Standard payments amounts need to be adjusted, would PFH eligibility based on new Standard-Standard payment need to be re-evaluated, and would all counters (including the 3-year interest subsidy counter) need to be adjusted? For example, Bobby Borrower's initial grace-end date was 12/31/12, and his IBR start date was 2/1/13. On 8/1/13, Bobby's lender receives an enrollment update indicating that Bobby was continuously enrolled through 5/31/13, making his true grace end date 11/30/13.

**A29.** Yes. Since a borrower is unable to waive the grace period for any reason, including to enter IBR early, the borrower could no longer be considered to be in IBR. The lender/servicer would have to reevaluate IBR eligibility and determine the Standard-Standard and Permanent-Standard amounts based on the new grace-end date. On a subsidized loan, the lender/servicer would also have to reset the 3-year interest subsidy period to begin no earlier than the day after the new grace-end date, refund all IBR subsidy interest previously billed from the old IBR start date, and retroactively bill the Department for all interest accrued from the old grace-end date. In addition, the forgiveness counter would also reset because, even though the payments will remain on the borrower's payment history, the borrower is no longer responsible for making payments during that period, and therefore the payments would no longer be considered qualifying forgiveness payments.

**Q30.** Based on the new regulation on Public Service Loan Forgiveness (PSLF), effective July 1, 2016, which allows a lump sum military payment to satisfy 12 payments for PSLF discharge eligibility, do these lump sum payments also count towards IBR forgiveness?

**A30.** Generally, whether the lump sum payment counts towards IBR forgiveness depends on the specific program payment rules, and whether the payment is considered an installment payment. For example, if the military payment rules provide that the lump sum payment must be processed as a principal reduction, and not to satisfy installments due, the payment would not count towards IBR forgiveness. [Note: The IBR Workgroup has sent a request to the Department to work with the applicable federal and state program agencies to develop a standard approach for applying future payments.]

**Section V: Deferment and Forbearance O&As**

**Q1.** Must a loan holder send a separate notification to a borrower and any applicable endorser when administrative forbearance is used to cover a period of delinquency prior to granting IBR?

**A1.** As with all administrative forbearances, notification to the borrower and any applicable endorser is required.

**Q2.** Can the borrower receive a deferment or forbearance while under the IBR umbrella?

**A2.** Yes, a borrower under the IBR “umbrella” may receive deferment or forbearance, if otherwise eligible.

**Q3.** If the borrower requests and receives a deferment or a forbearance while the borrower is currently under PFH, does the repayment plan automatically revert back to PFH if there is any time remaining under the annual certification period or does it convert to a Permanent-Standard repayment plan after the deferment or forbearance ends, in which case the borrower would need to re-request PFH payments?

**A3.** The Department clarified on July 3, 2013, that a borrower repaying under IBR does not trigger a loss of PFH and the associated capitalization of unpaid accrued interest by entering a deferment or forbearance period. Any period of PFH and deferment runs simultaneously (but independently) and all applicable IBR and deferment/forbearance notices are still expected.

**Q4:** Under the November 1, 2012 Final Rule (77 FR 66088), effective July 1, 2013, if the borrower receives a deferment or forbearance while in PFH, and the deferment or forbearance extends beyond the end of that annual PFH payment period, must the lender/servicer still send the borrower an annual renewal notice?

**A4:** Yes, the lender/servicer is expected to send the borrower an annual renewal notice. The lender/servicer may not wait until the deferment or forbearance period ends.

**Q5.** May the administrative forbearance in §682.211(f)(14) be used to cover a period of delinquency **prior to the borrower entering only IBR?**

**A5.** This administrative forbearance is not limited to a period of delinquency prior to the borrower entering into just the IBR plan. It may be used for any delinquency that exists prior to the borrower entering into any type of repayment plan.

**Q6.** May the administrative forbearance under §682.211(f)(14) be used when a borrower is delinquent at the time of any of the repayment term changes **under the IBR umbrella**, including, but not limited to, situations such as PFH status end (with conversion to Permanent-standard), recertification of PFH status, and changes in the IBR payment amount?

**A6.** Prior to the November 1, 2012 Final Rule, it was believed that the administrative forbearance under §682.211(f)(14) could be granted for any payment change under the IBR umbrella. Per the November 1, 2012 Final Rule (77 FR 66088), the administrative forbearance provided under §682.211(f)(14) could no longer be used for any delinquency that existed at the time of any payment changes under the IBR plan. However, a new administrative forbearance provided under §682.211(f)(16) can be granted under the IBR umbrella only if the borrower –

- Reapplies and qualifies for a new period of PFH after the renewal deadline;
- Was converted to Permanent-standard as a result of their late PFH renewal; and
- Receives a new PFH payment of \$0.00, or a new PFH payment that is less than the most recently expired PFH amount.

In this latter situation, the interest accrued from the end of the most recently expired PFH period to the end of the administrative forbearance period **may not** be capitalized.

**Q7.** Can a borrower enter into deferment/forbearance after leaving IBR?

**A7.** Yes.

**Q8.** Can a graduate student request to end his or her in-school deferment on a Grad PLUS loan and get under the IBR umbrella before graduation on those particular loans?

**A8.** Yes.

**Q9.** Can interest be capitalized at the end of a forbearance or deferment during non-PFH periods while in IBR?

**A9.** Yes, normal capitalization rules apply in these instances. [*for more Q&As on capitalization, see Section VI: Capitalization*]

**Q10.** If a student is in IBR and returns to school, would he or she be advised to request an in-school deferment but continue to make payments in order to reach 300 payments in 25 years?

**A10.** If a borrower enters into a deferment period, other than the economic hardship deferment, and payments are made, such payments would not count toward forgiveness. However, if the borrower requests that those payments be applied as prepayments to cover the payments due after the deferment period, the payments may qualify if such payments still meet the criteria for qualifying forgiveness payments as explained in Section IV, Loan Forgiveness Q&As.

**Q11.** If a borrower enters Expedited-Standard and can't afford the one monthly payment required on this plan, can he or she request a forbearance to serve as the one monthly installment before choosing a different plan?

**A11.** Yes, prior to the November 1, 2012 Final Rule; however, the lender/servicer had to bill the borrower for one Expedited-Standard payment and the borrower had to either make or forbear that expedited payment. Upon implementation of the November 1, 2012 Final Rule (77 FR 66088) (but no later than July 1, 2013), the borrower must make at least one payment under the Expedited-Standard repayment plan, or request and make at least one payment under a reduced-payment (other than \$0) forbearance agreement on that Expedited-Standard plan.

**From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q12.** A borrower is in a period of \$0 PFH payments and is either eligible for a deferment or would request a forbearance for a period longer than the PFH period. Because the borrower already has a \$0 payment, should the servicer still process a deferment or forbearance that is time limited?

**A12.** Since deferments and some forbearance types are entitlements, the servicer should not flat-out deny the borrower the benefit if he or she wants it, particularly if the borrower is requesting a deferment, has subsidized loans, and has already exhausted the 36-month negative-amortization subsidy period under IBR. The servicer should instead try to counsel the borrower further on the possible greater benefit of retaining the \$0 IBR payment (no unnecessary use of limited-term deferment types, etc.), and then abide by the borrower's final wishes.

**Q13.** A borrower is in a PFH period with a payment greater than \$0 and is several months delinquent. The borrower has exhausted the lender's forbearance limits. The borrower realizes that if he or she changes repayment plans, an administrative forbearance will be processed that will bring the borrower current. Almost certainly the new payment amount is going to be higher than the PFH payment. So if the borrower couldn't afford the new amount, he will probably become delinquent again. How should the servicer handle this situation?

**A13.** The servicer cannot deny the borrower the option to exit IBR in this situation. However, since the administrative forbearance for unresolved delinquencies at the time of a repayment plan change is a loan holder/servicer option and not an entitlement, a loan holder or servicer could deny the borrower that particular benefit if they felt the borrower was "abusing the system." It is up to each loan holder or servicer to make its own determination in that situation.

**Section VI: Capitalization O&As**

**Q1.** If a borrower is in a PFH period and the borrower requests a deferment or forbearance, may the loan holder capitalize unpaid interest according to the rules that apply to a deferment and forbearance?

**A1.** *[Revised July 8, 2013 per a Department ruling]:* Interest capitalization may occur only at the end of the deferment or forbearance period or at the end of the most recently certified annual payment period under PFH, whichever is later. The deferment or forbearance does not cause the borrower to exit PFH immediately. See new Q9 below for more information.

*[Prior to guidance issued by the Department on July 8, 2013]:* If a borrower enters into a deferment or forbearance after entering PFH, such event would cause the borrower to exit PFH. Any unpaid accrued interest is capitalized as of the date the borrower leaves PFH. Once the borrower is in a deferment or forbearance, the normal capitalization rules apply, even though the borrower is still under the IBR plan. If the deferment or forbearance ends prior to the end of the borrower's annual PFH certification period, the loan holder may choose to use the remaining PFH certification period *[See Section V: Deferment and Forbearance, Q2]*.

**Q2.** May a loan holder capitalize unpaid interest during a period of administrative forbearance authorized under §682.211(f)(13) in cases where it is necessary for a loan holder to collect and process documentation supporting the borrower's eligibility for loan forgiveness (up to 60 days)?

**A2.** The regulations in §682.211(f)(13) do not expressly prohibit capitalization of the interest during this period.

**Q3.** May a loan holder capitalize unpaid interest during a period of administrative forbearance for a period of delinquency at the time a borrower is granted an IBR plan, which is authorized under federal regulation §682.211(f)(14)?

**A3.** Yes. The period of delinquency is for a time frame that precedes the time frame when a borrower is under an IBR PFH.

**Q4.** If the guarantor denies the IBR forgiveness request, may the loan holder capitalize the outstanding interest and resume payments on the loan?

**A4.** Yes, with one exception. Federal regulation §682.215(g)(6) states that the loan holder may capitalize any unpaid accrued interest in accordance with §682.202(b) if the denial was not due to an error by the loan holder. In either case, the borrower must resume payments on the loan.

**Q5.** Can the borrower be on IBR and a deferment at the same time, such as a school deferment?

**A5.** *[Revised July 8, 2013 per a Department ruling]:* Yes. If the borrower is on PFH when the deferment begins, he or she will remain in PFH until the end of the annual payment period and must be permitted to renew the PFH status at that time if the borrower is still eligible. The borrower may not be moved to Permanent-Standard immediately as a result of the deferment. See new Q9 below for more information.

*[Prior to guidance issued by the Department on July 8, 2013]:* Yes, a borrower may enter a deferment while under the IBR umbrella. Once the borrower enters a deferment, they are deemed to have left PFH. However, when the deferment ends, the borrower will still be under the IBR

umbrella, most likely in Permanent-Standard unless new paperwork has been submitted and the borrower is deemed to have a PFH.

**Q6.** Can interest be capitalized at the end of a forbearance or deferment during non-PFH periods while in IBR?

**A6.** Yes, normal capitalization rules apply in these instances.

**Q7.** For a borrower who left PFH to enter a deferment period, would there actually be two events of capitalization—one because the borrower left PFH, and one at the end of the deferment?

**A7.** *[Revised July 8, 2013 per a Department ruling]:* No, interest may be capitalized only once. The application of a deferment may not cause PFH to end prior to the deferment begin date, such that capitalization would be required at that time and permitted again at the end of the deferment period. The PFH status must be maintained until the end of the annual payment period, and beyond if the borrower renews it. Interest may be capitalized only at the end of the deferment period or at the end of the most recently renewed annual payment period under PFH, whichever is later. See new Q9 below for more information.

*[Prior to guidance issued by the Department on July 8, 2013]:* Yes, interest would be capitalized twice.

**Q8.** When should interest be capitalized when a borrower is still on PFH during a deferment or forbearance period, since capitalization is normally required or optional at the end of each of these periods?

**A8.** Per a Department ruling dated July 8, 2013, if the PFH and deferment/forbearance periods overlap, the interest should only be capitalized once, based on whichever capitalizing event ends last. If the PFH and deferment/forbearance periods do not overlap, interest can be capitalized at the end of each period. Consider the following examples:

- a. Borrower was on PFH from 7/1/12 through 6/30/13 but did not provide renewal documentation; is also on an unemployment deferment from 4/1/13 through 12/31/13. In this case, since the last capitalizing event is the deferment, the interest should cap at the end of the deferment period only.
- b. Borrower is on PFH from 10/1/12 through 9/30/13, but doesn't continue to have a PFH, and was also on an in-school deferment from 1/1/13 through 5/31/13. In this case, since the last capitalizing event is the PFH status, the interest should cap at the end of the PFH period only.
- c. Borrower was on PFH from 7/1/12 through 6/30/13 and sent in sufficient renewal documentation by 5/31/13 to extend his or her PFH status through 6/30/14. Borrower is also on a discretionary forbearance from 4/1/13 through 12/31/13. In this case, since the last capitalizing event is the renewed PFH status, the interest should cap at the end of the PFH period only (barring any further timely renewal of PFH, which would result in the capitalization occurring at the end of that new PFH period).
- d. Borrower was on PFH from 7/1/12 through 6/30/13 and sent in sufficient renewal documentation, but not until 7/25/13. Borrower then received a new PFH period of 8/1/13 through 7/31/14. Borrower is also on a mandatory forbearance from 4/1/13 through 12/31/13. In this case, since the last capitalizing event is the renewed PFH status, the interest should cap at the end of the PFH period only.

- e. Borrower is on PFH from 7/1/12 through 6/30/13 but is delinquent from 1/1/13. Borrower then submits a fellowship deferment for the period of 4/1/13 through 12/31/13, and the lender applies an administrative forbearance to satisfy the payments due from 1/1/13 through 3/1/13. Borrower then fails to renew his or her PFH status beyond 6/30/13. In this case, since the last capitalizing event is the fellowship deferment, the interest should cap at the end of the deferment period only.
- f. Borrower is on PFH from 7/1/12 through 6/30/13 but does not renew his or her PFH status beyond 6/30/13. Borrower then takes out a mandatory forbearance from 7/1/13 through 6/30/14. In this case, the interest must be capitalized upon the expiration of the PFH status and can be capitalized again at the end of the forbearance period.

**Section VII: IBR Eligibility Documentation and Verification Q&As**

**Note:** On June 12, 2009, the Department posted an Electronic Announcement providing for Interim Guidance on the use of tax return copies in lieu of the 4506-T transcript process. On June 29, 2009, the Department provided additional guidance regarding the required signatures on the tax return copies. *[See Section XII for Q&As regarding the interim guidance]*

**Note:** On April 13, 2012, the Department posted an Electronic Announcement that permits lenders or servicers to accept an unsigned copy of the borrower's tax return, unless the lender or servicer has questions about the validity of the copy of the tax return submitted by the borrower. See Section XII for more information. Some of the answers in this Section may be superseded by this Interim Guidance.

**Note:** On January 11, 2013, the Department informed the community of Federal Student Aid's readiness to work with all FFEL lenders and lender servicers and assist them in becoming participants in the Electronic IBR application process that provides a direct link to the borrower's AGI information from the IRS. In September 2013, the Department submitted an updated SAIG Enrollment Form that will allow FFELP lenders and servicers to enroll for the ability to obtain electronic applications information through SAIG.

**Note:** The following Q&As are based on the IRS Form 4506-T as it is used today. In the future, the IRS may require a revised/new form for this authorization. Also, a better process may be developed as the industry and the IRS gain experience in the IBR process. On October 21, 2009, the IRS issued a new short form 4506T-EZ that may be used instead of the form 4506-T if the taxpayer filed a 1040 series return. In addition, the Income Verification Express Service (IVES) process was improved in August 2012, and this guide has been updated to reflect the changes. *[See Section VIII for more information.]*

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**Q1.** If a borrower has loans under an IBR plan, and subsequently obtains new loans, may the loan holder **automatically** add the new loans to the existing IBR plan or must the loan holder provide the borrower an option to repay the new loans under another repayment plan?

**A1.** *[Revised by November 1, 2012 Final Rule]:* Yes. Under the changes made by the November 1, 2012 Final Rule, borrowers who have requested IBR are required to repay all new eligible loans under an IBR plan, so the lender must add those loans to the IBR plan.

*[Prior to November 1, 2012 Final Rule]:* No. Since a loan holder must provide the borrower a repayment disclosure not less than 30 days, and no more than 150 days before repayment starts on the loan(s) [§682.205(c)(1)], and the repayment disclosure must provide all repayment options [§682.205(c)(2)] a borrower would have to contact the loan holder and select IBR for any new loans initially entering repayment. The possible scenarios are as follows:

1. Borrower does not contact loan holder before repayment on the new loan(s) begins or fails to submit required IBR paperwork in order to determine PFH eligibility. The loan holder is required to disclose under a standard repayment plan. A borrower may request that the new loan(s) be added to IBR at a later date upon the loan holder's determination that the borrower qualifies for IBR using PFH eligibility guidelines.

2. Borrower contacts the loan holder to request IBR on the new loan(s) and the current loans are in PFH IBR. The loan holder can add the new loan(s) to IBR. For the new loan(s), the loan holder should re-review the multiple-holder proration, and must calculate a Standard-Standard and Permanent-Standard payment amount and set counters as of the IBR start date or the date the new loan(s) enter IBR. The PFH payment would be allocated across all loans in IBR. All loans may be re-certified at the end of the current PFH period or as of the certification period.
3. Borrower contacts loan holder to request IBR on the new loan(s) and the current loans are in Permanent-Standard IBR. The borrower must submit an application to qualify the new loan(s) for IBR using the PFH eligibility requirements. If the borrower qualifies for PFH, then the new loans would qualify for IBR and all loans would be in PFH IBR. The loan holder should re-review the multiple-holder proration, and must calculate a Standard-Standard and Permanent-Standard amounts for the new loan(s) and set the counters on the new loan(s) as of the IBR start date or the date the new loan(s) enter IBR. The PFH payment is allocated across all loans in IBR. All loans may be re-certified at the end of current PFH period or as of the certification period.
4. If the borrower does not qualify for PFH, then the new loan(s) do not qualify for IBR, and must continue in the repayment plan selected by the borrower or a standard repayment plan if the borrower failed to select a repayment plan. The loan holder may try to qualify all loans for IBR using PFH eligibility guidelines at a future date or at the IBR re-certification date as requested by the borrower.

**Q2.** If the borrower has loans not currently included in an existing IBR plan and elects IBR for a new loan(s) or loan(s) not previously included in IBR do the borrower's PFH payment, Standard-Standard and Permanent-Standard amounts have to be re-calculated?

**A2.** No. The Standard-Standard and Permanent-Standard payment amounts are maintained at a loan level. The Standard-Standard and Permanent-Standard payment amounts for the existing loans would remain the same. The loan holder must re-review the multiple-holder proration, and must calculate a Standard-Standard and Permanent-Standard amounts for the new or added loan(s) and set the counters on the new loan(s) as of the IBR start date or the date the new loan(s) enter IBR. The PFH payment would be allocated across all loans in IBR.

**Q3.** If the borrower has any loan(s) currently not included in an existing IBR plan and subsequently elects IBR for any loan(s) not previously included in IBR, must the borrower submit new PFH documentation and may the loan holder use this documentation to restart the annual re-certification period on all loans?

**A3.** The possible scenarios are as follows:

1. If the existing loans are in PFH IBR, the loan holder may elect to use the existing PFH documentation to add the new loan(s) to the IBR plan for the remaining amount of time in the PFH period. For the new loan(s), the loan holder should re-review the multiple-holder proration, and must calculate Standard-Standard and Permanent-Standard payment amounts and set counters as of the IBR start date or the date the new loan(s) enters IBR. The PFH payment would be allocated across all loans in IBR. All loans may be re-certified at the end of the current PFH period or as of the certification period.
2. If the existing loans are in Permanent-Standard IBR, the borrower must submit IBR documentation to qualify the new loan(s) for IBR using the PFH eligibility requirements. If the borrower qualifies for PFH, then the new loan(s) would qualify for IBR and all loans would be in PFH IBR. The loan holder should re-review the multiple-holder proration, and must calculate Standard-Standard and Permanent-Standard amounts for the new loan(s) and set the counters on the new loan(s) as of the IBR start date or the date the new loan(s) enters IBR. The PFH payment

is allocated across all loans in IBR. All loans may be re-certified at the end of current PFH period or as of the certification period.

**Q4.** A borrower is applying for IBR in February 2013 and has not yet filed her 2012 tax return. Can she use the Adjusted Gross Income (AGI) from her 2011 tax return?

**A4.** Yes. Section 4, #8 on the “Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request” form (expiration date of 11-30-2015), allows the borrower to provide a tax return from either of the two most recently completed tax years. However, the form also allows the borrower to provide alternative documentation of income if the borrower’s current income is significantly different than the income used to determine the Adjusted Gross Income (AGI) that was reported to the IRS on the 2011 tax return.

**Q5.** Is it permissible to have the borrower send his or her tax forms (W-2, tax return, 1099, etc.) directly to the loan holder rather than asking for written consent for disclosure of AGI and other tax return information (a tax return transcript) by the IRS to the loan holder?

**A5.** *[Revised by November 1, 2012 Final Rule]:* The November 1, 2012 Final Rule revised the regulations to allow the loan holder to accept any form of documentation of the AGI that is acceptable to the loan holder. The 4506-T authorization and direct reporting from the IRS is no longer required. In addition, the borrower may indicate to the loan holder that the AGI as reported to the IRS and/or supplied on the documentation is no longer reflective of the borrower’s current income and may provide alternative documentation of income.

*[Prior to November 1, 2012 Final Rule]:* §682.215(e) stated that the borrower must provide written consent to disclose tax information by the IRS to the loan holder. The borrower provided consent by signing an approved IRS form, such as IRS Form 4506-T. Upon receiving the borrower’s signed consent, the loan holder submitted the consent to the IRS. The IRS returned to the loan holder, as indicated on the borrower’s signed consent form, a transcript of the borrower’s tax return for the years requested and/or confirmation that the borrower has not filed a tax return for the years requested. The loan holder could have obtained alternative documentation to determine IBR using PFH eligibility requirements when:

- No transcript was available from the IRS; or
- If the borrower indicated and/or the loan holder believed that the borrower’s circumstances changed, making the IRS reported AGI no longer an indicator of the borrower’s current income.

**Q6.** If a borrower qualifies for PFH in July but the paperwork is not completed until August, does the lender/servicer enter the effective date of July or August?

**A6.** The lender/servicer won’t know if the borrower qualifies for a PFH until the paperwork is completed, so an effective date of August should be used.

**Q7.** Would a loan holder be "required" to use NSLDS for loan verification or can the loan holder follow current procedures similar to the extended repayment plan where the borrower needs to send in proof of other loans from other loan holders to qualify?

**A7.** The Department provided a preamble comment to the October 23, 2008 final rules stating that loan verification for purposes of IBR was an acceptable use of NSLDS. However, the loan

holder would not be required to use NSLDS for this purpose and may require the borrower to provide documentation of other loans.

**Q8.** Must a loan holder include the income of a borrower's spouse when determining the borrower's PFH?

**A8.** If the borrower and the borrower's spouse file a joint tax return, the spouse's income would be included. If the borrower and the borrower's spouse file separately, the spouse's income would not be included.

**Q9.** For purposes of a Grad PLUS loan, at what point does the loan holder calculate the Standard-Standard payment amount when the borrower elects to defer repayment while in school?

**A9.** A Grad PLUS loan enters repayment on the date of the final disbursement. The Standard-Standard payment amount is calculated at that point in time.

**Q10.** Are the Standard-Standard and Permanent-Standard payment amounts subject to the \$50 minimum monthly payment provision, even if the borrower's actual payment is less due to an agreement with the borrower?

**A10.** Yes. The Standard-Standard and Permanent-Standard payment amounts are subject to the \$50 minimum because neither the regulations nor the statute exclude these payment amounts from the applicable minimum. The Department has stated that only the PFH payment amount is exempt from the \$50 minimum payment requirement.

**Q11.** What interest rate does the loan holder use when calculating the Standard-Standard and Permanent-Standard payment amounts on a variable rate loan, the current rate or the maximum rate?

**A11.** Loan holders and servicers should continue to use the same interest rate they use when calculating payments under other plans when calculating the IBR payment amounts. Please note that once the Standard-Standard and Permanent-Standard payment amounts are calculated, they would not change, based solely on interest rate changes.

**Q12.** For borrowers who have loans in multiple statuses, how does a loan holder determine eligibility for PFH when not all loans have yet entered repayment? For example, one borrower may have a variety of loans that are in grace, deferment, and repayment status at the same time.

**A12.** To determine PFH eligibility, the loan holder must use the annual amount due on all of a borrower's eligible loans. While all of the borrower's loans may be an eligible type for purposes of the IBR plan, in some statuses they do not yet have an established payment amount due. Systems handle the establishment of repayment terms differently. Loan holders should process the IBR repayment plan request similar to processing existing repayment plan requests. If the loan holder's system would allow a loan to be included in the IBR repayment plan, that loan can be included in the PFH calculations.

**Q13.** If loans are on the IBR plan at the time the loans are transferred to another holder (i.e., PUT to the Department, sold to another lender, transferred to claim, etc.) and some of the borrower's loans will not be transferred, must the holder adjust the PFH amount immediately after the transfer or wait until the next annual certification? For example, if the PFH amount on the loans remaining now falls into the \$5 or \$10 tolerance, does the holder adjust the payment amount accordingly?

**A13.** The lender/servicer is not required to adjust the allocation of the PFH payment amount at the time the loan(s) is transferred. The next renewal will cause the PFH payment to be allocated to the remaining loans. It should be noted that in the case of transfer due to claim payment for default, the defaulted loans should not be used in the next annual determination of PFH eligibility. This situation may have to be carefully monitored for purposes of Public Service Loan Forgiveness requirements.

**Q14.** Many married borrowers have asked holders to provide them with guidance as to whether the borrower should file their income tax return separately in order to qualify for IBR. Should holders be giving such advice?

**A14.** The borrower should consult his or her own tax accountant because each borrower's situation is different. There are some tax benefits that would be forgone by the borrower if he or she files separately (such as the deduction for student loan interest). The borrower will need to make a determination as to which filing status provides the most benefit taking into account his or her particular situation.

**Q15.** How does a holder or servicer use NSLDS to obtain the information needed on loans held by other holders?

**A15.** To find the information on NSLDS for the loans held by other holders, a holder or servicer should follow these steps:

1. Log into NSLDS: [https://nslsdfap.ed.gov/nsls\\_fap/default.jsp](https://nslsdfap.ed.gov/nsls_fap/default.jsp)
2. Enter the borrower's SSN, First Name and Date of Birth in the applicable fields on the NSLDS Menu screen
3. Select Loan History
4. Identify the loans that have an outstanding principal balance (OPB)
5. Loan by loan choose:
6. Loan Detail
7. Under Details for Loan, make note of the Loan Type
8. Under Details for Loan, make note of the Original Interest Rate (if variable, you need to determine the original rate based on loan type, disbursement date, and the date the loan entered repayment)
9. Under Amounts for Loan, select the H next to Outstanding Principal Balance
10. When you see the status code change from IG (in grace) to RP (repayment), make note of the:
  - a. Outstanding Principal Balance (Original Balance)
  - b. Outstanding Principal Balance Current (Current Balance)
  - c. Outstanding Interest Balance
  - d. The date the loan entered repayment (RP)
  - e. If the loan is unsubsidized you may need to add the Current Balance and Outstanding Interest together at the time of RP to get the balance after interest capitalized or check the next monthly reporting to get the new balance.

**Q16.** How does the loan holder identify the amount of interest capitalized on NSLDS in the case of a late notification of separation situation?

**A16.** The loan holder would use its best efforts to determine the balance outstanding at the time the loan initially enters repayment. If the loan holder is unable to identify a late-notification situation on NSLDS, the loan holder would use the balance and interest reported on the date the loan entered repayment. If this amount does not qualify the borrower for PFH, the loan holder may ask the borrower to supply documentation of the balance at the time the loan was placed in repayment based on the late notification.

**Q17.** What steps should a loan holder take to determine a borrower's AGI when a borrower works and earns money in a foreign country?

**A17.** U.S. citizens working and earning money in a foreign country must still file an IRS tax return, either 1040 or 1040 EZ. Loan holders can continue to request either copies of a borrower's tax return or the IRS Form 4506-T. However, if the borrower indicates that he or she has not filed a recent IRS tax return, the loan holder may accept pay stubs or other alternative documentation to determine estimated gross income and, as necessary, convert the earnings into U.S. dollars. The following are links to currency exchange calculators:

<http://www.oanda.com/currency/converter/>

<http://www.xe.com/ucc/>

**Q18.** Please explain how the family size is determined for a borrower who files married/separate, and has dependent children. For example, if a borrower reports a family size on the IBR application that is larger than was reported on his tax forms, how does the lender determine the correct family size?

**A18.** Family size is self-certified on the IBR application regardless of how the borrower(s) filed his or her taxes. This position was further verified by the Department as a result of an audit finding and a response from the Department during the development of the new "Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request" form with the expiration date of 11-30-2015. The Department stated in their response to a comment made by the IBR Workgroup in regard to self-certification of family size: "As to the issue with the auditor, the Department believes that the family size field is a self-certification field that the loan holder is not required to reconcile every different [*sic*] between the number of exemptions claimed on the borrower's tax return and the family size certified. The Department is currently working with its auditing team to better explain the family size requirement."

**Q19.** For purposes of determining IBR eligibility, how is the AGI determined for married borrowers who live in a community property state and file their tax returns separately.

**A19.** Married borrowers who file separate tax returns and live in a community property state may be disadvantaged because they are required, as a general matter, to pool community property income and split it equally between them when they file their taxes separately. Therefore, if the borrower indicates that the AGI reported on his/her separate Federal tax return does not reflect the borrower's actual income due to this situation, the lender/servicer may accept alternative documentation of income to determine IBR eligibility. The loans of the spouse may not be considered in determining IBR eligibility in this situation. [*Federal Register* dated November 1, 2012, Final Rule, p. 66112; HEA Section 493(a)(3)(B)(i) and §682.215(e)(1)(iii)(B)]

**Q20.** If the income information indicates the borrower is no longer eligible for a PFH, what action does the lender/servicer need to take?

**A20.** The loan(s) would be converted to the Permanent-Standard payment amount and any unpaid accrued interest should be capitalized.

**Q21.** If a borrower who has not yet entered repayment must be placed on the standard repayment plan because he or she does not submit IBR documentation, does this mean that the borrower is already placed on the IBR plan before eligibility for IBR is verified?

**A21.** No. Eligibility for IBR cannot be determined until the required income documentation is received and processed. If the borrower does not submit the IBR income documentation before the end of the grace period, the borrower will be placed in the standard repayment plan.

**Q22.** If a borrower in repayment on any other type of repayment plan requests IBR but does not submit the required income documentation, does this mean that the borrower is placed on the IBR plan before eligibility for IBR is verified?

**A22.** No. Eligibility for IBR cannot be determined until the required income documentation is received and processed. Therefore, the borrower would remain in their current repayment plan.

**Q23.** Please clarify how a borrower's repayment term is affected while in IBR; i.e., when does term freeze, when does it decrement? Is the remaining term calculated for the Expedited-Standard payment based on the term remaining prior to entering IBR or post IBR? If it is post IBR, what if the borrower used up the 10-year term?

**A23.** *[Revised by November 1, 2012 Final Rule]:* The term does not freeze while in IBR. However, see the November 1, 2012 Final Rule effective July 1, 2013, that now requires at least one payment to be made on the Expedited-Standard repayment plan, but may be made under a reduced-payment (other than \$0) forbearance agreement. This may allow such a borrower to move to another repayment plan.

*[Prior to July 1, 2013]:* The term does not freeze while in IBR. If the borrower elected to leave IBR and had used the entire 10-year term, Expedited-Standard would require the borrower to pay the remaining balance in full.

**Q24.** Please address what obligation the borrower has, when FIRST applying for IBR, to disclose and supply alternative documentation if his/her prior year tax information is not representative of current circumstances, e.g., last year's tax return had no income while in-school, but now the borrower has a full-time job with steady income.

**A24.** *[Revised by November 1, 2012 Final Rule]:* See the November 1, 2012 Final Rule effective July 1, 2013, and the "Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request" form with the expiration date of 11-30-2015 for the new process to allow a borrower to self-certify that the borrower's AGI does not reflect his current circumstances and provide alternative documentation.

*[Prior to July 1, 2013]:* It was the lender's discretion to make a determination, based on the dynamic described here (for example), that the prior year's AGI was not reflective of the borrower's current income, and the lender could require the borrower to provide more current, alternative documentation.

**Q25.** Can a borrower self-certify that he or she had zero income during the past year?

**A25.** Yes. The Department clarified in an electronic announcement dated June 12, 2009 that the lender may accept a borrower's written certification that no tax return was or will be filed. However, if the lender has reason to question such a claim, it must require the borrower to obtain IRS documentation that no tax return was filed. See the November 1, 2012 Final Rule effective July 1, 2013, and the "Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request" form with the expiration date of 11-30-2015 for the new process to allow a borrower to self-certify that the borrower has no taxable income.

**Q26.** Many Puerto Rican residents are not required to file a Federal Income Tax Return. How will AGI be determined?

**A26.** If a borrower is not required to file a tax return with the IRS, the borrower is permitted to provide alternative income documentation to qualify for PFH/IBR.

**Q27.** Are there any provisions in IBR that would allow someone who worked last year and had income but is NOT working during the period in which the borrower is required to start making payments, that looks at CURRENT or PROJECTED income?

**A27.** In this instance the borrower is permitted to submit alternative documentation to support the change in income status.

**Q28.** In the event a lender is willing to look at future income when determining payments under IBR, what kind of documentation might the lender accept in lieu of tax return from the previous year?

**A28.** Based on the regulations, lenders/servicers cannot look at future income when determining PFH eligibility. A lender/servicer must first try and obtain the AGI from the most recent tax year in order to qualify the borrower under PFH/IBR. See the November 1, 2012 Final Rule effective July 1, 2013, and the "Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request" form with the expiration date of 11-30-2015 for the new process to allow a borrower to self-certify that the borrower's AGI does not reflect his current circumstances and provide alternative documentation.

**Q29.** What proof of income is used if a borrower is not required to file taxes?

**A29.** The borrower should complete and submit the form along with supporting documentation. Examples of alternative documentation include but are not limited to: pay stubs, letter from employer, interest or bank statements, dividend statements, canceled checks. See the November 1, 2012 Final Rule effective July 1, 2013, and the "Income-Based (IBR) / Pay As You Earn / Income-Contingent (ICR) Repayment Plan Request" form with the expiration date of 11-30-2015 for the new process to allow the borrower to provide alternative documentation.

**Q30.** If a borrower's situation changes, such as annual income or family size, during the 12-month period of PFH payments, may the loan holder recalculate the borrower's PFH amount before the end of the current PFH 12-month period?

**A30.** *[Revised by November 1, 2012 Final Rule]:* If the borrower's financial circumstances change during the 12-month period of PFH payments, the lender must recalculate the borrower's PFH amount.

*[Prior to July 1, 2013]:* The Department has stated that a lender may recalculate a borrower's payment prior to the required annual evaluation. The Department also stated that such a recalculation resets the borrower's anniversary date for annual reevaluation.

**Q31.** IBR requires the borrower's income to be verified "annually." Does that mean the first of each year, or on the anniversary date of going into IBR?

**A31.** Annually, based upon the borrower's anniversary date established by the lender/servicer.

**Q32.** Is the lender required to request annual recertification or is it the responsibility of the borrower? If the borrower does not recertify, when does the lender return the borrower to the standard payment plan? 30 days, 45 days, etc.

**A32.** It is the lender's responsibility to request / notify the borrower of the annual recertification for PFH determination as long as the borrower is under the IBR umbrella. If the borrower does not provide updated income information then the borrower reverts to or continues to make the Permanent-Standard payment amount.

**Q33.** Is there a deadline for a borrower to submit annual documentation of AGI and family size?

**A33.** Yes. Borrowers are notified by their lender/servicer of the specific deadline for submitting the income information. There is an additional 10-day window following the specified annual deadline date to allow for mail time. Borrowers are not subject to any adverse consequences if their income information is received by the end of the additional 10-day window. [*Federal Register* dated November 1, 2012, Final Rule; §682.215(e)(3); §685.221(e)(3)]

**Q34.** How does a lender/servicer establish the deadline date and at what time does the lender/servicer send the annual renewal notice?

**A34.** The deadline date must be no earlier than 35 days before the end of the annual payment period. This will allow the lender/servicer to build in the amount of time it needs for processing and the additional 10-day mail time window. No earlier than 90 days and no later than 60 days before the deadline date established, the lender/servicer must send the annual renewal notice to the borrower. [*Federal Register* dated November 1, 2012 Final Rule; §682.215(e)(3); §685.221(e)(3)]

**Q35.** What happens if the borrower meets the deadline, but the lender/servicer isn't able to process the application before the end of the annual payment period?

**A35.** The lender/servicer must maintain the borrower's current monthly PFH payment amount until the new payment amount is determined. The lender/servicer must prevent the conversion to Permanent-Standard repayment. Once the lender/servicer is able to determine the new payment amount (PFH if borrower continues to qualify, Permanent-Standard if not), the lender/servicer makes appropriate adjustments (see July 17, 2012 NPRM preamble p. 42106) to the account if the new payment is less than the previous PFH payment. [*Federal Register* dated November 1, 2012 Final Rule; §682.215(e)(8); §685.221(e)(8)]

**Q36.** What happens if a borrower fails to provide the annual renewal information by the deadline plus the additional 10-day window?

**A36.** If the lender/servicer is unable to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period, the borrower's loan(s) will be converted to the Permanent-Standard payment and any unpaid interest will be capitalized. [*Federal Register* dated November 1, 2012 Final Rule; §682.215(e)(7); §685.221(e)(7)]

**Q37.** If a borrower, who is currently under PFH, does not submit the required annual PFH certification documentation for PFH in a timely manner, the loan holder will capitalize interest and put the borrower on the Permanent-Standard schedule. Later, the borrower submits the documentation needed to qualify the borrower again for PFH. (Keep in mind that this could happen when the borrower is very delinquent.) Does the loan holder need to retroactively process the PFH to cover the missed payments and reverse the capitalized interest or does it apply to future payments only?

**A37.** [*Revised by November 1, 2012 Final Rule*]: The November 1, 2012 Final Rule revised the regulations to clarify that in this case, the new annual certification does result in a new annual payment period. The Final Rule also revised the regulations to provide for an administrative forbearance in §682.211(f)(16) for any prior delinquency under the IBR "umbrella" if all of the following are met: 1) borrower was untimely in providing renewal documentation, 2) conversion to Permanent-Standard has occurred, and 3) the new PFH payment amount is \$0 or less than the prior PFH payment amount. Any unpaid interest attributable to the period of the administrative forbearance that falls after the date the conversion to Permanent-Standard occurred may not be capitalized. The amount of interest capitalized at the time of conversion to Permanent-Standard may remain capitalized. The administrative forbearance at §682.211(f)(14) may no longer be used within the IBR "umbrella".

[*Prior to November 1, 2012, Final Rule*]: The loan holder was not required to retroactively process the new PFH documentation. The loan holder should have granted the new annual certification period prospectively with the new certification, and could have covered any delinquency under the administrative forbearance provided for repayment plan changes.

**Q38.** What must the annual renewal information consist of and what items are absolutely needed by the end of the 10-day additional window?

**A38.** The annual renewal information includes documentation of the borrower's income and family size. Documentation of income may be a copy of the tax return, or other documentation of AGI acceptable to the lender/servicer, or may be alternative documentation of income. If the family size is the only information that is not received in a timely manner, the lender/servicer will assume a family size of one, which may result in a higher PFH payment or ineligibility for continued PFH. [November 1, 2012 Final Rule; §682.215(e)(3); §685.221(e)(3)]

Additional requirements for married borrowers: If the borrower is married and has filed his/her federal income tax return jointly with his/her spouse, the documentation requirements and family size process are the same as above, except that:

- Documentation of the spouse's income must be provided as well, through documentation of their joint AGI or, if applicable, alternative documentation of income, and

- If the spouse also has IBR-eligible student loans, those loans may be considered in determining PFH eligibility. If the lender/servicer does not also service at least one of the spouse's loans, then the borrower must ensure that the spouse's loan information is provided to the lender/servicer, either by having the spouse provide authorization and access for the lender/servicer to view the spouse's loan information on NSLDS, or by providing other documentation of the spouse's loans acceptable to the lender/servicer. [§682.215 (e)(1)(iii)]

**Q39.** Please give examples of when a borrower would elect to leave IBR.

**A39.** If the borrower wishes to enter into a different repayment plan such as extended repayment that would allow for a longer repayment term. Also, a borrower may have a smaller payment under their remaining original term on a Consolidation loan than the Permanent-Standard payment amount.

**Q40.** Can a borrower that left IBR come back at a later time and request it again?

**A40.** Yes, but the borrower must have a PFH to qualify for IBR. Borrowers who leave the IBR umbrella altogether cannot later opt directly back into Permanent-Standard.

**Q41.** If a borrower decides to opt out of the IBR umbrella, enters an Expedited-Standard repayment plan, and later wants to re-enter IBR, must the borrower reapply for the IBR plan and submit new documentation?

**A41.** Yes. The potential scenarios include:

1. A borrower wants to re-enter IBR to include the same loans that were in the IBR plan when the borrower elected to exit IBR. The borrower must qualify for IBR using PFH eligibility requirements. The loan holder would proceed as follows:
  - a. The loan holder must obtain PFH documentation from the borrower.
  - b. If the borrower qualifies for IBR using PFH eligibility requirements, then the borrower re-enters IBR.
  - c. The loan holder should re-review the multiple-holder proration, and would not recalculate the Standard-Standard and Permanent-Standard payment amounts.
  - d. The PFH payment is allocated across all loans in IBR.
  - e. If the borrower does not qualify for IBR using PFH eligibility requirements, then the loans are not eligible to re-enter IBR.
2. A borrower wants to re-enter IBR to include the same loans that were in the IBR plan when the borrower elected to exit IBR, and is also requesting to add loan(s) previously not included in the prior IBR plan. The borrower must qualify for IBR using PFH eligibility requirements. The loan holder would proceed as follows:
  - a. The loan holder must obtain PFH documentation from the borrower.
  - b. If the borrower qualifies for IBR using PFH eligibility requirements, then the loans are eligible for IBR.
  - c. The loan holder should re-review the multiple-holder proration.
  - d. The loan holder does not recalculate the Standard-Standard and Permanent-Standard payment amounts for the loans previously in the IBR plan.

- e. The loan holder must calculate Standard-Standard and Permanent-Standard payment amounts for the new loan(s) and set the counters on the loan(s).
  - f. The PFH payment is allocated across all loans.
  - g. If the borrower does not qualify for IBR using PFH eligibility requirements, then the loans are not eligible for IBR.
3. *[Revised by November 1, 2012 Final Rule]:* A borrower must include all eligible loans when requesting the IBR plan.
- [Prior to November 1, 2012 Final Rule]:* A borrower wants to re-enter IBR to include fewer loans than were in the IBR plan when the borrower elected to exit IBR. The borrower must qualify for IBR using PFH eligibility requirements. The loan holder would proceed as follows:
- a. The loan holder must obtain PFH documentation from the borrower.
  - b. If the borrower qualifies for IBR using PFH eligibility requirements, then the borrower resumes IBR.
  - c. The loan holder should re-review the multiple-holder proration.
  - d. The loan holder does not recalculate the Standard-Standard and Permanent-Standard payment amounts.
  - e. The PFH payment is allocated across all loans in IBR.
  - f. If the borrower does not qualify for PFH, then the loans are not eligible to resume IBR.

**From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q42.** The IBR Implementation Guide provides instructions for a loan holder to determine a borrower's AGI when a borrower works and earns money in a foreign country (Section VII, Q&A17). However, how does the loan holder compare the borrower's income to the poverty guideline to determine eligibility for IBR since the borrower isn't living in the U.S.?

**A42.** If a borrower is not a resident of a State identified in the Poverty Guidelines (e.g., foreign country), the borrower's poverty line income is the income used for the 48 contiguous States.

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**Section VIII: IRS Income Verification O&As**

**Note:** On June 12, 2009, the Department issued an Electronic Announcement providing for Interim Guidance on the use of tax return copies in lieu of the 4506-T transcript process. On June 29, 2009, the Department provided additional guidance regarding the required signatures on the tax return copies. [See Section XII for Q&As regarding the interim guidance]

**Note:** On April 13, 2012, the Department issued an Electronic Announcement that permits lenders or servicers to accept an unsigned copy of the borrower's tax return, unless the lender or servicer has questions about the validity of the copy of the tax return submitted by the borrower. See Section XII for more information. Some of the answers in this Section may be superseded by this Interim Guidance.

**Note:** On January 11, 2013, the Department informed the community of Federal Student Aid's readiness to work with all FFEL lenders and lender servicers and assist them in becoming participants in the Electronic IBR application process that provides a direct link to the borrower's AGI information from the IRS. In September 2013, the Department submitted an updated SAIG Enrollment Form that will allow FFELP lenders and servicers to enroll for the ability to obtain electronic applications information through SAIG. For more information about participation in the electronic process, refer to [011113LSIPOC4FFELendersandLenderServicersInterestedinElectronicIBRPay.html](http://011113LSIPOC4FFELendersandLenderServicersInterestedinElectronicIBRPay.html).

**Note:** The following Q&As are based on the IRS Form 4506-T as it is used today. In the future, the IRS may require a revised/new form for this authorization. Also, a better process may be developed as the industry and the IRS gain experience in the IBR process. On October 21, 2009, the IRS issued a new short form 4506T-EZ that may be used instead of the form 4506-T if the taxpayer filed a 1040 series return. In addition, the Income Verification Express Service (IVES) process was improved in August 2012, and this guide has been updated to reflect the changes.

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***Questions regarding the form***

**Q1.** How long does it take the IRS to process and post a tax return once it is filed by the borrower/taxpayer?

**A1.** It generally takes between 4 and 6 weeks for normal processing to post so that transcripts are available. Tax returns filed close to the April 15 deadline may take 8 weeks or more.

**Q2.** What tax years can be requested on the IRS Form 4506-T?

**A2.** The current tax year and the three prior tax years.

**Q3.** Can IRS Form 4506-T be e-signed?

**A3.** No, the IRS requires a wet signature on the form. This is in large part because it is authorizing a third-party to view the taxpayer's return.

**Q4.** Is there a different format of IRS Form 4506-T that loan holders can use to pre-populate from their system and send to borrowers?

**A4.** The PDF on the IRS website allows a loan holder to pre-populate fields.

**Q5.** Can IRS Form 4506-T be pre-printed with the loan holder's name and address (line 5) before sending to the borrower?

**A5.** Yes, a loan holder may pre-populate line 5 of the IRS Form 4506-T with its name, address, and telephone number prior to sending to the borrower/taxpayer.

**Q6.** Can the loan holder pre-fill any of the following lines on IRS Form 4506-T?

- Line 1a, 1b, 3, 4
- Lines 2a and 2b if the borrower/taxpayer filed a joint return and the loan holder is aware of the spouse's name and social security number
- Line 6 - 1040
- Box 6a. Returned Transcripts
- Box 7. Verification of Non-filing (only when using the regular filing method)
- Line 9. Year(s) or period(s) requested –12/31/XX

**A6.** Yes the loan holder can pre-fill all lines on the IRS Form 4506-T except the borrower/taxpayer's signature and the date. However, only box 6a **OR** box 7 can be pre-filled for each tax year requested on a single request.

**Q7.** What line items on IRS Form 4506-T need to be completed by the borrower/taxpayer in order for the loan holder to receive a 1040 transcript if the loan holder does not provide a pre-filled form?

**A7.** The following line items should be completed on IRS Form 4506-T with borrower/taxpayer information:

- Line 1a, 1b, 3, 4
- Lines 2a and 2b should be completed if the borrower/taxpayer filed a joint tax return
- Line 6
- Box 6a
- Line 9. Year(s) or period(s) requested –12/31/XX
- All applicable lines in the signature section.

The loan holder should populate line 5 with its name, address, and telephone number prior to sending to the borrower.

**Q8.** What line items on IRS Form 4506-T need to be completed by the borrower/taxpayer in order for the loan holder to verify that the borrower/taxpayer did not file a return if the loan holder did not provide a pre-filled form?

**A8.** The following Line items should be completed on IRS Form 4506-T with borrower/taxpayer information:

- Line 1a, 1b, 3, 4
- Lines 2a and 2b should be completed if the borrower/taxpayer filed a joint tax return
- Line 6
- Box 7 (only when using regular process; cannot verify non-filing using Income Verification Express Service (IVES; see more about this process below)

- Line 9. Year(s) or period(s) requested –12/31/XX
- All applicable lines in the signature section.

The loan holder should populate line 5 with its name, address, and telephone number prior to sending to the borrower/taxpayer.

**Q9.** What will occur if the IRS is not able to process the request due to missing or incorrect information on the IRS Form 4506-T?

**A9.** The request will be denied, the borrower/taxpayer will be informed of the error and the loan holder will be notified of the rejection, but not the reason. Therefore it is in the best interest of all to ensure that the IRS Form 4506-T is complete and accurate before submission to the IRS.

Some of the most common problems include:

- Failure to get a signature and/or date on the request
- Failure to provide the address on the return for the year desired
- Failure to provide the current address of the filer(s), if new
- Illegible form
- Missing IRS cover sheet
- Failure to include IVES user ID (used to access IRS site) at the end of line five on the 4506T, after servicer address.
- Transcript requests will be rejected if return only recently filed (within days), and request must be resubmitted.

**Q10.** How long does it take for the borrower/taxpayer to receive the explanation of why the return information could not be provided to the loan holder and in what format?

**A10.** Borrower/taxpayer should receive a written notice through the mail within 21 days from the date the IRS received the IRS Form 4506-T under the regular process and within 9-11 days from that date under IVES.

**Q11.** If the loan holder receives a rejected notification from the IRS, what action should the loan holder take with the borrower/taxpayer?

**A11.** The loan holder should notify the borrower/taxpayer that the request has been rejected by the IRS and inform the borrower/taxpayer to contact the loan holder to resolve.

Borrower/taxpayer will receive the notice explaining the rejection within 9-21 days from the date the IRS received the IRS Form 4506-T, depending on the submission process used (see previous question).

**Q12.** If there is more than one tax year entered on IRS Form 4506-T in line 9 (current year plus the 3 prior years), will the IRS return a single transcript with all four years, or will they return four separate 1040 transcripts?

**A12.** Each transcript represents a single return. The IRS would return 4 separate transcripts.

*Mail or Fax Submissions (normal Return and Income Verification Services (RAIVS) process)*

**Q13.** Can the loan holder mail or fax IRS Form 4506-T to any RAIVS Center, or does the form have to be sent to the RAIVS Center based on the borrower's residence?

**A13.** IRS Form 4506-T should be faxed or mailed to the RAIVS Team for the state where the borrower/taxpayer filed the most recent return.

**Q14.** What is the turnaround time for the IRS to process IRS Form 4506-T and return the transcript to the loan holder using the normal mail or fax process?

**A14.** 10 calendar days.

**Q15.** How does the IRS send the transcript information to the loan holder, by mail or by fax?

**A15.** The transcript will be mailed to the servicer.

**Q16.** Does the IRS charge a fee for processing 4506-T forms that are submitted through the normal RAIVS process?

**A16.** No, the IRS does not charge a fee for the normal RAIVS process.

**Q17.** If the borrower can provide alternative AGI information, why can't the lender/servicer bypass IRS completing the 4506-T form?

**A17.** Per the regulations, lenders are required to collect consent from the borrower to obtain income information from the IRS. The 4506-T form is the IRS method of doing so. However, under recent guidance from the Department, the lender/servicer may accept a copy of the first two pages of the income tax form. See the Electronic Announcement dated April 13, 2012, and the November 1, 2012 Final Rule effective July 1, 2013, that provide for relaxed AGI documentation requirements. In addition, the Department has introduced an electronic IBR application process that provides a direct link to the borrower's AGI information from the IRS. This process will be available for all participating servicers, regardless as to the borrower's loan program, in the near future.

**Q18.** Can a borrower withdraw his or her authorization to IRS information? Is this an annual authorization or permanent?

**A18.** The borrower could withdraw his or her authorization; however, this information is needed to make a PFH determination. The authorization is obtained annually and if obtained through the IRS Form 4506-T, it is only good for 120 days from the date on the form. See the Electronic Announcement dated April 13, 2012, and the November 1, 2012 Final Rule effective July 1, 2013 that provide for relaxed AGI documentation requirements. In addition the Department has introduced an electronic IBR application process that provides a direct link to the borrower's AGI information from the IRS. This process will be available for all participating servicers, regardless as to the borrower's loan program, in the near future.

*Submissions using the IVES process*

**Q19.** Does the IRS have a process to submit IRS Form 4506-T electronically through a batch process based on volume?

**A19.** Not at this time.

**Q20.** Does the IRS have a service to expedite the processing of IRS Form 4506-T?

**A20.** Yes, the IRS has a fee-based process called the IRS Income Verification Express Service (IVES). A user must apply to participate in the IVES process and a RAIVS Team address and fax number will be assigned to the user. When using the IVES system, the 4506-T forms must be faxed in batches of 50 with a cover sheet to the assigned RAIVS Center location, and the transcript is returned electronically via the IVES system. Information on the IVES system can be found at the following links:

Enrollment Procedures: <http://www.irs.gov/Individuals/IVES-Enrollment-Procedures>

e-Services Registration: <http://www.irs.gov/Individuals/e-Services-Registration>

Getting Started: <https://www.irs.gov/individuals/international-taxpayers/getting-started-using-ives>

Tutorials:

<https://la2.www4.irs.gov/PeopleBooks/CRMPROD/Training/3pdev/3pives/ivesover.htm>

The site includes tutorials on how to apply to participate in IVES and examples of the mail that will be delivered to the user's secure mailbox. However, there is no example showing what a tax transcript looks like.

**Q21.** Is there a cost to using this process?

**A21.** Yes, there is a fee of \$2.00 for each transcript requested. If the loan holder requests transcripts for multiple years, then there will be a charge of \$2.00 for each year requested. (Each year's tax return equates to a separate transcript)

**Q22.** How does IVES bill for the transcripts?

**A22.** IVES participants receive monthly bills (generally on the 5<sup>th</sup> of the month). Bills may only be paid using either ACH debit or credit, through the Pay.gov site at <https://www.pay.gov/paygov/>.

**Q23.** What if there are less than 50 IRS Form 4506-Ts (for example 35)? Or what if there are 235 IRS Form 4506-Ts? Can a batch of less than 50 be faxed under any circumstances?

**A23.** The IRS strongly prefers batches of 50 but will work with the loan holder.

**Q24.** What is the turnaround time for the IRS to process and return a transcript through the IVES process?

**A24.** The IRS provides a return transcript within 2 business days.

**Q25.** How is the transcript delivered to the loan holder?

**A25.** The transcript information is delivered to a secure mailbox, which the loan holder receives when it registers to use the IVES system.

**Q26.** What format is the transcript?

**A26.** The transcript is a PDF document.

**Q27.** How long does the transcript remain available in the secure mailbox?

**A27.** An item in the secure mailbox remains available for 3 business days after the item is opened. If the item has not yet been opened it remains available in the secure mailbox for 7 business days.

**Q28.** Are there commercial services that provide submission to the IRS on the loan holder's behalf?

**A28.** Yes. Internet research reveals several commercial services that provide this service. Some advertise that they will provide a transcript within 24 hours, and the cost appears to run between \$15 and \$20. They also use the IVES system, however, and have been promised no more expedited service than 2 business days.

### *Regulatory Question*

**Q29.** How long is the IRS Form 4506-T valid after the borrower/taxpayer signs the form?

**A29.** 120 days; since the IRS Form 4506-T is only valid for 120 days after the borrower/taxpayer signs the form, the loan holder must ensure that it is transmitted to the IRS within that time frame.

### *IRS Output Results Scenarios*

The following Q&As and chart are a quick reference of output results based on different request scenarios.

### **RAIVS Process**

**Q30.** If Box 6A (Return Transcript) is checked to request a transcript, what will the IRS return to the loan holder if the borrower/taxpayer did not file a return?

**A30.** The loan holder will receive a response of "no record of return filed."

**Q31.** If Box 6A (Return Transcript) is checked to request a transcript and Section 9 contains multiple years, what will the IRS return to the loan holder if the borrower/taxpayer filed a return in some of the years, but did not file a return in all of the years?

**A31.** The loan holder will receive a response of "no record of return filed" for the year(s) the borrower/taxpayer did not file a return. The loan holder will receive the transcript(s) for the year(s) the borrower/taxpayer did file.

**Q32.** If Box 7 (Verification of Non-filing) is checked to confirm that a return was not filed, what will the IRS return to the loan holder if the borrower/taxpayer did not file a return?

**A32.** The loan holder will receive verification that a return was not filed.

**Q33.** If Box 7 (Verification of Non-filing) is checked to confirm that a return was not filed, what will the IRS return to the loan holder if the borrower/taxpayer did in fact file a return?

**A33.** The loan holder will receive a letter advising it to contact the borrower/taxpayer. The borrower/taxpayer will get a letter with a copy of the transcript.

**Q34.** If Box 7 (Verification of Non-filing) is checked to confirm that a return was not filed and Section 9 contains multiple years, what will the IRS return to the loan holder if the borrower/taxpayer did in fact file a return for some of the years?

**A34.** The loan holder will receive verification of non-filing for any year in which the borrower/taxpayer did not file. For any requested year in which the borrower/taxpayer did file, the loan holder will receive a letter advising it to contact the borrower/taxpayer, and the borrower/taxpayer will receive a letter with a copy of the transcript.

### **IVES Process**

**Q35.** If Box 6A (Return Transcript) is checked to request a transcript, what will the IRS return to the loan holder if the borrower/taxpayer did not file a return?

**A35.** The loan holder will receive a response of “no record of return filed.”

**Q36.** If Box 6A (Return Transcript) is checked to request a transcript and section 9 contains multiple years, what will the IRS return to the loan holder if the borrower/taxpayer filed a return in some of the years, but did not file a return in all of the years?

**A36.** The loan holder will receive a response of “no record of return filed” for the year(s) the borrower/taxpayer did not file a return. The loan holder will receive the transcript(s) for the year(s) the borrower/taxpayer did file.

**Q37.** If Box 7 (Verification of Non-filing) is checked to confirm that a return was not filed, what will the IRS return to the loan holder if the borrower/taxpayer did not file a return?

**A37.** The loan holder should not submit any forms through the IVES process with Box 7 checked. IVES is not currently able to verify non-filing.

*See summary chart on next page for quick reference to filing via RAIVS or IVES process.*

The following chart summarizes Section VIII, Questions 32 through 39 for quick reference:

Method of Filing	If Box 6A Checked			If Box 7 (Verification of Nonfiling) Checked		
<b>Paper/ Fax (RAIVS)</b>	If return filed, loan holder receives transcript	If no return filed, loan holder receives response “no record of return filed”	If IRS Form 4506-T is for multiple years (line 9 says 2007 and 2008), what is response if borrower/taxpayer filed in 2008, but not in 2007? Loan holder receives transcript for 2008. For 2007, loan holder receives “no record of return filed.”	If return not filed, loan holder receives verification	If return was filed, what response? Separate response to taxpayer and loan holder. Taxpayer receives letter with copy of transcript; loan holder receives letter advising to contact taxpayer.	If IRS Form 4506-T is for multiple years (line 9 says 2007 and 2008), what is response if taxpayer filed in 2008, but not in 2007? Loan holder receives verification of non-filing for 2007. For 2008, taxpayer receives letter with copy of transcript; loan holder receives letter advising to contact taxpayer.
<b>IVES</b>	If return filed, loan holder receives transcript	If no return filed, loan holder receives response “no record of return filed”	If IRS Form 4506-T is for multiple years (line 9 says 2007 and 2008), what is response if taxpayer filed in 2008, but not in 2007? Loan holder receives transcript for 2008. For 2007, loan holder receives “no record of return filed.”	IVES unable to verify non-filing at this time. Loan holder should not send any forms with Box 7 checked through the IVES process.	IVES unable to verify non-filing at this time. Loan holder should not send any forms with Box 7 checked through the IVES process.	IVES unable to verify non-filing at this time. Loan holder should not send any forms with Box 7 checked through the IVES process.

**Section IX: Interest Subsidy and Special Allowance Q&As**

**Q1.** When does the 3-year period start and end in which the Department will pay interest subsidy?

**A1.** In the preamble to the October 23, 2008 Final Rule, the Department stated that IBR starts on the day the repayment period begins under IBR. This date is different on the systems used to service loans. Therefore, it is the date the borrower is “deemed in IBR on the servicing system used. The 3-year subsidy period begins on the date the borrower initially enters IBR PFH repayment on each loan and ends exactly three years later. This 3-year period is not interrupted except for periods of economic hardship deferment. The 3-year period continues to run even if the borrower no longer qualifies for PFH.

**Q2.** How is the 3-year period of interest subsidy calculated when an economic hardship deferment is granted before the 3-year period ends?

**A2.** The 3-year limit on interest subsidy is suspended during the periods of economic hardship deferment, and resumes after the deferment.

**Q3.** Does consolidation restart the 3-year period?

**A3.** No. The 3-year interest subsidy “clock” keeps ticking, even during the transition period between the date the underlying loans were paid in full and the first payment due date on the Consolidation loan. The only event that would temporarily stop this clock and extend the subsidy period would be the application of an economic hardship deferment.

**Q4.** Does the HEAL portion of a Consolidation loan get Special Allowance Payments under IBR?

**A4.** No. The HEAL portion of a Consolidation loan is never eligible for federal interest benefits and therefore would not be eligible for either the 3-year interest subsidy or the Special Allowance on the average daily balance of accrued interest.

**Q5.** If the borrower enters into a forbearance or deferment while in PFH, can the lender bill SAP on the unpaid interest during the forbearance or deferment period?

**A5.** Yes, the lender may bill for SAP on the unpaid accrued interest, for as long as the PFH status persists during the deferment or forbearance period. This was affirmed by the Department in e-mails dated November 25, 2009 and July 8, 2013.

**Q6.** If the loan holder bills for interest and SAP on the unpaid interest outstanding at the end of the quarter, then the borrower pays the outstanding interest in the next quarter, does the loan holder have to refund any interest subsidy and/or SAP paid in the previous quarter?

**A6.** No. Just like today, the loan holder billed correctly on what was outstanding at the end of the quarter or on the correct average daily balance for the quarter. However, if the payment is posted retroactively with an effective date on or prior to the last day of the previous quarter, the loan holder may have to adjust billings accordingly.

**Q7.** Will the government interest billed during a period of economic hardship deferment while the borrower is in an IBR plan be based solely on accrued interest during the deferment period or will the borrower's scheduled payment amount be factored into the amount billed?

**A7.** Subsidized interest accrued during any deferment while the borrower is in IBR will be billed as normal deferment interest.

**Q8.** If an enrollment update results in **the borrower being returned to an in-school or grace status** on a Stafford loan, would the Standard-Standard and Permanent-Standard payments amounts need to be adjusted, would PFH eligibility based on new Standard-Standard payment need to be re-evaluated, and would all counters (including the 3-year interest subsidy counter) need to be adjusted? For example, Bobby Borrower's initial grace-end date was 12/31/12, and his IBR start date was 2/1/13. On 8/1/13, Bobby's lender receives an enrollment update indicating that Bobby was continuously enrolled through 5/31/13, making his true grace end date 11/30/13.

**A8.** Yes. Since a borrower is unable to waive their grace period for any reason, including to enter IBR early, the borrower could no longer be considered to be in IBR. The lender/servicer would have to reevaluate IBR eligibility and determine the Standard-Standard and Permanent-Standard amounts based on the new grace-end date. On a subsidized loan, the lender/servicer would also have to reset the 3-year interest subsidy period to begin no earlier than the day after the new grace-end date, refund all IBR subsidy interest previously billed from the old IBR start date, and retroactively bill the Department for all interest accrued from the old grace-end date. In addition, the forgiveness counter would also reset because, even though the payments will remain on the borrower's payment history, the borrower is no longer responsible for making payments during that period, and therefore the payments would no longer be considered qualifying forgiveness payments.

**Q9.** If the Permanent-Standard amount happens to be less than the monthly interest accruing, may the loan holder bill the Department for subsidized interest during the 3-year period?

**A9.** It is very unlikely that a Permanent-Standard payment amount would ever be less than accrued interest, particularly during the three-year subsidy window. However, if this were to occur, billing would be permitted because §682.215(b) and §682.300(b) do not limit the subsidy to periods of a PFH, but rather authorize a subsidy to all periods under an IBR plan for the first three consecutive years from the established repayment start date.

**Q10.** The preamble to the October 23, 2008 Final Rule [page 63237] states that "A borrower's scheduled monthly payment amount, regardless of whether it covers accrued interest, is the borrower's payment obligation. During the 3-year period, the Department's obligation under the law is to pay only the amount of unpaid accrued interest that is not the borrower's obligation to pay during this period." Does the Department's subsidy payment for a borrower remain unchanged regardless of the actual amount that the borrower pays relative to the borrower's scheduled monthly payment amount? Is this true if a borrower makes a payment that exceeds the scheduled IBR payment amount? Are such prepayments from a borrower applied as provided under §682.215(c)(1)?

**A10.** The Department has stated that they will pay the calculated interest during the 3-year period regardless of the amount the borrower actually pays. This is the case both when the borrower pays less than the borrower's scheduled monthly payment or if the borrower pays more than the borrower's scheduled monthly payment. Any prepayments or excess payments made by the borrower should be applied as provided under §682.215(c)(1).

**Q11.** Is the "scheduled payment amount" based on all loans, all subsidized loans, or on the payment amount for each subsidized loan?

**A11.** The calculated PFH payment amount should be allocated across all loans for a borrower with a specific loan holder. This could mean that a borrower has a very low scheduled payment amount allocated to a loan that is not adjusted under the \$5 and \$10 tolerances. Interest subsidy would be calculated at the loan level for LaRS reporting based on the scheduled payment amount allocated to that subsidized loan or the subsidized portion of a Consolidation loan.

**Q12.** When determining the average daily balance of the unpaid accrued interest on the loan, does the loan holder include any interest during the 3-year subsidy period that has accrued in the quarter that is the Department's obligation to pay?

**A12.** Yes, the portion of the Department's accrued interest would be included when determining the average daily balance of the unpaid accrued interest.

**Q13.** What changes will occur to Part II, Interest Subsidy, of the LaRS report?

**A13.** Beginning with the September 30, 2009 quarter, the Department requires loan holders to use the following new billing codes in *Column C, Billing Code* and report the amount of interest in *Column F, Interest Amount* on the 'Lender's Interest and Special Allowance Request and Report (LaRS/799)', even if the billing is for the current quarter. While the Department will pay the amount in Column F, the loan holder will be responsible for maintaining the supporting documentation showing how the amounts were determined. The Department has asked that the interest rate be reported and zero dollar amounts will be accepted in *Column D, Ending Principal Balance* and *Column E, Average Daily Principal Balance*.

IC - Billing Current

II - Previous quarter increase adjustment

ID - Previous quarter decrease adjustment

**Q14.** What changes will occur to Part III, Special Allowance, of the LaRS report?

**A14.** The same billing codes used in Part II will be used in Part III, *Column A, Billing Code*. The special allowance will be calculated on an average daily balance of the outstanding accrued interest that includes the accrued interest that is the borrower's responsibility and the accrued interest that is the Department's obligation to pay. If the borrower's PFH ends prior to the end of a quarter, the average daily balance calculation will stop as of that date. Report on LaRS/799 using the same special allowance code as used on the principal amount for loan type in *Column E, Special Allowance Category* with a 0% interest rate in *Column F, Interest Rate* and use the average daily balance of the unpaid accrued interest. As is reported today, current quarter billings are reported in *Column H, Average Daily Principal Balance* and prior quarter adjustments are reported in *Column I, Adjustment for Difference in Average Daily Principal Balance*. The loan holder will be responsible for maintaining the supporting documentation showing how the amounts were determined.

**Q15.** What changes will occur to Parts IV and V of the LaRS report?

**A15.** None. The ending balances should not be carried forward to either Parts IV or V.

**Q16.** How can interest subsidy stop on the 61st day after a borrower is eligible for forgiveness if it is only a 36-month period? Please clarify.

**A16.** The 61st day is just another point at which interest subsidies stop in general. So, if the borrower was in an economic hardship deferment, for example, when the 300th qualifying month hits, and the lender did not file for forgiveness by the 60th day following the lender's determination date, the interest subsidies associated with that deferment period would stop.

**Q17.** How is the 3-year interest subsidy "clock" calculated? For example, if a borrower enters repayment and elects IBR (with PFH determination) on two subsidized Stafford loans for one year, goes back to school and takes out one new subsidized Stafford, re-enters repayment on all loans and re-enters IBR with PFH determination, how much time is left on the interest subsidy clock for each of the loans?

**A17.** On the first two loans, the 3-year clock will continue to run while the borrower is back in school, so how much subsidy time remains is based on how long the borrower remains in an in-school deferment on those loans. (Basically, take the 36 months minus the 12 months of subsidy already used minus the months of in-school deferment used.) The new loan would get a full 36 months from the time it entered IBR after the in-school period.

**Q18.** Is SAP billing on the unpaid accrued interest dependent upon the loan being in the 3-year IBR subsidy period?

**A18.** No. The SAP billing applies to all of the loans in PFH, not just the subsidized ones, and it applies during all periods of PFH, no matter how long those periods last or how far into the borrower's overall repayment period they begin or resume. Also, the Department has clarified that lenders/servicers are to include the IBR subsidy interest that is the Department's obligation to pay in the average daily accrued interest calculation.

**Q19.** A HEAL loan is not eligible for SAP billing due to the fact that loan type is not eligible for government interest subsidy. Can it be more generally said that unsubsidized balances of any loan type are ineligible for SAP billing?

**A19.** No. Unsubsidized FFELP loans are eligible for Special Allowance on the unpaid accrued interest; they are just not eligible for the additional interest subsidy during the first three years of IBR.

**Q20.** Should the average balance reported for subsidized loans be the same for interest billing as well as special allowance billing? Is there an example as to why they wouldn't?

**A20.** The average daily balance of unpaid accrued interest is an entirely different calculation than the 3-year interest subsidy, much like the traditional average daily principal balance is completely separate from, and different than, the interest for which you would bill the Department on subsidized loans during deferment periods. One amount (the interest subsidy) is a straightforward difference between the monthly payment amount and the accrued monthly interest amount, and the other (the average daily accrued interest) is an average of the outstanding daily interest amounts.

**Q21.** What day does IBR start for purposes of tracking the time periods?

**A21.** In the preamble to the October 23, 2008 Final Rule, the Department stated that IBR starts on the day the repayment period begins under IBR. This date is different on the systems used to service loans. Therefore, it is the date the borrower is “deemed” in IBR on the servicing system used.

**Q22.** If a borrower consolidates, how will the servicer be notified of the amount of time the borrower has already used of the 3-year IBR interest subsidy?

**A22.** The Loan Verification Certificate (LVC) forms in use today by Direct Loans have the data fields to capture the required information needed. *[Note: See Section XI: Forms Q&As for more information]*

**Q23.** Is the average daily balance of accrued interest based on the interest amount accrued each day or on the running total of unpaid interest through each day?

**A23.** The average daily balance is based on the running total of outstanding unpaid interest on each day of the quarter on which the borrower is on PFH.

**Q24.** If there is unpaid accrued interest prior to the borrower’s IBR start date, can the loan holder include that interest in the average daily balance of accrued interest calculation while the borrower is on PFH?

**A24.** Yes, per a final ruling from the Department dated July 3, 2013, loan holders can include unpaid interest accrued prior to the IBR start date in the average daily balance of accrued interest calculation while the borrower is on PFH, for all quarters beginning April 1, 2013.

**Q25:** If the lender/servicer included unpaid accrued interest prior to the IBR start date in the average daily balance of accrued interest calculation, for quarters prior to April 1, 2013, do they need to refund any paid SAP derived from that pre-IBR interest?

**A25:** No. The Department established the April 1, 2013 date only as a limitation for those lenders who were not previously including the pre-IBR accrued interest in the average daily balance of accrued interest calculation, and who might want to bill for extra SAP based on such interest retroactively.

**Q26.** If the borrower was in a deferment on a subsidized loan prior to entering IBR, and there was deferment interest billable to the government when IBR began, can the loan holder include this interest in the average daily balance of accrued interest calculation while the borrower is on PFH, along with any unpaid accrued interest owed by the borrower?

**A26.** Yes. Consistent with the Department’s final ruling dated July 3, 2013, for all quarters beginning April 1, 2013, the loan holder can include both government interest outstanding and borrower interest outstanding as of the IBR start date in the average daily balance of accrued interest calculation while the borrower is on PFH. The government interest outstanding will simply fall off the running interest total at the end of the quarter, when it is billed to the Department via LaRS.

**Q27.** If an enrollment update results in a **later** repayment start date on a Stafford loan but does not return the borrower to an in-school or grace status, and this later start date is after the original IBR start date, would all counters (including the 3-year interest subsidy counter) need to be adjusted? For example, Brenda Borrower's initial grace-end date was 1/15/13, and her IBR start date was 3/1/13. On 8/1/13, Brenda's lender receives an enrollment update indicating that Brenda was continuously enrolled through 10/15/12, making her true grace-end date 4/15/13.

**A27.** Yes. On subsidized loans, the lender/servicer would need to reset the 3-year interest subsidy period to begin on the day after the new grace-end date, refund to ED any IBR subsidy interest billed between the old IBR start date and the new grace-end date, and bill ED for the traditional subsidy interest accrued between the old and new grace-end dates.

#### **From the December 2015 Addendum to the 2013 IBR Implementation Guide**

**Q28.** Is a loan on IBR eligible for Special Allowance Payments (SAP) if the loan is 280 days past due and the claim has not yet been paid?

**A28.** Yes. With the Department's email confirmation on February 19, 2015<sup>2</sup>, that a borrower who is more than 270-days delinquent would remain in PFH, the existing SAP rules would permit a lender to collect special allowance for that PFH status. If the borrower is still in a PFH situation as of day 280, the lender may continue to include the unpaid accrued interest into the average daily unpaid accrued interest calculation. In this case, the loan has not yet reached the 60-day untimely filing restriction, at which point such billings would stop.

**Q29.** If a borrower files for bankruptcy under Chapter 13 (or under Chapter 7 with an undue hardship petition) while on PFH, such that the lender must eventually file a claim with the guarantor, is the borrower still entitled to the IBR interest subsidy during periods of negative amortization?

**A29.** No, even if the PFH status persists until the bankruptcy claim is paid. Under longstanding guarantor policy, any applicable interest subsidy ceases as of the date the lender was notified of the bankruptcy. The guarantor, when paying the bankruptcy claim, will pay all interest accrued from the bankruptcy notification date forward and charge the borrower for that interest.

**Q30.** If a borrower files for bankruptcy under Chapter 7 (with no undue hardship petition) while on PFH, is he/she still entitled to the IBR interest subsidy during periods of negative amortization?

**A30.** No. If a lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts against the borrower, and treat the loan(s) as if it were in forbearance. Although the borrower does remain in PFH, the borrower is responsible for paying all accrued interest during periods of forbearance.

**From the December 2015 Addendum to the 2013 IBR Implementation Guide (continued)**

**Q31.** If a borrower was on IBR prior to default and he or she used only part of the 36 months of interest subsidy, after the borrower successfully rehabilitates that loan, would the remainder of the subsidized period carry over so that the borrower would be eligible for the remaining time, and if so, how is that tracked?

**A31.** Yes, any remaining portion of the 36 months would carry over post rehab. The number of days excluded from the 36-month period (due to Economic Hardship deferment) prior to default is tracked via both the Claim Form (field 68) and CAM record type 54 (field 27e). By subtracting that figure from the 36-month period that began as of the original IBR start date, the rehab lender would know exactly how much (if any) eligibility for interest subsidy remains.

**Section X: Payment Application Q&As**

**Q1.** If payments are made by someone other than the borrower (DOD, AmeriCorps, etc), are they applied to interest first as required under IBR rules?

**A1.** Absent specific instructions from the third party, these payments are to be applied according to §682.215(c).

**Q2.** How does the loan holder handle a payment that would pay a loan ahead beyond the 12th month of a PFH term?

Example 1: Borrower's PFH payment is \$10 for 12 months. In month 12, the borrower makes a \$20 payment. That \$20 satisfies the \$10 payment due for month 12 of the PFH term. How do you apply the remaining \$10?

Example 2: A borrower's 12th PFH payment of \$20 is due on June 10, 2010. He sends in \$40 and wants to re-qualify for another year of PFH payments. Does the additional \$20 pay toward the July 10 payment, even though his payment amount may or may not be \$20 for the next year of PFH payments?

**A2.** §682.215(c)(3) provides for advancing payment due dates under §682.209(b)(2)(ii) based on the monthly payment for the borrower's repayment schedule established for the loan. Since the scheduled monthly payment amount will likely vary between PFH periods and permanent-standard periods, as well as for consecutive PFH periods, any advancement of due dates for a prepayment should correspond to the scheduled monthly payment for the applicable period, at the loan holder's discretion.

**Q3.** A borrower has both subsidized and unsubsidized loans. The monthly interest is more than the PFH payment amount. How should the PFH payment be applied to each loan type, proportionally based on the loan balances or is all of the subsidized interest paid first and the remainder to the unsubsidized? Or could the borrower direct all of the payment to the unsubsidized interest to take full advantage of the subsidy?

**A3.** The Department has approved the following answer: Consistent with the application of a borrower payment to a borrower's consolidated account (meaning combined, not consolidation loan) under other repayment plans, we believe the application would be proportional based on the loans included in that account and represented in the combined payment due amount. Payment application under IBR is first to accrued interest, then to collection costs, then to late charges, and finally to loan principal. If the appropriate portion of the consolidated payment applied to any subsidized loan in the IBR plan is insufficient to cover the accrued interest on that loan, the Department would pay the "supplemental" portion of interest on that loan for three years. If the appropriate portion of the consolidated payment applied to any unsubsidized loan in the IBR plan is insufficient to cover the accrued interest on that unsubsidized loan, the unpaid, accrued interest on that unsubsidized loan (and on any subsidized loan after the three-year subsidy period) would remain outstanding unless the borrower's PFH payment increases (due to a recalculation) to an amount greater than monthly accrued interest (thus sufficient to pay down the outstanding accrued interest) or until the borrower no longer qualifies for PFH or leaves IBR entirely. The borrower no longer qualifying for PFH or leaving IBR entirely would trigger capitalization of any accrued, unpaid interest on the loans. *[Note: e-mail dated 9-3-2009]*

**Q4.** When applying PFH payments, may the lender/servicer allocate the payment first to any unpaid interest accrued (for example, un-capitalized, unpaid interest that has accrued from the last payment date to the start of the PFH period, or un-capitalized, unpaid interest that accrued prior to a period of deferment before the borrower entered IBR)?

**A4.** Yes. §682.215(c)(1) states that any payment made under the IBR plan umbrella must be first applied to “accrued interest”. As this does not limit “accrued interest” to just the interest that accrues during PFH status, the payment must be applied to satisfy the oldest outstanding interest first, as required under simple interest rules. *[Note: e-mail dated 8-11-2011; the Department confirmed that the payment may first be applied to the most past-due interest as it otherwise would be under simple interest rules.]*

**Section XI: Forms O&As**

**Q1.** How do industry participants report any use of the 3-year subsidy period on the underlying loans to the consolidating lender?

**A1.** The Direct Loan Consolidation loan “Loan Verification Certificate” includes fields to be used by the underlying loan holder to report any period of IBR and economic hardship deferment granted. [Note: See Section IX; Q22]

**Q2.** How are certain data elements reported to the guarantor during a claim process?

**A2.** The claim form and the electronic claim file accommodate the data reporting elements required due to the borrower’s prior or future eligibility for IBR. The claim form and CAM record 54 are available in the NCHER e-library: <http://www.ncher.us/?page=e0063>

**Q3.** Are there IBR-related data elements that must be provided at the time of claim filing, even if the borrower has never been under an IBR plan?

**A3.** Yes. Certain fields must be populated in Section X (Income Based Repayment) of the Claim Form, even if the borrower has never been under an IBR plan. Those fields are:

Field 62-Loan ID7

Field 63-Standard-Standard \$

Field 65-25-Year Forgiveness Begin Date

Field 66-# Qualifying Forgiveness Mnths

Fields 62 and 63 must always be populated. Fields 65 and 66 must be populated if any qualifying payments have been made on or after July 1, 2009 and/or the borrower has been on an Economic Hardship deferment beginning on or after July 1, 2009. If field 65 is populated, field 66 must be populated, and vice versa. This data is required in order that it may be passed by the guarantor to any subsequent holder (e.g. resulting from loan rehabilitation) should the borrower apply and qualify for IBR at a later date.

Note: IBR data is never required for claims on Parent PLUS or Consolidation loans that include Parent Plus. It is also never required for claims submitted due to Closed School, Death, False Certification, Identity Theft, or Ineligible Borrower.

**Q4.** If data provided in fields 65 and 66 is the result of periods of economic hardship deferment, must field 68 (# Days HRD Def) also be populated?

**A4.** Not necessarily. Field 68 should only be populated if the borrower has been under an IBR plan. Consequently, if field 68 is populated, field 67 (IBR Start Dt) must also be populated. While the number of months on an economic hardship deferment must be included in field 66 (# Qualifying Forgiveness Mnths), it should be noted that field 68 captures the number of days on an economic hardship deferment and is intended for a very specific purpose. Claim Form instructions state that field 68 must reflect “the number of days the loan was on an Economic Hardship deferment on or after the date in field 67”. Data in field 68 is required in order that it may be passed by the guarantor to any subsequent holder (e.g. resulting from loan rehabilitation) so that the new loan holder can determine if any portion of the allotted 3-year period of subsidized interest allowed under IBR remains. Any periods of economic hardship deferment while the borrower is on an IBR plan are considered to have stopped the 3-year “clock”.

**Q5.** Under certain scenarios, it may be very difficult for a loan holder to calculate and provide the guarantor at claim filing an accurate Standard-Standard payment amount. For example, there may be times when a subsequent loan holder may not know the Standard-Standard payment amount or the outstanding balance at initial repayment to calculate the Standard-Standard payment amount because the data was not provided by the original loan holder. This is especially true if it is a rehabilitated loan, a loan acquired from another lender no longer in business, etc. If the Standard-Standard payment amount is not readily available, what is the expectation for the loan holder to determine/calculate that amount?

**A5.** Loan holders will need to utilize any and all resources at their disposal, e.g., NSLDS or records from previous holder(s), to calculate/determine the Standard-Standard payment amount to the best of their ability. Guarantors will accept the accuracy of the data elements submitted by the loan holder at claim filing.

**Q6.** If the loan is more than 270 days delinquent but the claim is not paid yet, is the language on any of the OMB-approved IBR request forms sufficient for an “agreement to repay the debt” in order to grant forbearance after default?

**A6.** Prior to the first OMB-approved forms announced in Dear Colleague Letter GEN-10-11 on June 17, 2010 (distribution of forms began as early as July 1, 2010) the industry-approved form did include such language so that the IBR form could be used to grant forbearance after default. However, the Department did not agree to include the borrower agreement “to repay the debt according to the terms and conditions of the promissory note” language in the OMB-approved forms. Therefore, the IBR request form is not sufficient for an “agreement to repay the debt” in order to grant forbearance after default. [Note: The first OMB-approved IBR Plan Request and IBR Plan Alternative Documentation of Income forms must be made available to borrowers no later than September 1, 2010.]

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**Note:** Dear Colleague Letter GEN-12-22 (December 22, 2012) announced the approval of the form Direct Loan and FFEL borrowers will use to request an income-driven repayment plan (IBR, ICR and Pay As You Earn) and provides guidance on the implementation of the form.

***Questions based upon the combined IBR/Pay As You Earn/ICR Request form issued on December 22, 2012***

**Q7.** Does a borrower currently on the IBR plan use this new form to provide the required annual documentation to determine a new monthly payment amount for IBR?

**A7.** Yes. In addition, Item 1 of the new IBR/Pay As You Earn/ICR Request form presents borrowers with check boxes to indicate the reason they are submitting the form. Specifically, borrowers may indicate that they are submitting the form to:

- Request an income-driven repayment plan or request a change to their income-driven repayment plan (e.g., changing from the IBR to Pay As You Earn plan);
- Submit annual documentation for the recalculation of their monthly payment amount under their current repayment plan; or
- Request that their loan holder recalculate the monthly payment amount because the borrower's circumstances have changed.

**Q8.** Is the electronic application process currently available for all borrowers requesting IBR?

**A8.** At this time, the electronic application is not available to FFELP-only servicers and lenders.

On January 11, 2013, the Department informed the community of Federal Student Aid's readiness to work with all FFEL lenders and lender servicers and assist them in becoming participants in the Electronic Income-Based (IBR)/Pay As You Earn/Income-Contingent Repayment (ICR) Repayment Plan Request process. As a participant in the electronic application process, a lender's or lender servicer's borrowers who have eligible commercially-held FFEL Program loans will be able to apply for the IBR Plan through the electronic process.

In September 2013, the Department submitted an updated SAIG Enrollment Form that will allow FFELP lenders and servicers to enroll for the ability to obtain electronic applications information through SAIG . For more information about participation in the electronic process, refer to [011113LSIPOC4FFELendersandLenderServicersInterestedinElectronicIBRPay.html](http://011113LSIPOC4FFELendersandLenderServicersInterestedinElectronicIBRPay.html).

**Section XII: ED Interim Guidance on Accepting Tax Return Copies**

**Note:** This Section is retained for historical purposes. See Section VII: IBR Eligibility Documentation and Verification Q&As for current documentation requirements.

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**Q1.** Are lenders/servicers required to collect and retain a new borrower wet signature on the copy, even if the copy already has the borrower's signature on it? What about e-signed tax forms, does the borrower print and wet sign those copies?

**A1.** According to the June 29, 2009 additional guidance, the Department determined that it is acceptable for the lender/servicer to accept a copy of the borrower's tax return form that includes a copied signature and an "original pen and ink" signature is not required. That way the borrower can simply make a photocopy before sending the original to the IRS. Or, in the case where the borrower's copy was not signed, he or she can sign it and send either that form or a photocopy to the lender. Or, in the case where the return was filed electronically, the borrower can print a copy in the normal 1040 format, sign it and send it or a copy in. This now also allows the return to be submitted either by FAX or by e-mailing a scanned copy of the return.

**Q2.** Is the lender still allowed to use IRS Form 4506-T process?

**A2.** Yes, the announcement from the Department stated the use of the tax return copies was optional. However, lenders should consider that guarantors and others may assist the borrower in obtaining documentation for IBR and it may only include tax return copies. And the use of IRS Form 4506-T may result in a delay in obtaining the AGI information from the IRS.

**Q3.** Do lenders/servicers still need to collect a release of tax information consent from the borrower?

**A3.** No; not for the use of the tax return copies. The fact that the borrower is sending the copies to the lender is consent. However, if the lender has questions about the accuracy of the copies, the lender will need to obtain a signed IRS Form 4506-T from the borrower and file it with the IRS to confirm the borrower's information.

**Q4.** If the borrower is sending the tax return copies, does the borrower need to complete an Alternative Documentation of Income form?

**A4.** No. The tax return copies replace IRS Form 4506-T. If the AGI on the tax form does not represent the borrower's current income, the lender would request alternative documentation.

**Q5.** How will a lender collect the borrower's self-certification of non-filing?

**A5.** ED stated that the self-certification must be written. At this point it will be up to each lender/servicer to develop a method of obtaining this written self-certification. However, if the borrower reports income to the lender that indicates the borrower should have filed a tax return the lender must verify non-filing through the IRS process.

**Q6.** The “Interim Guidance” states that the borrower must provide a copy of “both sides” of the borrower’s tax return. The 1040EZ only contains one side. Is this acceptable?

**A6.** Yes. The purpose is to obtain the pages with both the borrower’s AGI and signature. Since the 1040EZ has both on the same page, and does not have a second page, a copy of the first page is acceptable.

**Q7.** If the borrower filed a joint tax return, are both spouses required to sign the copy of the tax return if not already signed?

**A7.** No. This process should mirror IRS Form 4506-T process in that regard. Only one spouse’s signature is required to authorize the release of the tax information on a joint return.

**Q8.** What obligation does the lender have if the borrower claims he or she is not required to file a tax return but the income documentation suggests that the borrower should have? Does the borrower qualify for IBR if a discrepancy exists?

**A8.** It is highly unlikely that a holder will have a situation where they have enough documentation to make a determination as to whether the borrower should have filed for a particular tax year. Since the alternative income documentation cannot be more than 90 days old and the tax return for the prior year is not due until April 15 (or October 15 if an extension is filed), the lender would not have sufficient information to determine filing requirements. Per the June 12, 2009 Electronic Announcement, the only obligation the holder has is to obtain verification of non-filing from the IRS. If the borrower qualifies for IBR based on the income documentation presented, the borrower should be granted IBR, even if the lender believes the borrower should have filed a tax return.

**Item A-1: Q&A Draft, with attachment, to ED dated 3/2/2009, with helpful context not retained in final version dated 4/30/2009**

**From:** NCHELP IBR Workgroup [mailto:ibr@lists.nchelp.org] **On Behalf Of** Wanda Hall  
**Sent:** Tuesday, March 03, 2009 3:31 PM  
**To:** NCHELP IBR Workgroup <ibr@lists.nchelp.org>  
**Subject:** Re: Issue Document Sent To ED

Attached please find the updated Q&A document that was submitted to Pam Moran and Kathleen Smith yesterday.

Thank you,  
Wanda

**Item A-2: E-mail, with attachment - Q&A Draft, with final responses from ED dated 4/29/2009**

**From:** "Moran, Pamela"

**Date:** Fri, 1 May 2009 16:25:30 -0500

**To:** 'Vicki Shipley' <[vshipley@nchelp.org](mailto:vshipley@nchelp.org)>; 'wpcrigler@slsa.net' <[wpcrigler@slsa.net](mailto:wpcrigler@slsa.net)>

**Subject:** FFEL Industry Income-Based Repayment Plan Implementation Questions

Please find attached our responses to your IBR implementation questions. Please let me know if you need further assistance.

**Item A-3: E-mail from Bob Sandlin, dated 5/7/2009, confirming ED's verbal responses to some LaRS-related questions**

**From:** NCHELP IBR Workgroup [mailto:ibr@lists.nchelp.org] **On Behalf Of** Robert Sandlin  
**Sent:** Thursday, May 07, 2009 6:18 PM  
**To:** NCHELP IBR Workgroup <ibr@lists.nchelp.org>  
**Subject:** Revised LaRS Questions

All,

The LaRS sub-group had a call today with Angela Baker in regard to some questions we had on the Q&A that ED sent to us on 4-30-09. Angela was able to clear up some of the issues and we have revised the following questions in the Implementation Guide to reflect her corrections. LaRS sub-group members, please make sure I captured the issues correctly and translated them into the Q&A correctly. I made a few technical edits from what we had on the call in order to add the column and column name into the text.

Don't forget that comments are due on the Implementation Guide by Noon tomorrow.

Thanks,  
Bob

**Part II**

Angela stated that regardless as to current or past quarter billing, in Part II, the amount due is put into Column F. They are not going to calculate the IBR interest amount to pay in Part II. They will pay what is in Column F.

**Part III**

There is an error in the 4-30-09 Q&A document from ED on Part III, SAP billing. It should state the for current quarter billings, the ADB should be reported in Column H. For prior quarter adjustments, the amount of correction should be reported in Column I.

Angela did confirm that the same billing codes, IC, II, and ID should be used in both Part II and Part III.

**ED Ready Date**

Angela stated they are planning on having their changes in place by 9-27-09 to accept these billings. She also stated that if a lender was not able to get the changes done in order to report on the 9-30-09 LaRS, they will accept prior quarter adjustments on the 12-31-09 LaRS.

**Revised Questions From Implementation Guide**

**Q17.** What changes will occur to Part II, Interest Subsidy, of the LaRS report?

**A17.** Beginning with the September 30, 2009 quarter, the Department will require loan holders to use the following new billing codes in Column C, Billing Code and ~~to~~ report the amount of interest ~~Interest Amount~~ in Column F, Interest Amount ~~of~~ on the 'Lender's Interest and Special Allowance Request and Report (LaRS/799)', even if the billing is for the current quarter. While the Department ~~will use this amount to calculate the amount of interest payable, loan holders will still be required to populate all fields (a zero dollar amount will be accepted).~~ will pay the amount in

Column F, the loan holder will be responsible for maintaining the supporting documentation showing how the amounts were determined. The Department has asked that the interest rate be reported and zero dollar amounts will be accepted in *Column D, Ending Principal Balance & Column E, Average Daily Principal Balance*.

IC - Billing Current

II - Previous quarter increase adjustment

ID - Previous quarter decrease adjustment

**Q18.** What changes will occur to Part III, Special Allowance, of the LaRS report?

**A18.** The same billing codes used in Part II will be used in Part III, *Column A, Billing Code*. The special allowance will be calculated on an average daily balance of the outstanding accrued interest that includes the accrued interest that is the borrower's responsibility and the accrued interest that is the Department's obligation to pay. If the borrower's PFH ends prior to the end of a quarter, the average daily balance calculation will stop as of that date. Report on LaRS/799 using the same special allowance code as used on the principal amount for loan type in *Column E, Special Allowance Category* with a 0% interest rate in *Column F, Interest Rate* and use the average daily balance of the unpaid accrued interest. As is reported today, current quarter billings are reported in *Column H, Average Daily Principal Balance* and prior quarter adjustments are reported in *Column I, Adjustment for Difference in Average Daily Principal Balance*. Similar to Part II, all fields are required ('0' is acceptable in Columns G and/or H). For current billing, code IC, the average daily balance of the unpaid accrued interest must be reported in *Column H* The average daily balance of the unpaid accrued interest must be reported in *Column I, Adjustment for Difference in Average Daily Principal Balance* and the *Interest Rate* must be reported as '.00' in order calculate special allowance. The loan holder will be responsible for maintaining the supporting documentation showing how the amounts were determined.

**Item A-4: E-mail, with attachment, dated 6/12/2009 confirming ED's final take on the use of tax returns in lieu of IRS Form 4506-T**

From: SLSA List [mailto:SLSA@LISTS.ACS-EDUCATION.COM] On Behalf Of Winfield Crigler  
Sent: Friday, June 12, 2009 9:49 AM  
To: SLSA@LISTS.ACS-EDUCATION.COM  
Subject: FW: Guidance re 5406-T

Here it is - the long-awaited 4506-T guidance. It will be posted to IFAP later today. And, pursuant to our request, it provides that

(1) lenders/servicers may accept the borrower's self-certification that the borrower has not filed a return for the most recent year.

(2) this is an optional process and you may still rely on the 4506T if you choose.

Thanks,  
Winkie

Winfield P. Crigler  
Executive Director  
Student Loan Servicing Alliance (SLSA)

-----Original Message-----

From: Baker, Jeff [mailto:Jeff.Baker@ed.gov]  
Sent: Friday, June 12, 2009 7:59 AM  
To: Winfield Crigler  
Cc: Moran, Pamela; Madzellan, Dan  
Subject: RE: Guidance re 5406-T

Winkie: The attached will be posted to our IFAP website sometime today. However, feel free to distribute it as soon as you get this message.

Jeff

**Item A-5: Follow-up e-mail from ED re. signature requirement on borrower tax returns submitted in lieu of the 4506-T**

**From:** Baker, Jeff [<mailto:Jeff.Baker@ed.gov>]

**Sent:** Monday, June 29, 2009 3:59 PM

**To:** Baker, Jeff; Winfield Crigler

**Cc:** Moran, Pamela; Madzellan, Dan; Hansen, Kristie; [hwardsworth@wpllc.net](mailto:hwardsworth@wpllc.net)

**Subject:** RE: Guidance re 5406-T

Winkie: After consultation we have determined that it is acceptable for the lender/servicer to accept a copy of the borrower's tax return form that includes a copied signature and an "original 'pen and ink' is not required. That way the borrower can simply make a photocopy of the copy he made before sending the original to the IRS. Or, in the case where the borrower's copy was not signed, he or she can sign it and send either that form or a photocopy to the lender. Or, in the case where the return was filed electronically, the borrower can print a copy in the normal 1040 format, sign it and send it or a copy in. Of course, this now also allows the return to be submitted either by FAX or by emailing a scanned copy of the return.

Please let me know if you have any questions.

Jeff

**Item A-6: E-mail from ED on IBR payment allocation**

-----Original Message-----

From: Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
Sent: Thursday, September 03, 2009 9:37 AM  
To: 'vshiple@nchelp.org'  
Cc: Utz, Jon; Wiley, Debra; Hansen, Kristie; Battle, Cynthia  
Subject: FW: IBR - Payment Allocation

Consistent with the application of a borrower payment to a borrower's consolidated account (meaning combined, not consolidation loan) under other repayment plans, we believe the application would be proportional based on the loans included in that account and represented in the combined payment due amount. Payment application under IBR is first to accrued interest, then to collection costs, then to late charges, and finally to loan principal. If the proportional amounts of the consolidated payment amount are insufficient to cover the accrued interest **on both** the subsidized and unsubsidized portions of the borrower's combined payment due, the Department would pay the "supplemental" portion of interest on the subsidized loan portion for three years and the unpaid accrued interest on the unsubsidized portion (or on the subsidized portion after the three-year subsidy period) would remain outstanding until the borrower no longer qualifies for PFH or leaves IBR entirely. Either of those events would trigger capitalization of the accrued, unpaid interest on the loans.

----- Original Message -----

From: Vicki Shipley <[vshiple@nchelp.org](mailto:vshiple@nchelp.org)>  
To: Hansen, Kristie  
Sent: Mon Aug 24 10:00:01 2009  
Subject: IBR - Payment Allocation

Hi! Please read from the bottom/up - we knew this issue would cause some Q's. Any chance you can confirm for us what DL is doing as far as payment allocation across multiple loans? Thanks

\*\*\*\*\*

As you know we determined that, as is the case for all federal repayment plans, including the new IBR plan, the regulations do not address or mandate specific requirements for how a payment is to be allocated across multiple loans and documented that lenders should follow existing allocation procedures. The IBR Implementation Guide covers this in Section X, Q&A 3 on bottom of page 38.

We actually discussed this Q&A on our very first call on 9-23-08. The Q&A remained basically the same since then (we changed the person from first to third, but that was all). I believe we felt that if we were to change our allocation of payments for just this scenario, it would appear that we were manipulating the system to gain more subsidy, so we decided it was best to be consistent with our current allocation method across all repayment plans. Each lender's/servicer's allocation method could be different from other lenders/servicers, but they need to be consistent within their own shop.

-----Original Message-----

From: ADMINISTRATION of USA Financial Aid Offices [<mailto:FINAID-L@LISTS.PSU.EDU>]  
On Behalf Of Heather Jarvis  
Sent: Thursday, August 20, 2009 11:29 AM  
To: [FINAID-L@LISTS.PSU.EDU](mailto:FINAID-L@LISTS.PSU.EDU)  
Subject: negative amortization / IBR / interest

I've been asked the below, and I don't know the answer:

Imagine a medical student entering residency with a Stafford Loan repayment balance of roughly \$175,000, with \$34K (or about 20%) subsidized and \$141K unsubsidized (or 80%). The monthly interest, at 6.8%, would be roughly \$200 on the subsidized and \$800 on the unsubsidized. On a resident salary, under the IBR guidelines, their monthly payment amount would be about \$400, or not enough to even cover the total monthly interest. How would that payment be applied? Would it be proportional based on the balance, so 20% of the payment to the subsidized interest and 80% to the unsubsidized interest? Or is all of the subsidized interest paid first and the remainder to the unsubsidized? Or could the borrower direct all of the payment to the unsubsidized interest to take full advantage of the subsidy? The regulations are not very clear on this point, which is quite important in this example.

I know that ED will pay the interest on the subsidized portion for the first 3 years, but otherwise I'm unclear. Is IBR the first negative amortization scenario we're dealing with?

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Vicki Shipley

**Item A-7: E-mail, with attachment, and accompanying Lender Bulletin from ED on how to report the neg-am interest subsidy and average daily balance of accrued interest on LaRS**

**From:** FSA LR [[mailto:FSA\\_LR@ed.gov](mailto:FSA_LR@ed.gov)]

**Sent:** Sunday, September 27, 2009 1:18 PM

**Subject:** IBR Guidance

Attached is the IBR Bulletin that will be posted to the FSA Financial Partners Portal this coming week. The software changes that will allow lenders to report the unpaid accrued interest due for eligible IBR loans went into production this weekend and will be available for use beginning with the September 2009 LaRS/799 report. If you have any questions regarding the instructions, please let us know. All questions should be directed to [fsa\\_lr@ed.gov](mailto:fsa_lr@ed.gov). There will be a listserv alert once the bulletin has been posted.

Thank you,  
Angela Baker

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**Item A-8: E-mail from Vicki Shipley summarizing a telephone conversation with Pam Moran of ED re. an incarcerated FFELP borrower's eligibility for IBR**

-----Original Message-----

From: NCHELP IBR Workgroup [mailto:ibr@lists.nchelp.org] On Behalf Of Vicki Shipley

Sent: Tuesday, November 03, 2009 4:09 PM

To: NCHELP IBR Workgroup <ibr@lists.nchelp.org>

Subject: IBR and Incarcerated Borrowers

The following confirmation is from Pam Moran. "I have conferred with OGC and we all agree that IBR is an available repayment plan for an incarcerated individual."

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Vicki Shipley

**Item A-9: E-mail from ED clarifying the proper treatment of borrowers who obtain a deferment or forbearance while on PFH under IBR.**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Wednesday, November 25, 2009 10:26 AM  
**To:** Vicki Shipley  
**Cc:** Smith, Kathleen; Utz, Jon; Siegel, Brian; Battle, Cynthia; Roca-Baker, Angela  
**Subject:** RE: IBR Q - follow-up from Regs committee 7/20 conference call  
**Importance:** High

I apologize for my delay in getting back to you on this. We have discussed the issue of the status of a borrower in IBR with a partial financial hardship (PFH) status who requests a deferment or forbearance. Angela Roca-Baker also received a somewhat related question on the 3-year consecutive year subsidy period for a borrower whose calculated IBR payment does not cover accruing interest. The regulations state that the 3 years is a consecutive period from the established IBR repayment start date on each loan repaid under IBR, excluding any period of economic hardship deferment. The question to Angela was whether a lender would continue to bill the Department for the interest differential on a subsidized Stafford loan during periods of forbearance and deferment when the borrower's calculated IBR payment amount is less than the accruing interest.

As it relates to the first issue that came up during the July NCHelp Regulations Committee conference call, our position continues to be, as I stated on the conference call, that there is no basis under the statutory and regulatory provisions governing IBR for an IBR borrower with a PFH status to automatically lose the PFH status when the borrower requests a deferment or forbearance. A borrower's IBR eligibility is established by the borrower's demonstration of a PFH based on an examination of the borrower's eligible loans, AGI, and family size and that status is reevaluated annually on the anniversary date for that borrower. Unless the borrower requests to leave IBR totally, the borrower's eligibility for PFH is based strictly on that evaluation. The IBR statute and IBR regulations make it clear that any unpaid accrued interest for such a borrower is capitalized when a borrower chooses to leave IBR or no longer has a partial financial hardship. To the degree that the IBR capitalization provisions differ from the capitalization rules that would otherwise govern borrowers during deferment or forbearance periods, we believe the IBR provisions apply to borrowers in IBR. Should a PFH IBR borrower cease to show a PFH status or a borrower requests to leave IBR during a deferment or forbearance period, we believe the lender has the option to delay capitalization until the end of the deferment or forbearance period.

In response to your question on billing, given ED's position, we believe it is appropriate for lenders to use the IBR billing codes. Also, although a borrower may not have an obligation to make payments during a period of deferment or forbearance, the borrower has a calculated payment amount under his or her repayment plan. Unless the borrower's calculated IBR payment is already \$0, the borrower's payment during a deferment or forbearance does not become \$0 even if the Department is obligated to pay all the accruing interest on a subsidized loan during a deferment period.

In response to the question that Angela received, we believe the 3 consecutive year period tracks as follows on subsidized and unsubsidized loans under the following circumstances:

1. Borrower receives an economic hardship deferment - Department pays all accrued interest on a subsidized loan during the deferment period and it is excluded from the consecutive 3-year IBR subsidy period. Assuming the borrower continues to show PFH and the calculated IBR payment continues to be less than accruing interest, the lender resumes billing for the interest differential at the conclusion of the EH deferment up to 3 consecutive years of subsidy benefit. On unsubsidized loans, the full accruing interest is the responsibility of the borrower during the deferment period, but unpaid accrued interest is not capitalized at the end of the deferment period. Interest is capitalized only when the borrower is no longer PFH or leaves IBR unless the deferment end date is later than the PFH or IBR end date and the lender opts to capitalize at the conclusion of the deferment period.
2. Borrower receives unemployment or in-school deferment – Department pays all accrued interest during the deferment period on a subsidized loan, but the 3-year IBR interest subsidy clock continues to run during that period. If any months of the 3-year consecutive period remain after the deferment ends, and the borrower remains PFH with a calculated IBR payment amount of less than accruing interest, the lender resumes billing for the interest differential up to 3 consecutive years of subsidy benefit. On unsubsidized loans, the full accruing interest is the responsibility of the borrower during the deferment period, but is not capitalized if unpaid at the end of the deferment period. Interest is capitalized only when the borrower is no longer PFH or leaves IBR unless the deferment end date is later than the PFH or IBR end date and the lender opts to capitalize at the conclusion of the deferment period.
3. Borrower receives a forbearance – The borrower is responsible for all accruing interest during the forbearance period and the 3-year IBR interest subsidy clock on subsidized loans continues to run during this period. If any months of the 3-year consecutive IBR subsidy period remain on a subsidized loans after the forbearance period ends, and the borrower remains PFH with a calculated payment amount of less than accruing interest, the lender resumes billing for the interest differential up to 3 years of subsidy benefit. On unsubsidized loans, unpaid accrued interest is not capitalized at the end of the forbearance period. Interest is capitalized only when the borrower is no longer PFH or leaves IBR unless the forbearance end date is later than PFH or IBR end date and the lender opts to capitalize at the conclusion of the forbearance period.

I hope you find this information helpful

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**From:** Vicki Shipley [<mailto:vshipley@nchelp.org>]

**Sent:** Wednesday, July 29, 2009 11:46 AM

**To:** 'Moran, Pamela'

**Subject:** IBR Q - follow-up from Regs committee 7/20 conference call

Hi! Thanks again for taking the time to provide the Regulations committee an update last week – we always appreciate your updates. We do have a follow-up question and want to make sure we correctly understand the issue you raised regarding deferments and forbearances granted after a borrower has begun paying his/her loans under IBR. Here goes....

We believe the issue centers on whether a lender should consider the borrower to have left partial financial hardship (PFH) status during the deferment or forbearance period and the capitalization of the interest before and after the deferment or forbearance period. As we understand it, your concern is that if the borrower is in a period of partial financial hardship, either during the current

certification period or after the annual renewal, while on a deferment or forbearance, the interest should not be capitalized until the borrower no longer has a partial financial hardship.

If our understanding of the issue you presented is correct, we offer the following thoughts as to why the IBR Workgroup believes that periods of deferment and forbearance should not be handled any differently than how they are handled under all other existing repayment plans and that therefore the period of PFH should end.

1. If the PFH status does not end at the time a borrower enters deferment or forbearance, the lender would then be able to bill special allowance (SAP) on the unpaid interest that accrues during the deferment or forbearance period. During a period of deferment or forbearance, the borrower is more than likely not making any payments, and the amount of accrued interest would be a significant amount (on both subsidized and unsubsidized loans) upon which a lender could bill for SAP. The IBR Workgroup did not believe that this was the intent of the law and regulations, so we took the position that when a borrower requests and is granted a deferment or forbearance under the IBR umbrella, his PFH status should cease so that the lender could not bill for SAP on the unpaid accrued interest. During the Negotiated Rulemaking sessions regarding these rules, it was discussed that the reason lenders should be able to bill on the unpaid accrued interest during PFH is because that interest is not being capitalized. Therefore, if the PFH status ends during deferment or forbearance under the IBR umbrella, lenders should then be able to capitalize the accrued interest as is done with other repayment plans.

2. In addition, during periods of subsidized interest, there would be confusion as to how this interest should be billed to the Department through the LaRS process. Would this interest be billed using the regular billing codes, or using the new IBR billing codes? The IBR Workgroup believes this interest should be billed under the regular billing codes, just as any other deferment period would be billed.

3. Also, during a period of forbearance on a subsidized loan, does that mean the borrower's payment is now \$0 and if this forbearance occurs during the first 3 years of IBR, the lender would be able to bill subsidized interest that is not paid by the borrower? Again, the IBR Workgroup does not believe that this is appropriate.

Because IBR is another repayment option for borrowers, the IBR Workgroup strongly believes that any periods of deferment or forbearance while the borrower is under the IBR umbrella should be handled as they are today for other repayment plans and the borrower's PFH status should end for the reasons above. Capitalization of interest would therefore be treated the same as under the current deferment and forbearance provisions. Once the deferment or forbearance ends, if the borrower continues to experience a partial financial hardship (as certified in the most recent certification period), the borrower would again enter PFH status.

Thanks for taking a look at this and adding to the list of outstanding IBR issues!

Vicki

**Item A-10 (12/31/2009): E-mail from ED confirming that, when an IBR applicant submits a signed tax return copy in lieu of the 4506-T, the signature can be anywhere.**

**[E-mail is on the pages ahead]**

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**Item A-11: E-mail thread from Vicki Shipley and Winkie Crigler summarizing ED's verbally stated positions on some IDR form issues**

**From:** NCHELP IBR Workgroup [mailto:ibr@lists.nchelp.org] **On Behalf Of** Vicki Shipley  
**Sent:** Thursday, January 28, 2010 1:05 AM  
**To:** NCHELP IBR Workgroup <ibr@lists.nchelp.org>  
**Subject:** FW: Brief Summary of Meeting with ED re IBR forms

Thanks, Winkie – Just a couple of additional comments. I agree completely about ED's view on the new .211(f)(14) – Pam mentioned several times that they are interpreting this more broadly than we are. Regarding .211(d) their position goes back to the fact that defaulted borrowers are not eligible for IBR – hence the reason you have to first get a borrower out of default before they are eligible for IBR. They did not agree with our draft comments on the matrix regarding how we would use the form for this situation. It seems they want “some extra separate steps” (my words not ED's) for this situation rather than using the IBR application as an “all in one” way to get this done. ED will continue to stay “silent” regarding any optional interim form and its use or updating etc.

**From:** NCHELP IBR Workgroup [mailto:ibr@lists.nchelp.org] **On Behalf Of** Winfield Crigler  
**Sent:** Wednesday, January 27, 2010 5:28 PM  
**To:** NCHELP IBR Workgroup  
**Subject:** Brief Summary of Meeting with ED re IBR forms

Vicki and I met with Pam Moran (OPE) and Jon Utz (FSA) today to ensure that the two sides understood the points the other was trying to make regarding the forbearance language in the IBR application form. As you know, in our comments back and forth we were not sure that the Department understood where we were coming from and why (and vice versa). The face-to-face was very helpful and I think (hope) we made some progress, although there are still some disagreements about what this form can and can't do re forbearances.

- (1) FORBEARANCE LANGUAGE: We basically tried to make the point that this form needed to fit all different kinds of borrowers who may need different kinds of forbearances depending on their circumstances.
  - a. OPE seems hung up on the 60-day non-interest-capping documentation forbearance under 211(f)(11) as though it is a right of the borrower to get a non-interest capping forbearance for at least part of the time. They do agree that there is no authority for a non-interest-capping documentation forbearance beyond 60 days (except out of the goodness of the lender's heart), but seem to believe that if it takes longer than 60 days to process the IBR application, then you would be giving the borrower 60 days of uncapped and then another forbearance (under new 211(f)(14)?) for the balance of the time and interest could be capped on that portion. We even asked and Pam confirmed that in her view if you got a borrower who was 90 days delinquent applying for IBR, then you would give them a capped forbearance for the 90 days, a 211(f)(11) uncapped document forbearance for up to 60 days while the borrower is applying and some other kind of capped forbearance (211(f)(14)?) if it takes longer than 60 days. That seems crazy to me – I guess I had always

thought that you guys would pick the forbearance that fit the case the best and put a single forbearance on for the entire time. (Am I wrong?)

- b. ED reads new 211(f)(14) pretty expansively – more broadly than we do, I think. See discussion above where documentation takes longer than 60 days. But my recollection is that we did not really get into the issue of whether 211(f)(14) could be applied if the borrower were ultimately rejected for IBR.
  - c. We talked for a long time about 211(d) (forbearance authorized by a GA post 270 days but pre-claim). At first they thought that it was entirely inappropriate to be trying to use this form for that situation, and that it would demand a higher standard. They believe that this provision is used very infrequently currently. We tried to convince them that with IBR it may be used more frequently. (After all, if you can get a zero or very low payment, why wouldn't you be willing to do it?) They do not seem to believe that the borrower's signature on this form constitutes a new agreement to repay. They think that you would need something much more explicit.
- (2) **JULY 1, 2010 CHANGES FOR SPOUSES:** ED does not want to include the 7/1/2010 changes in this form. They think it will be too confusing to have two sets of rules. Other options are to update the form in a few months (they hope that they could talk OMB into a technical correction without comment periods, etc.) or to delay this form slightly so that it is issued with an effective date of July 1, 2010. We talked about how it may take the month of February for them to consider all the comments, and then OMB gets 30 days to review (the month of March); by then it is only 3 months until July 1<sup>st</sup>. From the point of view of the industry we think that 2 forms in a 3-month period is a nightmare! Based on where we are and where they are, it seems like the best option is to delay the form until July 1 and then have only the new rules printed on the form. (Question: would the industry update our “best efforts” form in the meantime to reflect some facets of the almost ready ED form?)
- (3) **4506-T INSTRUCTIONS:** We had a good discussion on the instructions regarding use of the 4506-T as only one possible option and I think that Jon in particular understands that most lenders are not using the 4506-T and when the new electronic process is in place, even fewer people (no one) will use the 4506-T. He thought our use of the phrase “other documentation of your AGI” was very helpful. He also liked the new language regarding the check box in Section 3, #3 – he thought that it captured the intent of the DCL, which he admitted wasn't clear.
- (4) **CELL PHONE AUTHORIZATION:** TICAS apparently is objecting to the cell phone authorization, mostly because of the ability to text message. Their rationale is that not everyone has free texting on their cell phone. ED doesn't seem sympathetic (Pam pointed out that many kids today no longer answer their cell phone and do nothing but text on it), but the Deputy Under Secretary hasn't weighed in yet.

Vicki – Please weigh in and elaborate, correct, disagree with the above impressions.

On thought re forbearances, is the solution to include a separate forbearance form with the IBR form in most instances (where appropriate)? This came up on or SLSA call today.

**IBR Implementation Overview and Q&As**

**Appendix A**

Thanks,  
Winkie

Winfield P. Crigler  
Executive Director  
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**Item A-12: E-mail thread providing ED's responses to the IBR Workgroup's comments on the IDR form draft being circulated at that time**

**From:** Paddock, Patricia [mailto:Patricia.C.Paddock@salliemae.com]  
**Sent:** Tuesday, March 30, 2010 11:40 AM  
**To:** 'Robert Sandlin' <rsandlin@nthea.com>; 'Winfield Crigler' <WPCrigler@slsa.net>; Sommer, Robert <Robert.A.Sommer@salliemae.com>; 'Kowalski, Laura' <laura.kowalski@tgsllc.org>; Brandt, Ed <Ed.Brandt@acs-inc.com>; michelle.p.barros@wellsfargo.com; dfreunde@aessuccess.org; 'vshiple@nchelp.org' <vshiple@nchelp.org>  
**Subject:** FW: IBR forms - ED's response to coms of 2-1-2010

The response to #9 indicates that the IBR Plan Request form will have only provisions effective 7/1/2010 and after and that it will be issued by ED with directions for implementation beginning 7/1/2010. Vicki asked for confirmation of that and the Jon Utz response was that the consensus at ED was that given how close we are to 7/1, it was best not to include both pre-and post-7/1 requirements because it would confuse borrowers and mean the form for most of the 3-year clearance period would have obsolete provisions.

Also see the responses to #3 and #10 regarding forbearance, specifically the 60-day no-capitalization forbearance.

**From:** Paddock, Patricia  
**Sent:** Tuesday, March 30, 2010 7:55 AM  
**To:** 'Robert Sandlin'; 'Winfield Crigler'; Sommer, Robert; 'Kowalski, Laura'; [Ed.Brandt@acs-inc.com](mailto:Ed.Brandt@acs-inc.com); [michelle.p.barros@wellsfargo.com](mailto:michelle.p.barros@wellsfargo.com); [dfreunde@aessuccess.org](mailto:dfreunde@aessuccess.org)  
**Cc:** 'vshiple@nchelp.org'  
**Subject:** IBR forms - ED's response to coms of 2-1-2010

Jon Utz has provided a response to the comments our Forms for IBR Workgroup submitted on behalf of the FFELP community on 2-1-2010 in response to the *Federal Register* notice published 12-31-2009 with ED's proposed forms.

I am providing this to the workgroup members. You may receive it through other avenues.

**Item A-13: E-mail thread clarifying ED's position on the implications for borrowers who exit IBR entirely**

**From:** Moran, Pamela [mailto:Pamela.Moran@ed.gov]  
**Sent:** Friday, April 30, 2010 3:26 PM  
**To:** Jennifer DiGiacomo  
**Cc:** Utz, Jon; Battle, Cynthia; Baker, Jeff  
**Subject:** RE: easy IBR question

Yes, the Department stands by the preamble guidance you highlight below. The Direct Loan program is working to correct the website.

But to be clear on the topic of such requests from borrowers who have left IBR totally, if a borrower's loan was originally scheduled to be paid in a ten-year period, which is true with most loans, the borrower only gets the balance of the years remaining of those ten years with the period spent in the IBR plan counted against the borrower in determining the remaining years. Depending upon how many years the borrower spent in IBR, the borrower may no longer really be able to leave IBR. Unless the borrower's outstanding balance is high enough for them to qualify for extended repayment after initially paying under the standard repayment plan, such a change in repayment plan yields nothing for the borrower. If you are too far along in the 10-year repayment period, an income sensitive or graduated repayment amount is no longer possible. For Consolidation Loan borrowers, the borrower gets the remaining years in what was the original Consolidation Loan standard repayment period with the years in IBR counted against the borrower in establishing the remaining years. So folks should be aware that a borrower may not be achieving anything by requesting a move from the standard repayment plan they are required to pay under when leaving IBR to another plan.

**From:** Jennifer DiGiacomo  
**Sent:** Friday, April 30, 2010 8:38 AM  
**To:** Moran, Pamela  
**Subject:** easy IBR question

Dear Pam,

Good morning,

I was hoping you could help resolve some concerns that have started circulating among financial aid officers and coming back to us asking for clarification. There appears to be an IBR question and note on the Direct Loan servicing site that is causing some concern with borrowers and financial aid officers. The other comment we've been told is that when the FAO calls the DL servicing center they were told that based on "new information" the servicing reps had received, the borrowers will now lose their ability to ever change their repayment plan after exiting IBR.

The IBR information in the Question Center seems to contradict the guidance in the preamble of the final rules published October 23, 2008. The understanding is that if a borrower chooses to leave IBR, they must convert to a Standard repayment plan. The question causing concern is "**Can a borrower later choose any other repayment plan after leaving IBR and having a Standard**

**repayment plan established?”**

The answer in the Question Center on the DL site appears to be “no”.  
The answer in the Federal Register appears to be “yes”.

My understanding from our years now of industry workgroup discussions with you on this subject is that the preamble guidance is the correct answer.

From the DL site:

<https://www.dl.ed.gov/borrower/QctrHelpIndex.do?SectionId=Glos>

**Note:** If you choose to leave the IBR Plan at any time, your account will be placed on the Standard repayment plan. You cannot change to any plan other than Standard at any time after being on the IBR repayment plan.

From the Department of Education Federal Register/ Vol. 73, No. 206/ Thursday, October 23, 2008 / Rules and Regulations, page 63239 of the preamble:

*Comment:* Under the proposed regulations, if a borrower leaves the IBR plan, the borrower must pay under the FFEL standard repayment plan, and the lender recalculates the borrower’s monthly payments based on the time remaining in the standard 10-year repayment period. Several commenters believed the time that the borrower is in the IBR plan should be treated like a deferment or forbearance and should not be counted towards the 10-year repayment period. These commenters argued that borrowers should have the option to switch out of the IBR plan to any repayment plan for which they are eligible—not just the FFEL standard repayment plan—and effectively have a full repayment period available to them after leaving the IBR plan.

*Discussion:* Section 493C(b)(8) of the HEA specifies that a borrower who is repaying a loan under the IBR plan may, at any time, terminate repayment under the IBR plan and “repay such loan under the standard repayment plan.” The law does not give the borrower the option to choose a different repayment plan when terminating repayment under the IBR plan. Nor is there authority in the HEA to treat the borrower’s time in the IBR plan as a deferment or forbearance that is excluded from the repayment period. However, the HEA does not require that borrowers stay in the standard 10-year repayment plan for the remaining life of the loan. As with any other borrower in the FFEL and Direct Loan programs, these borrowers may request a change in repayment plan no more frequently than annually as provided in the HEA. However, since the maximum repayment periods under other FFEL and Direct Loans repayment plans, except extended repayment and Consolidation, are 10 years, in most circumstances the repayment options for the borrower will be severely limited depending on the period of time the borrower remained in the IBR plan.

Would you agree that the preamble guidance is the correct answer?

**Jennifer DiGiacomo** | Compliance Officer

Graduate Leverage, LLC

**From:** NCHELP IBR Workgroup [<mailto:ibr@lists.nchelp.org>] **On Behalf Of** Robert Sandlin  
**Sent:** Wednesday, June 23, 2010 3:44 PM  
**To:** NCHELP IBR Workgroup  
**Subject:** Re: Changing of Payment Plans

This very issue was a hot topic on a grad student listserve a couple of months ago. I believe this issue is being pursued by representatives from this group because DL is wrong on this. They are basing their argument on the following Preamble comment in the Final Rules.

On page 63239, the preamble to the October 23, 2008 Final Rules states:

*Comment:* Under the proposed regulations, if a borrower leaves the IBR plan, the borrower must pay under the FFEL standard repayment plan, and the lender recalculates the borrower's monthly payments based on the time remaining in the standard 10-year repayment period. Several commenters believed the time that the borrower is in the IBR plan should be treated like a deferment or forbearance and should not be counted towards the 10-year repayment period. These commenters argued that borrowers should have the option to switch out of the IBR plan to any repayment plan for which they are eligible—not just the FFEL standard repayment plan—and effectively have a full repayment period available to them after leaving the IBR plan.

*Discussion:* Section 493C(b)(8) of the HEA specifies that a borrower who is repaying a loan under the IBR plan may, at any time, terminate repayment under the IBR plan and “repay such loan under the standard repayment plan.” The law does not give the borrower the option to choose a different repayment plan when terminating repayment under the IBR plan. Nor is there authority in the HEA to treat the borrower's time in the IBR plan as a deferment or forbearance that is excluded from the repayment period. **However, the HEA does not require that borrowers stay in the standard 10-year repayment plan for the remaining life of the loan.** (bold added) As with any other borrower in the FFEL and Direct Loan programs, these borrowers may request a change in repayment plan no more frequently than annually as provided in the HEA. However, since the maximum repayment periods under other FFEL and Direct Loans repayment plans, except extended repayment and Consolidation, are 10 years, in most circumstances the repayment options for the borrower will be severely limited depending on the period of time the borrower remained in the IBR plan.

*Changes:* None.

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**From:** NCHELP IBR Workgroup [<mailto:ibr@lists.nchelp.org>] **On Behalf Of** Pat Riemenschneider  
**Sent:** Wednesday, June 23, 2010 2:26 PM  
**To:** NCHELP IBR Workgroup  
**Subject:** Changing of Payment Plans

One of our loan counselor trainers was doing a comparison of the DL IBR information on their website with the FFEL information that we distributed. He questioned the following statement.

**Note:** If you choose to leave the IBR Plan at any time, your account will be placed on the Standard Repayment Plan. You cannot change to any plan other than Standard at any time after being on the

IBR repayment plan.

It can be found by clicking here: <http://loanconsolidation.ed.gov/help/glossary.html#satisfactory>. In our information we state that the borrower would have to make one payment under the “expedited plan” and then could change to any other plan as long as there was time left in the original 10 year period for Stafford and PLUS and 25 or 30 year period for Consolidation. In comparing both sets of Regulations (§§682.210(b)(1) and 682.209(a)(6)(xi); §685.221(d)(2) and 682.215(d)(2)) they appear to basically read the same and I didn’t find anywhere that specifically states a DL borrower must remain on the standard repayment plan for the remaining term of the loan. Can anyone help? Thanks

Pat Riemenschneider  
Sr. Program Policy Analyst  
Iowa Student Loan

**Item A-14: E-mail from ED emphasizing that PFH periods under IBR should not be treated as deferment periods**

**From:** "Moran, Pamela" <Pamela.Moran@ed.gov>  
**Date:** Wed, 4 Aug 2010 14:20:34 -0500  
**To:** vshiple@nchelp.org<vshiple@nchelp.org>; WPCrigler@slsa.net<WPCrigler@slsa.net>  
**Cc:** Utz, Jon<Jon.Utz@ed.gov>; Wiley, Debra<Debra.Wiley@ed.gov>  
**Subject:** Questionable IBR Implementation

We are not sure whether this is a matter of miscommunication with borrowers or an incorrect understanding on the part of lenders/lender servicers and their front line staff, but are hopeful that you can work with your members to address this issue. We have received information from borrowers that indicates that the lenders involved have implemented the IBR plan as if it were a 12-month deferment, sending renewal applications to the borrowers and informing them that if the renewal application and required information is not received and processed, they will be returned to standard repayment. I am not aware of whether it is being referred to as a “deferment” or not, but if it is, that should be discontinued.

I realize that to administer the IBR plan lenders must reevaluate borrowers annually to determine whether the borrower continues to demonstrate a partial financial hardship (PFH). If the borrower doesn't continue to demonstrate PFH or doesn't provide the information necessary for the lender to determine PFH, the borrower's IBR payment becomes the recalculated IBR payment under section 682.215(d)(1). I realize this is a form of standard payment under the IBR plan, but the borrower is still under the IBR plan. In fact, once a borrower enters the IBR plan, the borrower does not leave it unless the borrower specifically requests to leave the plan.

I just wanted to alert you to this situation so that any miscommunication or incorrect understanding of the IBR plan can be addressed.

Thanks. Let us know if we need to discuss this further.

**Item A-15: E-mail thread clarifying ED's position on how to administer IBR for divorced and remarried co-makers of Spousal Consolidation loans**

-----Original Message-----

From: Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]

Sent: Tue 8/10/2010 2:28 PM

To: Winfield Crigler; Vicki Shipley

Cc: Siegel, Brian; Utz, Jon; Battle, Cynthia; Baker, Jeff; Wiley, Debra

Subject: FW: Question RE: FFEL - joint Consolidation borrowers who have remarried and are filing jointly

Recently you requested that we clarify what the Department meant in its guidance below when we stated that the AGI or income that should be used to determine each borrower's eligibility for IBR would be "the respective borrower's portion of the new couple's AGI." After discussion with other staff and OGC, we would like to clarify that under these circumstances, a lender may use alternative documentation of income as provided for under the IBR regulations to determine the borrower's IBR eligibility. Any AGI determination not based on a tax return (the definition of AGI in 34CFR 682.215(a)(1) refers to the AGI reported to the IRS which would have to be reported on a tax return), would have to be determined based on other documentation as permitted by the regulations.

From: Moran, Pamela

Sent: Tuesday, May 18, 2010 2:53 PM

To: 'vshipley@nchelp.org'; Winfield Crigler

Subject: FW: Question RE: FFEL - joint Consolidation borrowers who have remarried and are filing jointly

FYI

From: Moran, Pamela

Sent: Tuesday, May 18, 2010 2:52 PM

To: Baker, Jeff; Arsenault, Leigh; Utz, Jon; Battle, Cynthia

Cc: Siegel, Brian; Wiley, Debra

Subject: FW: Question RE: FFEL - joint Consolidation borrowers who have remarried and are filing jointly

We received this question today from Deb Wiley. Although we had previously provided guidance to the FFEL industry and DL servicing on the ability of/procedures for a married couple with a joint consolidation loan to request IBR, the guidance did not encompass a situation in which the joint consolidation borrowers had divorced and subsequently married other parties and have filed jointly with the new spouse.

In response to Deb's question below, after consulting with OGC, we have determined that the AGI or income that should be used to determine each borrower's eligibility for IBR in this scenario would be the respective borrower's portion of the new couple's AGI. So, in the example below that Deb is presenting, A's portion of the joint AGI of A&C and B's portion of the joint AGI of B&D would be added together and would be used with the full amount of the

**IBR Implementation Overview and Q&As**

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joint consolidation loan to determine each joint consolidation borrower's eligibility for IBR.

From: Wiley, Debra

Sent: Tuesday, May 18, 2010 12:53 PM

To: Moran, Pamela; Utz, Jon

Subject: Question RE: FFEL - joint Consolidation borrowers who have remarried and are filing jointly

The scenario:

Parties A and B took a joint consolidation in 1994; Parties are divorced; A is now married to party C; B is now married to D; A and C filed taxes jointly; B and D plan to file taxes jointly.

A and B want to utilize IBR. Both have agreed to provide income information and complete the IBR request.

What income should the lender use to calculate the IBR payment?

This situation involves a borrower and former spouse who are speaking with the lender tomorrow (Wednesday, May 19). The lender will need definitive guidance from Department of Education to advise them accurately.

Thank you.

Debra Wiley  
FSA Ombudsman  
U.S. Dept. of Education

**Item A-16: E-mail thread clarifying the credit bureau reporting of borrowers with a PFH payment of \$0 (follow-up to Item A-14 above)**

-----Original Message-----

From: Vicki Shipley [<mailto:vshipley@nchelp.org>]  
Sent: Friday, August 13, 2010 1:35 PM  
To: 'Moran, Pamela'  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

Correct - I sent you this info because based on the conversations with IBR workgroup no one could figure out how or why the borrower may be confused other than in this particular situation with a -0- scheduled payment and how that translates to the credit reporting for that one situation. Sorry for the confusion but we don't think we (lenders/servicers) are confused and we're doing this correctly - not so sure borrowers understand all that is going on!!??

-----Original Message-----

From: Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
Sent: Friday, August 13, 2010 1:26 PM  
To: Vicki Shipley  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

I thought this was related to my inquiry, which originated with the Ombuds office, about lenders treating borrower who are in IBR as if there are in a 12-month deferment. That approach, which we were concerned about, we think was applied to more than just \$0 payment folks. But you are saying that what you have found here, that may track this treatment back in part (or the misrepresentation of what is going on) to the credit bureau reporting organizations, only applies to \$0 payers? I guess I missed that.

-----Original Message-----

From: Vicki Shipley [<mailto:vshipley@nchelp.org>]  
Sent: Friday, August 13, 2010 2:19 PM  
To: Moran, Pamela  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

Our Q was specific only to a calculated payment of -0- not to someone having a positive payment amount. Not sure I understand your comment.

-----Original Message-----

From: Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
Sent: Friday, August 13, 2010 1:08 PM  
To: Vicki Shipley  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

I guess I have a hard time seeing how, even for credit bureau reporting purposes, a borrower who is in active repayment and has a positive payment amount (as opposed to a calculated \$0 payment) would be reported as in some sort of deferred status.

-----Original Message-----

From: Vicki Shipley [<mailto:vshipley@nchelp.org>]  
Sent: Friday, August 13, 2010 1:49 PM  
To: Moran, Pamela  
Cc: 'Winfield Crigler'; Utz, Jon; Wiley, Debra  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

Since IBR is "different" in several key areas as far as repayment etc, we had discussions with the credit reporting organizations to make sure there were no unintended consequences for any of the reporting requirements etc.

If we need to revisit any of this and have some further discussions, we certainly can.

-----Original Message-----

From: Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
Sent: Friday, August 13, 2010 10:34 AM  
To: Vicki Shipley  
Cc: 'Winfield Crigler'; Utz, Jon; Wiley, Debra  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

So the credit reporting organizations are driving this. I can see how this would make sense with a calculated \$0 payment IBR borrower, but not if a borrower has something more than \$0 as the IBR payment.

-----Original Message-----

From: Vicki Shipley [<mailto:vshipley@nchelp.org>]  
Sent: Monday, August 09, 2010 2:08 PM  
To: Moran, Pamela  
Cc: 'Winfield Crigler'; Utz, Jon; Wiley, Debra  
Subject: FW: Credit Bureau Reporting -IBR and zero payment

Hi - I wanted to share this as perhaps this is where the borrower confusion may be coming into play and where they are picking up the "deferment" concept (from the CB reporting) which of course is not the "traditional" deferment. Please see the exchange below and I'll send you an actual report so you can see the status.

-----Original Message-----

From: Seneway, Debbie [<mailto:debbie.seneway@experian.com>]  
Sent: Thursday, March 26, 2009 9:24 AM  
To: Vicki Shipley  
Cc: Seneway, Debbie  
Subject: RE: Credit Bureau Reporting -IBR and zero payment

Hi Vicki,

Reporting these accounts as in deferment is the most precise way to handle this situation. By reporting the accounts as deferred, anyone looking at the credit report is aware that the consumer is not obligated to make payments at this time.

If a lender does choose to report the accounts as current, it would be important to also report a Scheduled Monthly Payment Amount of zero. But this method would not be as precise as reporting the accounts as deferred.

Hope this helps!!

Debbie Seneway, CPT  
Educational Consultant, Experian  
[debbie.seneway@experian.com](mailto:debbie.seneway@experian.com)  
301-854-0239

-----Original Message-----

From: Vicki Shipley [<mailto:vshipley@nchelp.org>]  
Sent: Wednesday, March 25, 2009 3:41 PM  
To: Seneway, Debbie  
Subject: FW: Credit Bureau Reporting -IBR and zero payment

HI! I hope everything is going well for you! We need your expertise yet again - please see the question below from the IBR workgroup – your input would be much appreciated. Thanks!!

We discussed the following Q&A on the IBR call today:

Q#. How does the lender report the loan to a credit reporting agency during the PFH period when the borrower's monthly payment amount is \$0?

A#. The credit reporting agencies have indicated that the lender should report these loans as in deferment for any period when a \$0 payment amount is due during PFH.

Based on how the following email was worded, "is the best way to report", some questioned whether the lender had to report in a deferred state or could report in repayment in good standing. The reason being is that some just became aware of this suggestion from the CDIA Task Force. Is there any way we could follow up with the CDIA Task Force (or Ms. Seneway) to see if what would happen if a lender reported a zero payment as in repayment and current?

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**Item A-17: E-mail from ED clarifying how the newly implemented rules for joint tax filers who both have IBR-eligible FFELP loans should be implemented when one of the two is not actively making payments**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Friday, September 03, 2010 10:07 AM  
**To:** Vicki Shipley  
**Cc:** 'Crigler, Winfield (SLSA)'; Utz, Jon; Battle, Cynthia; Hernandez, Jana; Arsenault, Leigh  
**Subject:** RE: An IBR Question

Yes, when I use the phrase “not actively making payments” I am referring only to borrowers who have entered repayment, but do not currently have an obligation to make payments. I do not mean borrowers with loans that are in an in-school status prior to entering the grace period, if applicable, and repayment.

**From:** Vicki Shipley [<mailto:vshipley@nchelp.org>]  
**Sent:** Friday, September 03, 2010 8:27 AM  
**To:** Moran, Pamela  
**Cc:** 'Crigler, Winfield (SLSA)'  
**Subject:** FW: An IBR Question

Good morning! Thanks so much for keeping us in the loop with these IBR issues – it is much appreciated. Just so we’re all on the same page with this one.....

Please confirm that your phrase of "not actively making payments" in the following response only pertains to loans in deferment (the context of the initial question) or forbearance, and not to Stafford loans that have not yet entered repayment in regard to the loans that would be included in the calculations. Any Stafford loan that has not yet entered repayment would not have amounts due at the time the borrower or spouse "initially entered repayment" as required under 682.215(a)(4)(i) and (ii) and such amounts would be unknown until the borrower enters repayment.

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Friday, August 27, 2010 9:40 AM  
**To:** Vicki Shipley; Winfield Crigler  
**Subject:** FW: An IBR Question

FYI

**From:** Moran, Pamela  
**Sent:** Wednesday, August 25, 2010 5:44 PM  
**To:** Wiley, Debra  
**Cc:** Hammond, Cynthia; Arsenault, Leigh; Utz, Jon; Siegel, Brian; Battle, Cynthia; Hernandez, Jana  
**Subject:** RE: An IBR Question

I have discussed this with OCC. The Department’s interpretation is that the July 1, 2010 IBR provision affecting IBR eligibility and the calculation of IBR payments for borrowers who are

married and filing jointly and both borrowers have eligible loans applies to each of those borrowers requesting IBR even if the spouse is not actively making payments on his/her eligible loans at the time the IBR request is made or the borrowers are not both applying for IBR.

That being said, there is no requirement that a lender recalculate an IBR borrower's IBR payment amount (see below - "change my monthly IBR [monthly payment amount] based on the new 07/1/10 eligibility of spousal debts.") earlier than the anniversary date of that borrower's annual IBR reevaluation. There is nothing in the regulations or preamble that indicates that the new approach applies immediately to all affected borrowers. We made it clear in the preamble to the October 23, 2008 final IBR regulations that a lender may, but is not required to use alternative documentation to determine a borrower's IBR eligibility...it is the lender's call and not the borrower's. Consistent with that approach, we think that our policy position will need to be that even if a borrower already repaying under IBR specifically requests such a recalculation of the IBR payment amount based on the July 1, 2010 regulatory change, the lender "may" but is not required to do so prior to the lender's annual reevaluation of the borrower on the borrower's IBR anniversary date. Our interpretation of the effective date of the July 1, 2010 regulatory changes would be that they apply to all new borrowers requesting IBR on or after July 1, 2010, and to all new IBR determinations based on the borrower's IBR anniversary date on or after that date.

**From:** Wiley, Debra  
**Sent:** Wednesday, August 25, 2010 1:30 PM  
**To:** Utz, Jon; Moran, Pamela  
**Cc:** Hammond, Cynthia; Arsenault, Leigh  
**Subject:** An IBR Question

Pam and Jon, the following question is just in from a woman who's called us before. I'm about to get on a conference call so am forwarding for your guidance in hopes of getting the matter resolved quickly. I apologize now if the answer is in the Q & A or the regulations.

Question about the IBR monthly payment amount calculation on my loan.2) I have called and spoken to at least 5 reps at [LENDER] with different answers.3) Please answer this: When calculating IBR monthly payment amount....When you have a joint tax return, both spouses have Federal Student loan debt. If one of the spouses is currently in deferment, does that affect the other spouse's monthly payment? XXXX states that since my husband is currently in deferment, they will not change my monthly IBR based on the new 07/1/10 eligibility of spousal debts. I think they are incorrect, and the monthly payment should go down from when I originally applied based on my own debt. They state the payment stays the same and his loan debt load does not get calculated until he is in repayment. I don't see that in the IBR rules that both spouses need to be in repayment in order to get the benefit of the new 07/01/10 rules.

Many thanks,  
 Debra Wiley  
 FSA Ombudsman  
 U.S. Dept. of Education

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**Item A-18: E-mail, with attachment, providing ED's final responses to a number of new operational questions from the IBR Workgroup**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Wednesday, October 20, 2010 9:31 AM  
**To:** Vicki Shipley  
**Cc:** Utz, Jon; Siegel, Brian  
**Subject:** FW: Final Outstanding IBR Questions from NCHELP  
**Importance:** High

Please find attached the Department of Education's response to the final outstanding IBR questions. Thanks for your patience.

**Item A-19: E-mail, with attachment, dated 8/17/2011 referencing an attached Q&A with initial responses from ED**

**From:** NCHELP IBR Workgroup [<mailto:ibr@lists.nchelp.org>] **On Behalf Of** Robert Sandlin  
**Sent:** Wednesday, August 17, 2011 9:07 AM  
**To:** NCHELP IBR Workgroup <[ibr@lists.nchelp.org](mailto:ibr@lists.nchelp.org)>  
**Subject:** Discussion of ED Responses to IBR Questions

Attached is the document containing the responses received from the Department on our latest round of questions. We need to meet to discuss these answers and to determine our next move. As you review these keep in mind the following:

1. Are any of these answers ok?
2. Are any of the answers something we cannot live with (wrong)?
3. Are some of these answers acceptable if we have implementation time with a prospective effective date? (systemic vs. procedural changes)
4. Are some answers ok for some lenders/servicers, but not all of us?

Thanks,  
Bob

Robert K Sandlin  
Director of Policy and Compliance  
Higher Education Servicing Corporation  
Servicer for North Texas Higher Education Authority

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**Item A-20: E-mail, with attachment, dated 11/27/2012 providing ED's responses to the IBR Workgroup's comments on the IDR form draft in circulation at the time**

**From:** Foss, Ian [<mailto:Ian.Foss@ed.gov>]  
**Sent:** Tuesday, November 27, 2012 9:45 AM  
**To:** Robert Sandlin; Vicki Shipley; Winkie Crigler ([wpcrigler@slsa.net](mailto:wpcrigler@slsa.net))  
**Cc:** Moran, Pamela; Utz, Jon; Ninemire, Sandra  
**Subject:** Re: NCHER/SLSA IBR Workgroup Comments on the IBR/ICR/Pay As You Earn Combined Request Form Under the 30-Day Comment Period

Bob, Vicki, and Winkie,

Attached are our responses to your comments as well as the final form in a blackline.

Regards,

Ian

**From:** Robert Sandlin <[rsandlin@nthea.com](mailto:rsandlin@nthea.com)>  
**Date:** Monday, November 26, 2012 15:27  
**To:** Ian Foss <[Ian.Foss@ed.gov](mailto:Ian.Foss@ed.gov)>, "Moran, Pamela" <[Pamela.Moran@ed.gov](mailto:Pamela.Moran@ed.gov)>, "Utz, Jon" <[Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov)>, "Ninemire, Sandra" <[Sandra.Ninemire@ed.gov](mailto:Sandra.Ninemire@ed.gov)>  
**Cc:** Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>, Winfield Crigler <[WPCrigler@slsa.net](mailto:WPCrigler@slsa.net)>  
**Subject:** NCHER/SLSA IBR Workgroup Comments on the IBR/ICR/Pay As You Earn Combined Request Form Under the 30-Day Comment Period

Attached are the comments we filed on regulations.gov. I wanted to send a note to let you know which ones are new from the preliminary draft comments we sent last week. Comment #7 and #26-#41 are new. All of the others are substantially the same but may have some "TC's" to them in the final version.

Let us know if we need to discuss any of these.

Thanks,  
Bob  
Robert K Sandlin  
Director of Policy and Compliance  
Higher Education Servicing Corporation  
Servicer for North Texas Higher Education Authority

**Item A-21: E-mail from ED dated 3/13/2013 settling the family size self-certification issue**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Wednesday, March 13, 2013 11:49 AM  
**To:** Vicki Shipley  
**Subject:** RE: Outstanding IBR issues - family size issue and SAP

On the family size verification issue, I responded to an inquiry from the Chicago regional office that should settle the issue for anything coming out of that office. That was only last week. I also just forwarded that e-mail to Pat Trubia and asked that it be distributed to all the regional oversight offices.

On the SAP issue, Winkie is working on getting me data on the percentage of FFEL borrowers that transition from another repayment plan when entering IBR. I need that for further discussion with our Budget office. I think she is trying to pull that together by the close of this week.

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Wednesday, March 13, 2013 10:57 AM  
**To:** Moran, Pamela  
**Subject:** Outstanding IBR issues - family size issue and SAP

Hi! Folks are asking if I ever received a response regarding the “self cert for family size” issue that you talked about on the November Regs Committee call. It appears that some ED program review staff are still noting it as a finding. Also, any movement on the IBR/SAP issue? Here’s the snippet from the Regs call. I believe you were going to send me something in writing after it was sent to the program review folks? Thanks – and sorry to keep sending you all these Q’s.....

From Pam’s Update – conference call with Regs committee – November 2012.

- IBR – loan holders can rely on borrower self-certification of family size, but if fraud is suspected the loan holder must investigate. Also, the Department is ramping up efforts to answer the two remaining questions submitted to them in 2010, regarding the IBR interest subsidy and Special Allowance.
-

**Item A-22: E-mail from ED, with attachment, dated 7/3/2013 providing their final responses to a newer series of operational questions from the IBR Workgroup**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Wednesday, July 03, 2013 1:37 PM  
**To:** Vicki Shipley ([vshipley@ncher.us](mailto:vshipley@ncher.us))  
**Cc:** Trubia, Patricia; Siegel, Brian  
**Subject:** FW: IBR Q&A - Final ED Responses

Attached are ED final responses to the FFEL industry's follow-up to the IBR Qs&As to which the Department originally responded.

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**Item A-23: E-mail from ED dated 7/8/2013 clarifying their position on how overlapping periods of PFH under IBR and deferment/forbearance should be treated, for purposes of interest capitalization and LaRS reporting**

**From:** Utz, Jon [<mailto:Jon.Utz@ed.gov>]  
**Sent:** Monday, July 08, 2013 7:49 AM  
**To:** Vicki Shipley  
**Cc:** Moran, Pamela  
**Subject:** RE: IBR - Impact on PFH when entering a period of deferment or forbearance and eligibility for SAP

I concur with Pam's response on #1.

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Wednesday, July 03, 2013 5:48 PM  
**To:** Vicki Shipley  
**Cc:** Utz, Jon  
**Subject:** RE: IBR - Impact on PFH when entering a period of deferment or forbearance and eligibility for SAP

I am looking at this quickly and ccing Jon Utz to make sure he doesn't see anything I am missing on Q1. On Q1, a borrower who is in PFH under IBR does not have interest capitalized until the borrower no longer demonstrates PFH or leaves the IBR plan. The rules on capitalization normally associated with borrowers in a period of deferment or forbearance do not apply for a PFH borrower. There is some suggestion below under A1 that you would capitalize at the end of the deferment or forbearance period. This would not be the case for the PFH borrower. So, it is correct that the PFH period does not end when they enter the deferment or forbearance, and it is also true that the interest that accrues during the deferment and forbearance for a PFH borrower is not capitalized at the end of that period if the borrower remains PFH. I agree with the response to Q2.

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Wednesday, July 03, 2013 4:40 PM  
**To:** Moran, Pamela  
**Subject:** IBR - Impact on PFH when entering a period of deferment or forbearance and eligibility for SAP

Hi again! Thanks for the quick response on the March issue (I will let you know if there are additional concerns). As I mentioned, we still have a couple of remaining issues for the *IBR Implementation Guide* that we are trying to publish by the end of July. It's my understanding that the Department confirmed with Diane Freundel in late November the responses to the following two questions regarding the impact on PFH when entering a period of deferment or forbearance and eligibility for SAP. We would like to confirm that this is the Department's current position so we can incorporate this information into the *Guide* so everyone has the information. Thanks

Q 1. If a borrower is in a period of partial financial hardship (PFH) and enters a period of

deferment or forbearance, does the PFH period end?

A 1. Proposed: No, the period of PFH does not end and interest should not be capitalized prior to the deferment or forbearance.

ED Response: Yes, that is correct. A borrower repaying under IBR does not trigger a loss of PFH and the associated capitalization of unpaid accrued interest by entering a deferment or forbearance period. The borrower remains in repayment under the IBR plan during a period of deferment or forbearance as they would under any other repayment plan.

Q 2. If a borrower goes on a deferment or forbearance during a period of PFH, may the lender continue to include unpaid accrued interest in the calculation of special allowance during the PFH/deferment/forbearance period, in accordance with 34 CFR 682.215(b)(7) and 34 CFR 682.302(a)?

A 2. Proposed: Yes, since the period of PFH does not end because of the deferment or forbearance, unpaid accrued interest can be included in the special allowance calculation during any period of PFH.

ED Response: The borrower remains in IBR repayment during authorized periods of deferment and forbearance and receipt of a deferment or forbearance does not trigger a loss of PFH status for the borrower. Therefore, 34 CFR 682.215(b)(7) and 34 682.302(a) continue to apply and unpaid accrued interest associated with a PFH borrower's deferment or forbearance period can be included in the special allowance calculation.

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**Item A-24: E-mail from ED dated 7/22/2013 clarifying ED's position on the possible temporary use of reduced-payment forbearance by borrowers who choose to exit IBR altogether**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Monday, July 22, 2013 10:35 AM  
**To:** Vicki Shipley; Utz, Jon  
**Subject:** RE: One more IBR Q/A

I agree with Jon that this is how the reduced payment forbearance under the standard repayment plan would work. I also agree that think the only option is the Extended plan if the borrower is close to or has already exceeded the 120-month repayment period applicable to other plans at the time the borrower requests to exit IBR.

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Monday, July 15, 2013 3:47 PM  
**To:** Utz, Jon  
**Cc:** Moran, Pamela  
**Subject:** Re: One more IBR Q/A

Thanks - I will wait for the final confirmation before I post. Thank you!

Sent from my iPhone

On Jul 15, 2013, at 11:55 AM, "Utz, Jon" <[Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov)> wrote:

I agree that the lender may, after the borrower has been placed on the Standard repayment plan in accordance with §682.215(d)(2), allow the borrower to change to a different repayment plan after the borrower has made one payment under a reduced-payment forbearance. As a practical matter, I think changing to Extended (after making the one payment) would be the only viable option.

Just to be sure that I'm not missing something, I'd like Pam to confirm after she returns (which I think will be on Thursday or Friday of this week).

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Wednesday, July 10, 2013 3:47 PM  
**To:** Utz, Jon; Moran, Pamela  
**Subject:** One more IBR Q/A

Good afternoon! Many thanks for the responses to the previous Q/A's and I am hoping we are getting close to the end of the list (I know – famous last words and empty promises)! The IBR workgroup has one more Q/A regarding borrowers who wish to leave IBR for another plan after they have exhausted their maximum repayment term. Would you please confirm your agreement with the following. Thanks!

Q. Under 34 CFR 682.215(d)(2), what would a borrower's initial monthly payment be if they wished to exit IBR in order to obtain a lower monthly payment under another repayment plan (e.g.,

Extended) but had no time remaining under the maximum repayment period applicable to their loan type (e.g., 120 months for a Stafford, SLS, or PLUS loan or 240 months for a Consolidation loan)?

A. As an alternative to requiring a very large payment under 34 CFR 682.215(d)(2), the lender may, under 34 CFR 682.215(d)(3), accept a lower payment under a reduced-payment forbearance agreement and then move the borrower to another repayment plan that gives them more time to make a more affordable monthly payment.

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**Item A-25: E-mail from ED dated 5/5/2014 confirming that a Consolidation loan that originally repaid PLUS loans can become eligible for IBR if the entire portion attributable to the PLUS loans is discharged**

**From:** Arnold, Nathan <Nathan.Arnold@ed.gov>  
**Sent:** Tuesday, March 18, 2014 7:51 AM  
**To:** Sommer, Robert  
**Cc:** Arnold, Nathan  
**Subject:** RE: IBR Inquiry

Thanks again for passing this question along, Rob. We have discussed internally and determined that because the portion attributable to the PLUS loan has been eliminated by the death discharge, IBR will not be used to pay of the portion of the consolidation loan that rendered it ineligible. Therefore, borrowers in the circumstance you describe are eligible to repay their consolidation loan using IBR.

Please let me know if you have any further questions.

Nathan

**From:** Sommer, Robert [mailto:Robert.A.Sommer@salliemae.com]  
**Sent:** Monday, February 24, 2014 3:25 PM  
**To:** Arnold, Nathan  
**Subject:** IBR Inquiry

Good Afternoon Nathan –

This is a summary of the scenario I mentioned concerning income-based repayment eligibility. We have a customer that consolidated her Stafford loans with her parent PLUS loans that were obtained for her dependent student. Subsequent to the consolidation, the borrower's dependent student passed away, and the portion of the consolidation loan that was attributable to the underlying parent PLUS loans were paid by a death discharge claim. The customer is seeking the income-based repayment plan and it is uncertain whether the Consolidation loan qualifies for the IBR plan given the definition of an "eligible loan" under section 682.215(a)(2) since the consolidation loan repaid a parent PLUS loan. Your assistance is appreciated.

Rob Sommer

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**Item A-26: E-mail from ED dated 2/19/2015 confirming that the PFH status under IBR, including the neg-am interest subsidy where applicable, can continue beyond day 270 of delinquency.**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Thursday, February 19, 2015 3:51 PM  
**To:** Vicki Shipley  
**Cc:** Siegel, Brian; Battle, Cynthia; Utz, Jon; Arnold, Nathan; Baker, Jeff; Foss, Ian; McLarnon, Gail  
**Subject:** RE: IBR and Default Status

I apologize for my delay in responding to your inquiry about the IBR treatment of borrowers who are 270 days or more past due on repayment of their FFELP loans but whose loans have not been submitted to the guaranty agency for default claim payment. Lenders/Loan servicers in the FFELP are encouraged, but not required, to continue to work with borrowers in this status to avert default claim payment and the resulting negative consequences of default for the borrower after the guaranty agency pays the lender's default claim and provides the borrower the required 60-day notice.

We took the time to poll the ED Loan Servicers' treatment of borrowers in this status whose loans had not yet been transferred to the Department's Debt Collection unit under the existing IDR plans. Such transfers generally take place at day 360 for consistency with the administrative requirements in the FFEL program and to ensure equitable treatment of borrowers and schools (CDR). We also discussed with OGC their legal view of the eligibility of such borrowers to enter IBR (FFELP) and the other existing IDR plans (Direct Loans) and, specific to your inquiry, remain in the IBR plan after reaching 270 days past-due status.

OGC's view is that such borrowers are eligible to enter the IBR or another of the existing IDR plans (Direct Loans) and may remain in such plans while the FFEL lender/lender servicer or the ED loan servicer works with the borrower to avert default claim filing and payment or transfer of the loan to DCS because we do not treat borrowers as defaulters at 270 days past due. Consistent with that view, the ED Servicer poll showed that ED servicers both assist borrowers in this status to enter the existing IDR plans while also granting a forbearance to reduce or eliminate the past-due status and retain borrowers in this status in their IDR plans while continuing to work with them to avert transfer of the loan to DCS.

We are hopeful that this satisfactorily addresses your question.

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Monday, February 09, 2015 9:32 AM  
**To:** Moran, Pamela  
**Subject:** IBR and Default Status

Good morning! I wanted to follow-up on one of the outstanding IBR issues and the discussion we had last week – whether a borrower that is 270 days delinquent can continue to be in IBR (including being in PFH etc). We believe we are to keep the borrower in IBR (if they already are in IBR and hit 270) but not everyone is on the same page. We are also trying to determine if

**IBR Implementation Overview and Q&As**

**Appendix A**

we would put this on our short list of additional topics for neg reg. We did run across this clarification that points to the 360 day trigger. Any help/guidance you can provide before you leave would be much appreciated. Thanks!

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**Item A-27: E-mail from ED, with attachment, dated 2/26/2015, finalizing ED's position on the interest and special allowance benefits associated with overlapping periods of PFH under IBR and deferment/forbearance**

**From:** "Moran, Pamela" <[Pamela.Moran@ed.gov](mailto:Pamela.Moran@ed.gov)>  
**Date:** February 26, 2015 at 12:46:41 PM CST  
**To:** Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>  
**Cc:** "Siegel, Brian" <[Brian.Siegel@ed.gov](mailto:Brian.Siegel@ed.gov)>, "Utz, Jon" <[Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov)>  
**Subject:** **RE: One More Outstanding IBR issue**

Staff of OPE, OGC, and FSA/PLI have concluded their review of the attached document. We concur with the content of your Interest Benefits column. In the Special Allowance calculation column, we disagree that unpaid accrued interest of the borrower includes interest that is being paid (subsidized) by ED. If you have any further questions on this, please contact Brian Siegel.

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Wednesday, February 11, 2015 3:41 PM  
**To:** Moran, Pamela  
**Subject:** One More Outstanding IBR issue

Hi! We still the attached as part of the outstanding IBR issues – hoping you can confirm our understanding of the billing for special allowance and interest benefits for unpaid interest when a borrower elects to postpone making a PFH payment etc. Thanks!

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**Item A-28: E-mail from ED dated 2/10/2016 authorizing the immediate use of the applicant spouse's alternative income documentation in cases of separation.**

**From:** Foss, Ian [<mailto:Ian.Foss@ed.gov>]  
**Sent:** Wednesday, February 10, 2016 7:34 AM  
**To:** Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>  
**Subject:** RE: New IDR Request form and timing

Hi Vicki,

I just want to be sure I understand. Is the consensus of the group to keep implementation of the paper form in line with the electronic application? That's what I'm taking from the below.

As with alternative documentation of income, generally, this is at loan holder discretion. However, by stating what we did in the preamble to the final rule, our intent was to make it clear to loan holders that this always could have been done and nobody had thought of it until now. So, yes, you can implement this now and don't need to wait for the form.

Thanks,

Ian

**From:** Vicki Shipley [<mailto:vshipley@ncher.us>]  
**Sent:** Tuesday, February 09, 2016 6:11 PM  
**To:** Foss, Ian  
**Subject:** New IDR Request form and timing

Hi! I believe we will have our final edits to you later on Thursday – thanks for the chance to look it over one last time. I hope you will agree with our edits that we have made for clarity. With regard to your Q about the timing of this revised paper form, after much discussion the recommendation from the group (that included both FFEL-only servicers and federal servicers), everyone hopes the electronic process and form will be available in June rather than October and to minimize borrower confusion everyone felt it is important to closely align the paper form with the electronic form and process.

Based on the above recommendation, we are also hoping that for FFEL-only servicers you can approve/confirm their ability to implement immediately the change below (i.e. their ability to accept alternative documentation once they have identified a situation where the borrower is separated from the spouse or unable to access the spouse's income documentation if the spouses most recently filed a joint return). This would provide borrower parity based on how the federal servicers are able to accommodate this situation while the revised/new and improved IDR request form is pending. Thanks again and let me know if you have any questions.

*Excluding the spouse from family size based on the exclusion of the spouse's income/loan debt from the calculation applies only to REPAYE. For IBR, PAYE, and ICR, if the borrower is married, the spouse is included in family size regardless of whether the spouse's income/loan debt is included in the calculation. The thing that changed in response to comments to the final*

*rule is that alternative documentation of income of just the borrower could be used in cases where the borrower is separated from the spouse or unable to access the spouse's income documentation if the spouses most recently filed a joint return.*

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**Item A-29: E-mail from ED dated 12/22/2016 establishing that Consolidation loans are ineligible for IBR only if they directly repaid PLUS loans.**

**From:** "Foss, Ian" <[Ian.Foss@ed.gov](mailto:Ian.Foss@ed.gov)>  
**Date:** December 22, 2016 at 2:00:10 PM CST  
**To:** Winfield Crigler <[WPCrigler@slsa.net](mailto:WPCrigler@slsa.net)>, Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>  
**Cc:** "Weisman, Annmarie" <[Annmarie.Weisman@ed.gov](mailto:Annmarie.Weisman@ed.gov)>, "Smith, Brian" <[Brian.Smith@ed.gov](mailto:Brian.Smith@ed.gov)>, "McLarnon, Gail" <[Gail.McLarnon@ed.gov](mailto:Gail.McLarnon@ed.gov)>, "Utz, Jon" <[Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov)>  
**Subject: RE: Twice Consolidated Parent PLUS Loans**

We agree that there is no need to go back and identify borrowers whose applications may have been denied for this reason and retroactively grant them IBR, though if they reapply and are otherwise eligible, we would expect their new application will be renewed.

We are not planning an Electronic Announcement or Dear Colleague Letter about this, but may insert a question and answer in our IDR Q&A document.

**From:** Winfield Crigler [<mailto:WPCrigler@slsa.net>]  
**Sent:** Thursday, December 22, 2016 2:43 PM  
**To:** Vicki Shipley  
**Cc:** Foss, Ian; Weisman, Annmarie; Smith, Brian; McLarnon, Gail; Utz, Jon  
**Subject:** Re: Twice Consolidated Parent PLUS Loans

Agree on the need for prospective - we may also have double FFELP consolidations that involved an underlying parent PLUS.

Is ED planning to issue official guidance on this?

Thanks,  
Winkie

On Dec 22, 2016, at 1:50 PM, Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)> wrote:

Hi again! One more Q and/or confirmation needed. Since this is a significant policy change, I assume this is indeed **prospective** as far as the trigger for those who might be eligible for this? If a quick call is easier, let me know what works for you – I'm around! Thanks again for the heads up.

**From:** Foss, Ian [<mailto:Ian.Foss@ed.gov>]  
**Sent:** Tuesday, December 20, 2016 4:45 PM  
**To:** Winfield Crigler <[WPCrigler@slsa.net](mailto:WPCrigler@slsa.net)>  
**Cc:** Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>; Weisman, Annmarie <[Annmarie.Weisman@ed.gov](mailto:Annmarie.Weisman@ed.gov)>; Smith, Brian <[Brian.Smith@ed.gov](mailto:Brian.Smith@ed.gov)>; McLarnon, Gail <[Gail.McLarnon@ed.gov](mailto:Gail.McLarnon@ed.gov)>; Utz, Jon <[Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov)>  
**Subject:** Re: Twice Consolidated Parent PLUS Loans

Hi Winkie,

It is, indeed, broader than just a FFEL Consolidation Loan that is reconsolidated into a Direct Consolidation Loan.

A Direct Parent PLUS Loan could be consolidated into a Direct Consolidation Loan, and then, if there are other loans outstanding, be reconsolidated into another Direct Consolidation Loan. The second Direct Consolidation Loan would be eligible for all IDR plans. The first Direct Consolidation Loan would have only been eligible for ICR.

Ian

On Dec 20, 2016, at 17:29, Winfield Crigler <[WPCrigler@slsa.net](mailto:WPCrigler@slsa.net)> wrote:

One quick question. Are you guys seeing this as only applying to FFEL consolidations with underlying Parent PLUS that then consolidate into DL? Or is it potentially broader than that? In general I know that re-consolidation is not permitted, but do you think that borrowers with DL Parent PLUS will also be able to do a double consolidation in order to get into IDR plans?

Thanks,  
Winkie

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**From:** Foss, Ian [[Ian.Foss@ed.gov](mailto:Ian.Foss@ed.gov)]  
**Sent:** Monday, December 19, 2016 10:59 AM  
**To:** Vicki Shipley; Winfield Crigler  
**Cc:** Weisman, Annmarie; Smith, Brian; McLarnon, Gail; Utz, Jon  
**Subject:** Twice Consolidated Parent PLUS Loans

Hi Vicki and Winkie,

We wanted to pass along a little wrinkle related to IBR that cropped up when we were analyzing a specific borrower's loans.

The borrower has a Direct Consolidation Loan that repaid a Federal Consolidation Loan, which itself had previously repaid a Federal Parent PLUS Loan. After some thinking, we realized that, even though the Federal Consolidation Loan could not have been repaid on IBR, the Direct Consolidation Loan can be.

We reached this conclusion after checking the regulations and the statute, both of which only render ineligible Parent PLUS Loans and Consolidation Loans which repaid Parent PLUS Loans. After the second consolidation, the new Consolidation Loan has lost its association with the Parent PLUS Loan in the eyes of the statute and the regulations, and is thus eligible for IBR (and all of the other IDR plans too).

Let us know if you have any questions!

Regards,

Ian

**Item A-30: E-mail from ED, with attachment, declining to accept the IBR Workgroup's proposal that a DMDC match, alone, be sufficient to warrant the application of the IDR renewal waiver under the HEROES Act regulation.**

**From:** Silver, Rochelle [<mailto:Rochelle.Silver@ed.gov>]  
**Sent:** Thursday, September 28, 2017 7:57 AM  
**To:** Vicki Shipley <[vshipley@ncher.us](mailto:vshipley@ncher.us)>  
**Cc:** Jameson, Richard <[Richard.Jameson@ed.gov](mailto:Richard.Jameson@ed.gov)>; Silver, Rochelle <[Rochelle.Silver@ed.gov](mailto:Rochelle.Silver@ed.gov)>; Sanders, P.J. <[Phyllis.Jean.Sanders@ed.gov](mailto:Phyllis.Jean.Sanders@ed.gov)>; Weisman, Annmarie <[Annmarie.Weisman@ed.gov](mailto:Annmarie.Weisman@ed.gov)>; McLarnon, Gail <[Gail.McLarnon@ed.gov](mailto:Gail.McLarnon@ed.gov)>  
**Subject:** FW: NCHER letter HEROS

Good Morning,

Please see the attachment below

Thank you,

Rochelle Silver  
Program Support Assistant  
Policy Development, Analysis and Accreditation  
Office of Postsecondary Education  
Department of Education

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**1 March 18, 2014 email from the Department:**

**From:** Arnold, Nathan <Nathan.Arnold@ed.gov>  
**Sent:** Tuesday, March 18, 2014 7:51 AM  
**Cc:** Arnold, Nathan  
**Subject:** RE: IBR Inquiry

Thanks again for passing this question along. We have discussed internally and determined that because the portion attributable to the PLUS loan has been eliminated by the death discharge, IBR will not be used to pay off the portion of the consolidation loan that rendered it ineligible. Therefore, borrowers in the circumstance you describe are eligible to repay their consolidation loan using IBR.

Please let me know if you have any further questions.

**2 February 19, 2015 email from the Department:**

**From:** Moran, Pamela [<mailto:Pamela.Moran@ed.gov>]  
**Sent:** Thursday, February 19, 2015 3:51 PM  
**Cc:** Siegel, Brian; Battle, Cynthia; Utz, Jon; Arnold, Nathan; Baker, Jeff; Foss, Ian; McLarnon, Gail  
**Subject:** RE: IBR and Default Status

I apologize for my delay in responding to your inquiry about the IBR treatment of borrowers who are 270 days or more past due on repayment of their FFELP loans but whose loans have not been submitted to the guaranty agency for default claim payment. Lenders/Loan servicers in the FFELP are encouraged, but not required, to continue to work with borrowers in this status to avert default claim payment and the resulting negative consequences of default for the borrower after the guaranty agency pays the lender's default claim and provides the borrower the required 60-day notice.

We took the time to poll the ED Loan Servicers' treatment of borrowers in this status whose loans had not yet been transferred to the Department's Debt Collection unit under the existing IDR plans. Such transfers generally take place at day 360 for consistency with the administrative requirements in the FFEL program and to ensure equitable treatment of borrowers and schools (CDR). We also discussed with OGC their legal view of the eligibility of such borrowers to enter IBR (FFELP) and the other existing IDR plans (Direct Loans) and, specific to your inquiry, remain in the IBR plan after reaching 270 days past-due status.

OGC's view is that such borrowers are eligible to enter the IBR or another of the existing IDR plans (Direct Loans) and may remain in such plans while the FFEL lender/lender servicer or the ED loan servicer works with the borrower to avert default claim filing and payment or transfer of the loan to DCS because we do not treat borrowers as defaulters at 270 days past due. Consistent with that view, the ED Servicer poll showed that ED servicers both assist borrowers in this status to enter the existing IDR plans while also granting a forbearance to reduce or eliminate the past-due status and retain borrowers in this status in their IDR plans while continuing to work with them to avert transfer of the loan to DCS.

We are hopeful that this satisfactorily addresses your question.

***3 NPRM Federal Register, July 9, 2015, page 39615***

“Representatives of the FFEL Program community raised several points related to the applicability of current HEA and SCRA statutory provisions during the discussions. First, they asked whether the \$600 annual (\$50 monthly) payment rule in the HEA still applies. We confirmed that the minimum payment amount requirement in the HEA does apply.”