

From: Jessica Ranucci, Primary Negotiator for Consumer Advocates
To: U.S. Department of Education
Re: Technical Edits Relating to Consolidation Loans
Date: December 7, 2023

Background:

I am submitting these proposed revisions to the regulations proposed by the Department in advance of the Third Session to provide suggested technical edits to the treatment of consolidations loans to ensure that no borrower loses any rights to waiver due to having previously consolidated their loans, putting all borrowers in the same position to receive a waiver regardless of whether they have consolidated or not. The proposed language in each provision is essentially identical to the Department's proposed § 30.85(b).

Proposed Regulatory Text for §§ 30.83, 30.86, 30.87, 30.88, 682.403:

§ 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 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.

(b) 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.

(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.

(d) If the conditions for waiver in paragraph (a) or (b) of this section are met but the loan 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 such loan.

§ 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.

(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.

(c) If the conditions for waiver in paragraph (a) of this section are met but the loan 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 such loan.

§ 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—

(1) Based on the most recent reliable data for that program or institution, the program or institution has not satisfied, for at least one year, 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; or

(2) The program or institution—

(i) 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; and

(ii) Is the subject of a program review, investigation, or any other Department action that remains unresolved at the time of closure and that is based, in whole or in part, on the conduct described in paragraph (a)(2)(i) of this section.

(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.

(c) If the conditions for waiver in paragraph (a) of this section are met but the loan 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 such loan.

§ 30.88 Waiver for closed Gainful Employment programs with high debt-to-earnings rates or low median earnings.

(a) The Secretary may waive the outstanding balance of a loan received by a borrower associated with enrollment in a Gainful Employment (GE) program as described in 20 U.S.C. 1002(b)(1)(A)(i) and (c)(1)(A) if--

(1) The program or institution closed;

(2) The Secretary determines the program was not preparing students to become a doctor of medicine or osteopathy or a doctor of dental science; and

(3) For the period in which the borrower received loans for enrollment in the program, the Secretary has reliable data demonstrating that, for students who received title IV, HEA assistance--

(i)(A) The median annual loan payment of graduates from the program is greater than 20 percent of the median annual earnings for graduates, minus 150 percent of the applicable Federal Poverty Guideline for the year being measured or the denominator of such calculation is zero or negative; and

(B) The median annual loan payment of graduates from the program is greater than 8 percent of the median annual earnings for graduates of the program or the denominator of such calculation is zero; or

(ii) The median annual earnings of graduates from the program are equal to or less than the median annual earnings for working adults aged 25-34, who either worked during the year or indicated they were unemployed (i.e., not employed but looking for and available to work) when interviewed, with only a high school diploma (or recognized equivalent)--

(A) In the State in which the institution is located; or

(B) Nationally, if fewer than 50 percent of the students in the program are from the State where the institution is located, or if the institution is a foreign institution.

(b) In determining whether a program meets the requirements under paragraph (a) of this section, the Secretary-

(1) Identifies a program using the program's six-digit CIP code as assigned by the institution or determined by the Secretary, in combination with the institution's six-digit Office of Postsecondary Education ID (OPEID) number and the program's credential level, unless the Secretary does not have reliable data at the six digit-level, in which case the Secretary will use the four-digit CIP code;

(2) Calculates the annual loan payment based upon the average of-

(i) The interest rate on Direct Unsubsidized Loans for undergraduate students for the three consecutive award years ending in the latest completion year for the students whose median debt payment is being calculated for graduates of undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs; or

(ii) The interest rate on Direct Unsubsidized Loans for graduate students for the three consecutive award years ending in the latest completion year for the students whose median debt payment is being calculated for graduates of graduate certificate programs and master's degree programs; or

(iii) The interest rate on Direct Unsubsidized Loans for undergraduate students for the six consecutive award years ending in the latest completion year for the students whose median debt payment is being calculated for graduates of bachelor's degree programs; or

(iv) The interest rate on Direct Unsubsidized Loans for graduate students for the six consecutive award years ending in the latest completion year for the students whose median debt payment is being calculated for graduates of doctoral programs and first professional degree programs; and

(3) Calculates the median annual earnings of program graduates by considering earnings in the third year subsequent to graduation.

(c) The Secretary may also apply the waiver described in paragraph (a) of this section for loans received for enrollment in a GE program at an institution--

(1) If the institution has since closed;

(2) Prior to the closure, the institution received a majority of its title IV, HEA funds from programs that met the conditions described in paragraph (a) (3) of this section; and

(3) The Secretary did not have reliable data to evaluate the program's performance as described in paragraph (a) (3) of this section.

(d) If the conditions for waiver in paragraph (a) or (c) of this section are met but the loan 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 such loan.

§ 682.403 Waiver of FFEL Program loan debt.

(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 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.

(2) Closed school discharge. The Secretary may waive the borrower's obligation to repay 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, a closed school discharge on that loan under § 682.402(d).

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

(c) Notification. If the Secretary determines that a loan qualifies for a waiver under paragraph (b) of this section, the Secretary provides notice to the lender that the lender must--

(1) Submit a waiver claim to the applicable guaranty agency; and (2) Suspend collection activity, or maintain a suspension of collection activity, on the borrower's FFEL Program loan.

(d) Claim procedures.

(1) The guaranty agency must establish and enforce standards and procedures for the timely filing by lenders of waiver claims.

(2) The lender must submit a claim for the full outstanding balance of the loan to the guaranty agency, within 75 days of the date the lender received the notification from the Secretary described in paragraph (c) of this section.

(3) The lender must provide the guaranty agency with the following documentation when filing a waiver claim:

(i) An original or a true and exact copy of the promissory note.

(ii) The notification described in paragraph (c) of this section.

(4) The guaranty agency must review the waiver claim and determine whether the claim meets the requirements of paragraph (d)(3) of this section.

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

(6) If the lender receives any payments on the loan from or on behalf of the borrower after receiving a claim payment from the guaranty agency, the lender must promptly return the payments to the sender.

(7) The Secretary reimburses the guaranty agency for the full amount of a claim paid to the lender after the agency pays the claim to the lender.

(8) The guaranty agency must assign the loan to the Secretary within 75 days of--

(i) The date the guaranty agency pays the claim and receives the reimbursement payment; or (ii) The date the guaranty agency receives the notification described in paragraph (c) of this section if the guaranty agency is the lender.

(9) After the guaranty agency assigns the loan, the Secretary may waive the borrower's obligation to repay up to the entire outstanding balance of the loan.

(10) After the Secretary grants the waiver, the Secretary notifies the borrower, the lender, and the guaranty agency that the

borrower's obligation to repay the debt or a portion of the debt, has been waived.

(e) Payments received after the Secretary's payment of a waiver claim.

(1) If the guaranty agency receives any payments from or on behalf of the borrower on a loan that has been assigned to the Secretary in accordance with paragraph (d) of this section, the guaranty agency must promptly return these payments to the sender. At the same time that the agency returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after the Secretary has granted a waiver unless—

(i) The borrower received a partial waiver of the outstanding balance of the loan; or

(ii) The Secretary directs the borrower otherwise.

(2) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (e) (1) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

(3) If the Secretary receives any payments from or on behalf of the borrower on the loan after the Secretary waives the entire outstanding balance of a loan, the Secretary returns the payments to the sender.

(f) If the conditions for waiver in paragraph (b) of this section are met but the loan has been repaid by a Federal Consolidation Loan that has an outstanding balance, the Secretary may waive the portion of the outstanding balance of the consolidation loan attributable to such loan once the loan has been assigned to the Secretary.