

From: Jessica Ranucci, Primary Negotiator for Consumer Advocates
To: U.S. Department of Education
Re: Proposed Regulatory Text Amendments
Date: December 11, 2023

Proposal 1— Proposed Regulatory Text for §§ 30.81, 30.82, 30.89, 30.90: This regulatory text eliminates the cap on waiver of the amount by which the borrower’s total loan balance exceeds their original principal balance. With this edit, the various proposals in §§ 30.81, 30.82, 30.89, and 30.90 can be combined into one provision.

§ 30.81 Waiver when the current balance exceeds the original principal balance. ~~for low income borrowers on an IDR plan. (a) Pursuant to the authority to waive debt that the Secretary is unable to collect in full under the standards prescribed in 31 U.S.C. 3711(d), and subject to paragraphs (b) and (c) of this section, t~~ The Secretary may waive ~~the lesser of \$20,000 or~~ the amount by which a borrower’s loans cumulatively have a total outstanding balance that exceeds—

(1) The original principal balance of the loans for loans disbursed before January 1, 2005;

(2) The balance of the loans on the final day of their grace period for loans disbursed on or after January 1, 2005; or

(3) The total original principal balance of all loans repaid by a Federal Consolidation Loan or a Direct Consolidation Loan.

~~(b) A borrower is eligible for the waiver described in paragraph (a) of this section if—~~

~~(1) The borrower is enrolled in an IDR plan under §§ 682.215, 685.209, or 685.221 as of a date determined by the Secretary; and~~

~~(2) The borrower’s adjusted gross income or other documentation of income acceptable to the Secretary demonstrates that the borrower’s annual income is equal to or less than 225 percent of the applicable Federal Poverty Guideline as described in § 685.209.~~

~~(c) A borrower who has received a waiver under § 30.82 is not eligible for a waiver under paragraph (a) of this section.~~

§ 30.82 [Reserved]

§ 30.89 [Reserved]

§ 30.90 [Reserved]

Proposal 2— Proposed Regulatory Text for § 30.83: This proposal would reduce the problem of a regulatory “cliff” by applying this relief in the future on a rolling basis with respect to all loans disbursed before the regulations go into effect. It would also provide relief in the shorter term to borrowers with

§ 30.83 Waiver when a loan first entered repayment 20 or 25 years ago. (a) The Secretary may waive the outstanding balance of a loan if:

(i) the loan first entered repayment ~~on or before July 1, 2005~~ at least 20 years before the date of the waiver; ~~and~~

(ii) the borrower only received loans as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that repaid only loans the borrower received as an undergraduate student; and

(iii) the loan was disbursed before July 1, 2025.

(b) The Secretary may waive the outstanding balance of a loan if:

(i) the loan first entered repayment ~~on or before July 1, 2000~~ at least 25 years before the date of the waiver; ~~and~~

(ii) the borrower received loans other than loans received as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that repaid loans other than loans the borrower received as an undergraduate student; and

(iii) the loan was disbursed before July 1, 2025.

(c) For the purpose of this section, a loan enters repayment on—

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

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

(3) For a Federal Consolidation Loan or Direct Consolidation Loan, the earliest day as determined under paragraph (c)(1) and (2) of

this section for any loan that was repaid by that consolidation loan.

Proposal 3— Proposed Regulatory Text for §§ 30.86 and 30.87: This would clarify that loss of accreditation resulting in loss of Title IV eligibility can be a basis for waiver so long as the loss of accreditation meets the standards set by this section. This would also allow the Secretary the discretion to issue this relief upon the Department's termination, denial of recertification, or determination.

§ 30.86 Waiver based upon Secretarial actions. (a) Subject to paragraph (b) of this section, the Secretary may waive the entire outstanding balance of a loan associated with attending an institution or a program at an institution if the Secretary or other authorized Department official has ~~issued a final decision that~~ terminated the institution or program's participation in the title IV, HEA programs or denied the institution's request for recertification, or the Secretary or other authorized Department official has otherwise determined that the institution or the program in which the student was enrolled is no longer eligible for its students to receive assistance under the title IV, HEA programs and that decision, denial, or determination was due, in whole or in part, to any of the following circumstances:

(1) The program or institution has failed to meet an accountability standard based on student outcomes established under the HEA or its implementing regulations for determining eligibility for participation in the title IV, HEA programs.

(2) The program or institution has failed to deliver sufficient financial value to students, including in situations where the institution or program has engaged in substantial misrepresentations, substantial omissions, misconduct affecting student eligibility, or other similar activities, including loss of accreditation due to such activities.

(b) The waiver described in paragraph (a) of this section is limited to loans that were borrowed to attend that program or institution during the period that corresponds with the findings or outcomes data that forms the basis for the action described in paragraph (a) of this section, unless the Secretary determines that the use of a different period is appropriate.

§ 30.87 Waiver following a closure prior to Secretarial actions.

(a) Subject to paragraph (b) of this section, the Secretary may waive the entire outstanding balance of a loan associated with attending a program or institution if the program or institution has closed and the Secretary or other authorized Department official has made a ~~final~~ determination that—

[. . . rest of regulation remains the same]

Proposal 4— Proposed Regulatory Text for § 682.403: This would change the title of this regulation to clarify that it applies only to FFEL Program debt that is not held by the Department, in order to clarify that Department-held FFEL loans are covered by the provisions in Subpart G. It also makes conforming changes to the 20/25 year old provision that are the same as proposed above in § 30.83.

§ 682.403 Waiver of FFEL Program loan debt for FFEL loans not held by the Department.

(a) General.

(1) This section specifies the rules and procedures under which--

(i) The Secretary determines that a FFEL Program loan qualifies for a waiver of all or a portion of the outstanding balance and notifies the lender of any such determination;

(ii) The lender submits a waiver claim to the applicable guaranty agency;

(iii) The guaranty agency pays the claim, is reimbursed by the Secretary, and assigns the loan to the Secretary; and

(iv) The Secretary grants the waiver.

(2) For the purposes of this section, references to--

(i) "The lender" includes the guaranty agency if the guaranty agency is the holder of the loan at the time the Secretary determines that the loan qualifies for a waiver, except that the waiver claim filing requirements applicable to the lender do not apply to the guaranty agency; and

(ii) "The guaranty agency" means the guaranty agency that guarantees the loan.

(b) Determination of qualification for a waiver by the Secretary. The Secretary may waive the borrower's obligation to repay ~~up to~~ the entire outstanding balance on an FFEL Program loan if the loan qualifies for a waiver under one of the following conditions:

(1) First entered repayment 20 or 25 years ago.

(i) The Secretary may waive the outstanding balance of a loan if:

(A) the loan first entered repayment at least 20 years before the date of the waiver;

(B) the borrower only received loans as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that

repaid only loans the borrower received as an undergraduate student; and

(C) the loan was disbursed before July 1, 2025.

(ii) The Secretary may waive the outstanding balance of a loan if:

(A) the loan first entered repayment at least 25 years before the date of the waiver;

(B) the borrower received loans other than loans received as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that repaid loans other than loans the borrower received as an undergraduate student; and

(C) the loan was disbursed before July 1, 2025.

~~(i) The Secretary may waive the outstanding balance of a loan if the loan first entered repayment on or before July 1, 2005, and the borrower only received loans as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that repaid only loans the borrower received as an undergraduate student.~~

~~(ii) The Secretary may waive the outstanding balance of a loan if the loan first entered repayment on or before July 1, 2000, and the borrower received loans other than loans received as an undergraduate student or a Federal Consolidation Loan or Direct Consolidation Loan that repaid loans other than loans the borrower received as an undergraduate student.~~

(iii) For the purpose of this section, a loan enters repayment on—

(A) For a Federal Stafford Loan, the day after the initial grace period ends;

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

(C) For a Federal Consolidation Loan, the earliest day as determined under paragraph (iii)(A) and (B) of this section for any loan that was repaid by that consolidation loan.

[. . . rest of regulation remains the same]

Proposal 5— Proposed Regulatory Text for New § 30.92: This would clarify that if a borrower would be eligible for any waiver action but for missing Department or servicer data, the Secretary may include such a borrower in waiver relief.

§ 30.92 Waiver under circumstances where borrower data is missing. The Secretary may waive up to the outstanding balance of a loan where the Secretary determines that record keeping by the Department or by any entity awarded a contract by the Secretary

under 20 U.S.C. 1087f is insufficient for the Secretary to determine whether the borrower would qualify for waiver under §§ 30.80-90 or § 682.403.