Addendum to the 2013 IBR Implementation Guide
December 2015

Since the IBR Implementation Guide was developed in 2013, the NCHER IBR Workgroup has continued to collaborate on various issues regarding the IBR plan. The following Addendum includes several new IBR-related questions and answers, as well as clarification on some of the information provided in the 2013 Guide.

Section I: Overview

CLARIFICATION—page 4, Section 1: Income-Based Repayment Overview

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., foreign country), the borrower's poverty line income is the income used for the 48 contiguous States.

Section II: Eligible Loans Q&As

CLARIFICATION—page 18, Section II: Eligible Loans Q&As

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. 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[1]]

CLARIFICATION—Page 19, Section II: Eligible Loans Q&As

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[1]]***

NEW—Q. 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?

A. 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[2]]

NEW—Q. Can a servicer allow a borrower to sign up for IBR after 270 days of delinquency?

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

NEW—Q. 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?

A. 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.

<u>Section III: Monthly Payment Amount Q&As</u>

NEW—Q. 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?

A. 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.

NEW—Q. 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?

A. 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. ***[NPRM Federal Register, July 9, 2015, page 39615[3]]***

NEW—Q. 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?

A. 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 Q&As

NEW—Q. 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.

A. 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.

NEW—Q. 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?

A. 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 Q&As

NEW—Q. 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?

A. 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.

NEW—Q. 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?

A. 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 VII: IBR Eligibility Documentation and Verification Q&As

NEW—Q. 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.?

A. 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.

Section IX: Interest Subsidy and Special Allowance Q&As

EXPANDED ANSWER; see p. 62 of the Guide

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. ***[Answer in 2013 Guide expanded March 2015 (see underlined text)].*** 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.

NEW—Q. 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?

A. Yes. With the Department's email confirmation on February 19, 2015[2], 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.

NEW—Q. 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?

A. 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.

NEW—Q. 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?

A. 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.

NEW—Q. 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?

A. 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.

Appendix

[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."