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To: U.S. Department of Education
Re: Technical edits to 34 C.F.R. § 30.80 to improve administrability of proposed debt relief
Date: November 14, 2023

Background:

We are submitting these proposed revisions to the Departments proposed 34 C.F.R. § 30.80 (and a conforming update to the cross-references in § 30.83) in an effort to ease the administrability of debt relief provided by these regulations. Our goal in submitting these edits is *not* to provide alternative policies to the Department's proposals (though we support certain alternative policies, and are suggesting them in other submissions). Rather, in the proposed text below, we are trying to make the Department's current proposals easier to administer and/or we are providing technical corrections, taking into account the following principles:

- In our experience, loan documentation and repayment histories can be missing or incomplete, so we are proposing alternatives that either do not rely on reviewing these histories and/or provide a backstop for borrowers whose records are incomplete;
- Debt relief will be simpler to administer without borrower eligibility criteria;
- Making explicit the amount waiver and how waived balance is calculated for consolidation loans will make the relief easier to administer; and
- For relief that will be provided on an ongoing basis, providing more general language preserves the Department's flexibility to incorporate potential future regulatory or statutory changes and avoids potential confusion with independent regulatory authority that authorizes certain programs and relief.

Proposed Regulatory Text:

§ 30.80 Waiver of Federal student loan debts.

(a) General. The Secretary may waive all or part of any debts owed to the Department arising under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D, of the HEA, the Federal Perkins Loan Program authorized under title IV, part E, of the HEA, and the Health Education Assistance Loan Program authorized by sections 701-720 of the Public Health Service Act, 42 U.S.C. 292-292o, under ~~the conditions described in this section~~ including but not limited to those described in paragraphs (b)-(g) of this section.

(b) Current balance exceeds the original principal balance. The Secretary may waive ~~{all or a portion of }~~ the amount by which a borrower's total outstanding balance exceeds the original principal balance of the loan, including if the loan is a Federal Consolidation Loan or a Direct Consolidation Loan, the total original principal balance of all loans repaid by such loan, if-

~~(i) The loan was in first entered repayment for at least XX months by no later than July 1 on or before August 1, 2024⁵; and~~

~~{(ii) BORROWER ELICIBILITY REQUIREMENTS}.~~

(c) First entered repayment 25 years ago. (1) The Secretary may waive the outstanding balance of a loan if the loan first entered ~~was in~~ repayment, ~~including periods when the loan was in default, deferment, or forbearance, for at least 300 months by no later than on or before~~ July 1, 200~~0~~²⁵.

(2) For the purpose of ~~this~~ paragraphs (b) and (c), a loan enters repayment on—

(i) For a Federal Stafford Loan, a Direct Subsidized Loan, or a Direct Unsubsidized Loan, the day after the initial grace period ends;

(ii) For a Federal PLUS Loan or a Direct PLUS Loan, the day the loan is fully disbursed; ~~or~~

(iii) For a Federal Consolidation Loan or Direct Consolidation Loan, the earliest day as determined under paragraphs (c) (2) (i) and (ii) of this section for any loan that was repaid by that consolidation loan; or

(iv) For any loan for which accurate records are not available to make the applicable calculation of the date any loan first entered repayment, the Secretary may use the date that is six months after the loan's origination date in lieu of the date provided in subparagraphs (i) or (ii) or six months after the earliest loan's origination date for any loan that was repaid by the consolidation loan in lieu of the date provided in subparagraph (iii).

(d) Forgiveness based upon repayment plan. (1) The Secretary may waive the outstanding balance of a loan where the Secretary determines that a borrower is not enrolled in, but otherwise meets the eligibility requirements apart from recertification requirements for forgiveness under—

(i) An income-based repayment plan under § 682.215 or § 685.221;

(ii) An income-contingent repayment plan under § 685.209; or

(iii) An alternative repayment plan under § 685.208(1).

(e) Targeted forgiveness programs. (1) The Secretary may waive ~~up to the entire~~ outstanding balance of a loan where the Secretary determines that a borrower has not successfully applied for, but otherwise meets the eligibility requirements for—

~~(i) Public Service Loan Forgiveness under § 685.219;~~

~~(ii) Closed School Discharge under § 674.33(g), § 682.402(d), or § 685.214;~~

~~(iii) Borrower Defense to Repayment under part 685, subpart D; or~~

~~(iv) a~~Any other loan discharge, cancellation, or forgiveness program under parts 674, 682 or 685.

Commented [JR1]: Note that this proposed edit is designed to fix administrability of this section but does not reflect many negotiators' concerns that this proposal excludes many borrowers who should be entitled to relief whose loans entered repayment after this date but who have accrued, or will accrue, many months in repayment, default, deferment, or forbearance.

(2) For any loan that that meets the criteria of paragraph (1) but that has been repaid by a Federal Consolidation Loan or Direct Consolidation Loan that has an outstanding balance, the Secretary may waive the portion of the outstanding balance of the Consolidation Loan attributable to the loan meeting the criteria of paragraph (1).

(3) For any loan that meets the criteria of paragraph (1) with respect to unpaid refund discharge under § 685.216 or 685.402(l), the Secretary may waive the portion of the outstanding balance of the loan or Consolidation Loan not to exceed the relief the borrower would be entitled to upon receiving that unpaid refund discharge.

(f) Gainful employment. (1) For loans received for enrollment in a gainful employment (GE) program, as described in 20 U.S.C. 1002(b)(1)(A)(i) and (c)(1)(A), the Secretary may waive ~~repayment~~ the outstanding balance if the following conditions are met:

(i) The Secretary determines that the GE program has failed the debt-to-earnings (D/E) rates measure, or has failed the earnings premium measure, under paragraph (f)(2) of this section in two out of any three consecutive award years for which the program's D/E rates or earnings premium, as applicable, are calculated.

(ii) The borrower—

(A) Completed the program and the borrower was in the cohort whose debt was used to calculate the failing D/E rates or earnings premium; or

(B) Withdrew from the program within—

(1) Four award years prior to the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium, for a bachelor's degree, doctoral degree, or first professional degree program;

(2) Two award years prior to the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium for an associate or master's degree program; or

(3) The same award year as the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium for a certificate program.

(iii) The borrower did not submit an acknowledgment under § 668.605.

(2) For the purpose of this paragraph (f)—

(i) The Secretary calculates D/E rates and the earnings premium in accordance with §§ 668.403, 668.404, and 668.405, beginning with the first award year that the Secretary calculates D/E rates and the earnings premium for a program under part 668, subpart Q; and

(ii) For award years 2015-2022 and any subsequent award year where the Secretary does not calculate D/E rates and the earnings premium for a program under part 668, subpart Q for reasons other than those described in § 668.403(f) or § 668.404(d), as applicable, the Secretary will calculate the

measures by [using available data and a methodology that reasonably approximates those described in §§ 668.403, 668.404, and 668.405].

(g) Cohort default rates. For loans received for attendance at an institution that lost its eligibility to participate in any title IV, HEA program because of its high cohort default rate, as defined in 20 U.S.C. 1085(m), the Secretary may waive the outstanding balance ~~repayment~~ of the loan provided that the borrower was included in the cohort whose debt was used to calculate the cohort default rate.

§ 682.403 Waiver of FFEL Program loan debt.

Waivers.

(1) The Secretary may waive the outstanding balance on an FFEL Program loan if the loan would qualify for a waiver under--

- (i) 34 CFR 30.80(c);
- (ii) 34 CFR 30.80 (d) ~~(i)~~; or
- (iii) 34 CFR 30.80 (e) ~~(i)~~ and ~~(e)(1)(iv)~~.

(2) After determining that a loan qualifies for a waiver under paragraph (a)(1) of this section, the Secretary may direct the lender to submit a claim to the guaranty agency so the loan can be assigned to the Secretary.

(3) After the loan is assigned, the Secretary may waive all or a portion of the loan in accordance with 34 CFR 30.80.

(b) Lender and guaranty agency actions.

(1) If the Secretary determines that a loan qualifies for a waiver under paragraph (a)(1) of this section--

- (i) The Secretary notifies the lender that the loan qualifies for a waiver;
- (ii) The lender must submit a claim to the guaranty agency, within 60 days of the date the lender received the notification, that includes the following documentation:

- (A) An original or a true and exact copy of the promissory note.
- (B) The notification described in paragraph (b)(1)(i) of this section.

(2) If the claim meets the requirements of paragraph (b)(1)(ii) of this section, the guaranty agency must pay the claim submitted by the lender.

(3) The Secretary reimburses the guaranty agency for a claim paid to the lender after the agency pays the claim to the lender.

(4) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the claim and receives the reimbursement payment or within 45 days of the date the guaranty agency receives the notification described in paragraph (a)(2) of this section if the guaranty agency is the lender.