

**Issue Paper #1**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Changes to the Income Contingent Repayment (ICR) Plan

**Statutory Cites:** §§455(d)(1)(d) and 455(e)

**Regulatory Cites:** §§685.208(k) and 685.209

**Summary of Issue:**

Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer an ICR plan with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e) authorizes the Secretary to establish ICR plan repayment schedules through regulations. Under current regulations, the annual amount payable under the ICR plan may not exceed 20% of a borrower's discretionary income, and the maximum ICR repayment period is 25 years. If a loan has not been repaid at the end of the 25-year period, the unpaid portion of the loan is canceled.

The President's "Pay As You Earn" student loan repayment initiative would cap the annual payments for new borrowers in 2008 who receive a loan in 2012 and who repay under the ICR plan at 10% of discretionary income, and reduce the maximum repayment period to 20 years. Any loan amount remaining at the end of the 20-year repayment period would be canceled.

Loan Committee members also requested that the regulations clarify the process under which a borrower who meets the requirement for cancellation of the unpaid portion of the loan after either 20 or 25 years would receive that benefit. The Committee members stated that it is unclear whether borrowers would be responsible for requesting the cancellation when they believe they qualify or whether ED loan servicers will track a borrower's time in repayment under the plan and either notify borrowers of the steps they must take to request the cancellation or that the cancellation has taken place.

**Issue Paper #2**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Changes to the Income-Based Repayment (IBR) Plan

**Statutory Cite:** §493C

**Regulatory Cites:** §§682.215 and 685.221

**Summary of Issue:**

*Statutory changes*

To qualify for the IBR Plan and to continue to make income-based payments under that plan, a borrower must have a partial financial hardship. Under the law and regulations that currently govern IBR, a borrower is considered to have a partial financial hardship if the annual amount due on the borrower's eligible William D. Ford Federal Direct Loan (Direct Loan) and Federal Family Education Loan (FFEL) Program loans, as calculated based on a 10-year standard repayment plan, exceeds 15% of the difference between the borrower's adjusted gross income (AGI) and 150% of the annual poverty guideline amount for the borrower's family size. During any period when a borrower repaying under the IBR Plan has a partial financial hardship, the borrower's monthly loan payment may not exceed 15% of the difference between the borrower's AGI and 150% of the poverty guideline amount for the borrower's family size, divided by 12.

Currently, the maximum repayment period under the IBR Plan is 25 years. A borrower who has participated in the IBR Plan qualifies for forgiveness of any remaining loan balance after making the equivalent of 25 years of payments through a combination of qualifying monthly payments and periods of economic hardship deferment.

The SAFRA Act included in the Health Care and Reconciliation Act of 2010 (Public Law 111-152) amended §493C to make the following changes to the IBR Plan for new borrowers on or after July 1, 2014:

- The percentage used in the formula for determining whether a borrower has a partial financial hardship and for calculating the maximum IBR monthly payment amount during periods of partial financial hardship, as described above, is 10% rather than 15%.
- The maximum repayment period under the IBR Plan is 20 years rather than 25 years. Borrowers will qualify for loan forgiveness after making the equivalent of 20 years of payments through a combination of qualifying monthly payments and periods of economic hardship deferment.

The changes made by the HCERA apply only to new borrowers on or after July 1, 2014. For all other borrowers repaying under IBR, the current IBR Plan requirements in these areas will continue to apply.

The Department will incorporate the SAFRA Act changes for new borrowers in the Direct Loan and FFEL program IBR Plan regulations.

#### *Other changes*

- *Annual IBR partial financial hardship assessment*

Under current regulations, a borrower's loan holder determines whether a borrower has a partial financial hardship to initially qualify for the IBR Plan and annually thereafter, based on the date the borrower was initially determined eligible for IBR, for each year the borrower remains on IBR. To make the initial and annual determinations, the loan holder asks the borrower to provide documentation of the borrower's AGI (or consent for the Internal Revenue Service to disclose the borrower's AGI to the loan holder) or, in some cases, alternative documentation of the borrower's income. Borrowers are also required to provide an initial and annual certification of their family size.

If a borrower who is repaying under IBR does not provide the annual income information required to determine whether the borrower continues to have a partial financial hardship, the borrower may remain on the IBR Plan, but the borrower's monthly loan payment is recalculated and is no longer based on the borrower's income. The recalculated payment is the amount the borrower would pay under a 10-year standard repayment plan, based on the amount owed on the borrower's eligible loans at the time the borrower began repayment on the loans under IBR. The repayment period based on the recalculated payment may exceed 10 years. If a borrower does not annually certify family size, the loan holder assumes a family size of one.

Current regulations do not require loan holders to notify borrowers in advance of the annual requirement to provide income information and certify family size, nor do they specify a timeframe for the borrower to provide the required information before the borrower's payment is recalculated. The Department has received public comments indicating that not all loan holders notify borrowers in advance of the annual documentation requirement, and that there are also inconsistencies in the amount of time that loan holders allow for borrowers to provide the required information before recalculating their IBR payments. As a result, some borrowers who still have a partial financial hardship are placed on the recalculated IBR payment because they were not aware that it was time for their annual re-evaluation, or because they were not given sufficient time to provide the required income documentation.

- *Repayment options for borrowers who leave the IBR Plan*

The law and regulations provide that a borrower who no longer wishes to repay under the IBR Plan must pay under the standard repayment plan, but do not address a borrower's options for changing to a different repayment plan after leaving IBR and initially being placed on the standard repayment plan. Section 428(b)(1)(D)(ii) of the HEA provides that a FFEL Program borrower may change repayment plans annually. Section 455(d)(3) of the HEA provides that a Direct Loan Program borrower may change repayment plans under terms and conditions

established by the Secretary. To acknowledge both the statutory requirement in §493C that a borrower who leaves the IBR Plan must repay under the standard repayment plan and the other statutory provisions cited above that allow a borrower to change repayment plans, the Department has issued subregulatory guidance stating that a borrower who leaves the IBR Plan and is placed on the standard repayment plan may change to a different repayment plan after making one full payment under the standard repayment plan. However, the Department has received comments indicating that many borrowers and loan holders are not aware of this policy, resulting in inconsistent treatment of borrowers. The Department will propose to reflect the subregulatory guidance in the regulations.

- *Process for Borrower Receipt of Forgiveness After 20 or 25 Years of Repayment*

The law and regulations provide that a borrower qualifies for forgiveness of any remaining loan balance after making the equivalent of 25 years of payments (20 years for new borrowers on or after July 1, 2014) through a combination of qualifying monthly payments and periods of economic hardship deferment. Loan Committee members requested that the regulations clarify the process under which a borrower who meets the requirements for loan forgiveness of the unpaid portion of the loan would receive that benefit. The Committee members stated that it is unclear whether borrowers would be responsible for requesting the forgiveness when they believe they qualify or whether lenders/loan servicers would be required to track a borrower's time in repayment for this purpose and either notify borrowers of the steps they must take to request the forgiveness or that the cancellation has taken place.

**Issue Paper #3**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** FFEL Lender Repayment Disclosures: Borrowers Who Are Having Difficulty Making Payments and Borrowers Who Are 60-Days Delinquent

**Statutory Cite:** §433(e)(3)

**Regulatory Cite:** §682.205(c)(4) and (5)

**Summary of Issue:**

Lenders in the FFEL program must provide a repayment disclosure to borrowers who notify the lender that they are having difficulty making payment and those who are 60 days delinquent in making required student loan payments.

Current regulations stipulate that the disclosure to borrowers who are having difficulty making payments must be provided each time the borrower contacts the lender and must provide the borrower with a description of the repayment plans available to the borrower and how the borrower may request a change in repayment plan; a description of the requirements for requesting forbearance on the loan and any associated costs; and a description of the options available to the borrower to avoid default and any associated fees or costs.

The 60-day delinquent notice must be sent within five days of the date the borrower becomes 60 days delinquent. For this purpose, five days means five calendar days. The notice must include: the date on which the loan will default if no payment is made; the minimum payment the borrower must make as of the date of the notice to avoid default (including the amount required to bring the loan current or to pay it in full); a description of the options available to the borrower to avoid default (including deferment and forbearance) and any fees and costs associated with those options; any options for discharging the loan; and any additional resources, including ED's Office of the Ombudsman, that may be available to the borrower for advice and assistance on loan repayment.

FFEL lenders and lender servicers have noted that because disclosure notices are often system-generated and sent automatically on a fixed schedule, in some cases the 60-day delinquency disclosure may not be sent until more than five calendar days after the 60<sup>th</sup> day of delinquency, in violation of the regulations. For example, if a borrower's 60th day of delinquency falls on a weekend, but a lender's system generates disclosures only on business days, the 60-day delinquency disclosure may not be sent within the regulatory timeframe.

For the required disclosure to borrowers who are having difficulty making payment, the lenders and lender servicers have also noted that the requirement to generate a disclosure as a result of every borrower contact is redundant and confusing to the borrower if contact with the borrower, whether borrower initiated as the result of an earlier disclosure or the product of lender outreach efforts, has

addressed the borrower's repayment problem. The Loan Committee agreed to examine the timing and triggering mechanism for this required disclosure when borrower contact has already addressed the borrower's repayment difficulty.

**Issue Paper #4**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits

**Statutory Cite:** §428(c)(3)

**Regulatory Cites:** §§682.211(h)(2)(ii)(B) and 685.205

**Summary of Issue:**

Section 428(c)(3)(A)(i)(IV) of the HEA specifies that forbearance must be granted to FFEL borrowers who are eligible for and will receive partial repayment on his or her FFEL loans under the Department of Defense (DOD) repayment benefit program authorized in section 2174 of title 10, United States Code for service in the Armed Forces. This mandatory forbearance is reflected in 34 CFR 682.211(h)(2)(ii)(B) of the FFEL regulations. The same HEA provision also applies to Direct Loan borrowers, but is not included in the Direct Loan forbearance regulations in 34 CFR 685.205. In addition, commenters have requested that this same forbearance provision be applied to borrowers receiving student loan repayment benefits under other DOD student loan repayment programs.

**Issue Paper #5**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Borrowers who are Delinquent when Authorized Forbearance is Granted

**Statutory Cite:** §428(c)(3)

**Regulatory Cites:** §§682.211(f) and 685.205(b)

**Summary of Issue:**

FFEL lenders are authorized to grant administrative forbearance, a form of forbearance that does not require documentation from the borrower, at the end of a deferment period if the borrower was delinquent on repayment of the loan at the beginning of the deferment period. This policy ensures that the borrower is current on the loan when he or she resumes making payments upon conclusion of the deferment. The first payment after the end of the deferment must be due no later than 60 days after the end of the deferment. FFEL lenders are not similarly authorized to grant administrative forbearance if the borrower is delinquent at the beginning of a period of non-mandatory authorized forbearance. Unless the borrower provides a basis for the lender to extend the authorized forbearance period retroactively to eliminate the delinquency that existed at the beginning of the forbearance period, the borrower will remain delinquent at the end of the authorized forbearance period. Periods of administrative forbearance and authorized forbearance generally involve capitalization of accrued, unpaid interest unless the borrower pays the accruing interest during the authorized forbearance period.

In the Direct Loan program, the circumstances under which ED may grant administrative forbearance without requiring documentation from the borrower under 34 CFR 685.205(b) include, but are not limited to, periods of delinquency that exist when a borrower enters a period of authorized deferment. Because the list of circumstances under which ED may grant administrative forbearance to Direct Loan borrowers is not exclusive, ED may grant administrative forbearance to reduce or eliminate a delinquency that exists when a borrower enters a period of authorized forbearance on a Direct Loan. Commenters have asked ED to authorize FFEL lenders to grant administrative forbearance to FFEL borrowers under the same circumstances.

**Issue Paper #6**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Forbearance for Post-270 day Defaulted Loan Borrowers Prior to Lender Claim Payment or Transfer to ED Default Collections

**Statutory Cite:** §428(c)(3)

**Regulatory Cites:** §§682.211(f)(2) and 685.205

**Summary of Issue:**

The HEA provides that a Direct Loan or FFEL borrower is in default on repayment of a loan that is repayable in monthly installments if the borrower fails to make scheduled payments when due and that failure persists for 270 days. Even after a borrower is in default on a loan, the Department of Education (ED) and FFEL lenders may work with borrowers to eliminate the default or reduce the borrower's level of delinquency through a deferment or forbearance before the FFEL lender must submit a default claim to the guaranty agency or the ED loan servicer transfers the loan to ED's Debt Collection Division. Under 34 CFR 682.211(d), as part of the forbearance agreement between the FFEL lender and the defaulted borrower, the borrower must sign a new agreement to repay the debt, which constitutes the borrower's reaffirmation of his or her obligation to repay the loan. Defaulted borrowers in the Direct Loan program are not required to sign a new repayment agreement or otherwise reaffirm the debt when forbearance is granted under the same circumstances. Commenters requested that ED eliminate the signed repayment agreement requirement from the FFEL regulations.

**Issue Paper #7**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Minimum Loan Period for Transfer Students in Non-Term and Certain Non-Standard Term Programs

**Statutory Cite:** N/A

**Regulatory Cites:** §685.301(a)(9) [refers to §685.301(a)(9) as contained within the second Editorial Note following §685.301 in 34 CFR Part 685, revised as of July 1, 2011]

**Summary of Issue:**

For a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length, with no term less than 9 weeks in length, the minimum period for which a school may originate a Direct Loan is a single academic term.

For a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than 9 weeks in length, current regulations provide that, in general, the minimum period for which the school may originate a Direct Loan is the lesser of **(1)** the length of the student's program at the school (or the remaining portion of the program), or **(2)** the academic year as defined by the school. The regulations provide an exception to this requirement only in the case of a student who transfers into a school with credit or clock hours from another school, and the loan period at the prior school overlaps the loan period at the new school. In this circumstance, the new school may originate a loan for the remaining balance of the program or academic year that started at the prior school, in an amount up to the balance of the borrower's annual loan limit remaining after subtracting the amount borrowed for attendance at the prior school. After this initial loan period, the student becomes eligible for a new annual loan limit, with a new loan period corresponding to the lesser of the program (or remaining portion of the program) or academic year at the new school.

The exception described above was added to the Direct Loan Program regulations by a Final Rule published on November 1, 2007 (72 FR 62014). Prior to this regulatory change, the minimum loan period for a student who transferred into a clock hour program or non-term credit hour program with an overlapping loan period was, in all cases, the lesser of the length of the student's program (or remaining portion of the program) at the new school, or the academic year at the new school.

The exception to the minimum loan period rule applies only if the new school accepts clock or credit hours from the prior school. If the new school does not accept any transfer hours from the prior school, the regulatory exception does not apply and the transfer student is limited to receiving no more than the remaining balance under the applicable annual loan limit for the entire program or academic year at the new school, whichever is less. The limited scope of the exception provides no benefit to most transfer students and may in some cases discourage students from transferring to different schools.

**Issue Paper #8**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** “Reasonable and Affordable” Payment Standard for Rehabilitation of Defaulted Direct Loan and FFEL Program Loans

**Statutory Cites:** §428F(a)

**Regulatory Cites:** §§682.405(b)(1)(iii) and 685.211(f)

**Summary of Issue:**

Loan rehabilitation programs authorized for borrowers who have defaulted on Direct Loan and FFEL program loans provide that a borrower is eligible for rehabilitation if the borrower makes 9 voluntary, reasonable and affordable payments within 20 days of the scheduled due date during 10 consecutive months. After a Direct Loan borrower makes the qualifying payments, the borrower’s loan is rehabilitated when the loan is transferred from the Department of Education’s (ED) Debt Collection Division back to ED loan servicing to resume normal repayment. A FFEL borrower’s defaulted loan is not rehabilitated under §428F(a) of the Higher Education Act until the guaranty agency holding the defaulted loan sells the loan to an eligible lender. Only then does the borrower return to normal repayment on the FFEL program loan. Guaranty agencies are only required to sell loans to rehabilitate them if such a sale “is practicable.” If a guaranty agency is unable to sell the loan, the loan remains in default status and the borrower continues repaying the guaranty agency that holds the loan.

Section 428F(a)(1)(A) of the HEA specifies that under a rehabilitation agreement with a borrower, the guaranty agency and ED may not demand a monthly payment amount that is more than is reasonable and affordable based on a borrower’s total financial circumstances. The FFEL program regulations at 34 CFR 682.405(b)(1)(iii) provide that a guaranty agency’s determination of reasonable and affordable for purposes of loan rehabilitation must include consideration of the borrower’s (and spouse’s, if applicable) disposable income and reasonable and necessary expenses of the borrower (and spouse and other dependents, if applicable). These expenses include, but are not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment. A guaranty agency may not establish a minimum payment amount if the agency determines that a smaller amount is reasonable and affordable. If the agency determines that the reasonable and affordable payment is less than \$50, or the monthly accrued interest on the loan the agency must include documentation in the borrower’s file of the basis for the determination. In the Direct Loan Program, 34 CFR 685.211(f) also provides that payments under a rehabilitation agreement must be reasonable and affordable, but the Direct Loan regulations do not prescribe the factors that ED must consider when determining what constitutes a reasonable and affordable payment.

The income-based repayment (IBR) plan, which provides for a monthly loan payment that is affordable based on a borrower’s income and family size, became available to borrowers in the Direct Loan and

FFEL programs on July 1, 2009. Borrowers who have rehabilitated their defaulted loans may request to repay under the IBR plan once they return to normal repayment on the loan. Commenters have recommended that ED use the IBR repayment formula in 34 CFR 682.215(b)(1) to determine what is a reasonable and affordable payment for loan rehabilitation purposes to simplify and standardize the process for borrowers. Note, however, that there is no minimum payment amount under IBR. In some cases, a borrower's calculated monthly payment under IBR may be \$0.00.

**Issue Paper #9**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Rehabilitation of Defaulted Direct Loan and FFEL Program Loans: Treatment of Borrowers Subject to Administrative Wage Garnishment

**Statutory Cite:** §428F(a)

**Regulatory Cites:** §§682.405(a)(2)(i) and 685.211(f)

**Summary of Issue:**

Loan rehabilitation programs for Direct Loan and FFEL program borrowers who have defaulted on their loans require borrowers to make 9 voluntary, reasonable, and affordable payments within 20 days of the due date during 10 consecutive months. Payments made through administrative wage garnishment (AWG) do not qualify as voluntary payments. Borrowers are not subject to AWG unless they have defaulted on the loan and other efforts to collect the loan have been unsuccessful.

For loans held by the Department of Education (ED), if a borrower is subject to AWG at the time the borrower attempts to rehabilitate a defaulted loan, AWG continues while the borrower makes the series of voluntary payments necessary to rehabilitate the loan. The reasonable and affordable voluntary payments the borrower must make to qualify for rehabilitation must be over and above the payments secured through the AWG process. The same requirements apply to guaranty agency-held defaulted loans which are subject to AWG.

Loan rehabilitation provides borrowers who have defaulted on a Direct Loan or FFEL program loan the opportunity to reaffirm their intention to repay the defaulted loan and to establish a successful repayment history sufficient to support returning the borrower to normal repayment, with its associated benefits, and to remove the record of the default from the borrower's credit report. For AWG defaulted borrowers, ED is examining whether concurrent voluntary borrower payments and involuntary AWG payments should continue for the entire period it takes the borrower to qualify for loan rehabilitation and, given the greater risk of re-default associated with these borrowers, whether any relaxation of the current double payment requirement should be limited.

**Issue Paper #10**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Participation Rate Index Appeal for Single Cohort Default Rate Loss of Eligibility to Participate in the Direct Loan Program

**Statutory Cites:** N/A

**Regulatory Cites:** Subpart N-Cohort Default Rates; §§668.206(a)(1) and 668.214(a)(1)

**Summary of Issue:**

The HEOA of 2008 amended the definition of “cohort default rate” in section 435(m) of the HEA to provide for the calculation of a three-year institutional cohort default rate (CDR). The HEOA specified a transition period for the use of three-year CDRs as a basis for institutional CDR sanctions, and provides that no sanctions will be imposed on institutions using a three-year CDR until three consecutive years of three-year CDRs are available. Sanctions will be imposed using three consecutive years of three-year CDRs for the first time in late 2014. Until that time, two-year CDRs will continue to be the basis for institutional CDR sanctions.

Section 435(a) (2) of the HEA was also amended, increasing the threshold for CDR sanctions to 30% for FY 2012 and beyond, amending existing CDR institutional data adjustment and appeal criteria, and adding new appeal criteria. The “participation rate index” (PRI) appeal standard specified in section 435(a)(8) of the HEA was increased from 0.0375 to 0.0625 for fiscal years beginning on or after October 1, 2011. Under the PRI provision, an institution may demonstrate that it should not be subject to statutory CDR-related sanctions because the number of borrowers that make up its CDR are a small part of the number of its regular students who were enrolled on at least a half-time basis. The amendment made by the HEOA permits schools to have a higher percentage of borrowers than before and still qualify for relief from sanctions through a PRI appeal.

In addition to the statutory CDR sanctions, the Department’s CDR regulations have always included a regulatory sanction if an institution’s CDR for a single year exceeds a certain threshold. The 40% threshold that has been applicable to two-year CDRs in the regulations has been retained as the single-year rate threshold for three-year CDR sanctions under Subpart N of Part 668 of the Department’s regulations. The Department’s CDR regulations have also provided for a PRI appeal to the regulatory single-year CDR sanction. The PRI appeal for a single-year CDR sanction is included in the regulations governing three-year CDRs, but, as commenters have pointed out, the PRI remains the 0.06015 applicable to PRI appeals of two-year CDR single-year rate sanctions and was not adjusted to reflect the increased PRI in the HEA.

**Issue Paper #11**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Repeal of unnecessary FFEL Program regulations

**Statutory cites:** HEA Part B

**Regulatory cites:** 34 CFR Part 682

**Summary of issue:**

The SAFRA Act included in the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) amended Part B of the HEA to provide that no new loans could be made under the FFEL Program after June 30, 2010. Accordingly, all new Stafford, PLUS, and Consolidation loans have been made through the Direct Loan Program since July 1, 2010. As a result of this change, certain sections of the FFEL Program regulations (or portions of certain sections) containing provisions related to the making and disbursement of new loans may no longer be needed. Certain other provisions may also be obsolete. Removal of these unnecessary provisions would simplify the FFEL Program regulations.

The FFEL Program regulations also require minor technical and conforming changes in various areas to correct errors and reflect the impact of the SAFRA Act. There may also be areas of the FFEL Program regulations that could be made easier to read by restructuring the current regulatory language, without changing the content (e.g., deferment provisions).

**Issue Paper #12**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Modification of Direct Loan Program regulations

**Statutory cites:** HEA Part D

**Regulatory cites:** 34 CFR Part 685

**Summary of issue:**

The current Direct Loan Program regulations include cross-references to the FFEL Program regulations for certain provisions that apply in both loan programs (in particular, definitions of various terms and the eligibility requirements for certain deferments). Adding these provisions to 34 CFR 685 would allow the Direct Loan Program regulations to stand on their own, eliminating the need to refer to 34 CFR 682 for terms and conditions that apply to Direct Loans. The current Direct Loan Program regulations also include certain provisions that are no longer consistent with current procedures used in administering the Direct Loan Program and may need to be updated (e.g., definitions of the different school origination options).

The Direct Loan program regulations also require minor technical and conforming changes in various areas to correct errors and reflect the impact of the SAFRA Act that was included in the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152). The SAFRA Act amended Part B of the HEA to provide that no new loans could be made under the FFEL Program after June 30, 2010. There may also be areas of the Direct Loan Program regulations that could be made easier to read by restructuring the current regulatory language, without changing the content (e.g., deferment provisions).

**Issue Paper #13**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Total and Permanent Disability Discharge: Single Application Process

**Statutory Cites:** §§437(a), 464(c)(1)(F), and 464(k)

**Regulatory Cites:** §§674.61(b), 682.402(c), 682.402(g), 682.402(h), 682.402(k), 682.402(r), 685.213, and 686.42(B)

**Summary of Issue:**

Currently, a Title IV loan borrower applying for a total and permanent disability (TPD) discharge must submit a discharge application to each of the borrower's loan holders. The loan holder then makes an initial determination of the borrower's eligibility for a TPD discharge. If the loan holder determines that the discharge application supports the conclusion that the borrower appears to qualify for a TPD discharge, the holder assigns the loan to the U.S. Department of Education (ED). For non-defaulted FFEL Program loans, both the loan holder and the guaranty agency must agree that the borrower appears to qualify for a TPD discharge before the loan is assigned to ED. After accepting the assignment, ED makes the final determination of whether the borrower qualifies for a discharge.

For Direct Loans and other Title IV loans held by ED at the time the borrower applies for a TPD discharge, the initial and final determinations of eligibility are made solely by ED. ED also makes all eligibility determinations for TEACH Grant recipients who apply for a TPD discharge of their TEACH Grant service obligations.

Under a streamlined TPD discharge process, a borrower would submit one TPD discharge application directly to ED. For borrowers with multiple Title IV loans, the process would be greatly simplified. Upon receipt of a TPD application, ED would check the borrower's loan history in NSLDS to make sure all loans that would be eligible for a discharge are included in the TPD discharge review process.

The advantages of a single TPD discharge application process would include the following:

- Simplification of the application process for borrowers.
- A single point of contact for borrowers throughout the TPD discharge process.
- Reduction in the length of time needed to process TPD discharge applications.
- More consistency in TPD eligibility determinations.

However, there may also be disadvantages to implementing a single application process. All TPD applications will now be reviewed by ED regardless of their completeness. ED will be required to conduct more follow-up with TPD applicants and their certifying physicians to correct simple errors that currently the loan holder corrects before assigning the loan to ED. A single application process would also remove one level of review of TPD discharge applications.

In addition, issues relating to the status of the loan during the TPD review process—such as if and when the loan is assigned to ED and the timing of lender claim payments and guaranty agency reinsurance payments in the FFEL program—would need to be addressed in the regulations.

**Issue Paper #14**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Total and Permanent Disability Discharge: Borrower Notification of Denial

**Statutory Cites:** §§437(a), 464(c)(1)(F), and 464(k)

**Regulatory Cites:** §§674.61(b)(3)(ii), 682.402(c)(3)(iii), and 685.213(b)(2)(iii)

**Summary of Issue:**

The regulations for the Perkins Loan, FFEL and Direct Loan programs governing discharges for total and permanent disability (TPD) state that if the U.S. Department of Education (ED) determines that a borrower does not qualify for a TPD discharge, ED notifies the borrower that the application for a TPD discharge has been denied, and instructs the borrower to resume making payments on the loan. The denial letters that ED currently sends to borrowers provide additional information beyond what is specified in the regulations, such as the reason for the denial and an explanation of how a borrower may request that the TPD discharge application be re-evaluated.

ED has received public comment recommending that the regulations governing TPD denials reflect the information currently included in ED's TPD discharge denial letters and include additional information (beyond what is currently included in the letters) that might be helpful to borrowers.

**Issue Paper #15**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Total and Permanent Disability Discharge: Post-Discharge Monitoring of Employment Earnings

**Statutory Cites:** §§437(a), 464(c)(1)(F), and 464(k)

**Regulatory Cites:** §§674.61(b)(5)(i), 682.402(c)(5)(i)(A), and 685.213(b)(4)(i)(A)

**Summary of Issue:**

After a total and permanent disability discharge has been granted, the borrower enters a 3-year post discharge monitoring period that begins on the date the loan was discharged. If, for any year during this period, the borrower has annual earnings from employment that exceed the poverty guideline amount for a family of two, the discharged loan is reinstated. A loan may also be reinstated if the borrower fails to provide required documentation of employment earnings to the U.S. Department of Education (ED) during the 3-year post-discharge monitoring period.

Because the 3-year post-discharge monitoring period begins on the discharge date, in most cases it is necessary for ED to obtain employment earnings information for two partial calendar years at the beginning and end of the 3-year period. For example, if a discharge was granted on June 30, 2011, documentation of employment earnings will be needed for the periods July 1 to December 31, 2011, all of 2012, all of 2013, and January 1, to June 30, 2014.

Documentation of employment earnings (or lack of earnings) is difficult to obtain for partial calendar years. Borrowers have not filed income tax returns for a calendar year that isn't over; social security earnings statements only provide income information on a calendar-year basis; and other documentation of employment earnings that a borrower could provide for a partial calendar year may be inconclusive. Monitoring a borrower's post-discharge employment earnings for three complete calendar years beginning on January 1<sup>st</sup> of the year after the discharge was granted would make it easier for borrowers to provide employment earnings documentation to ED, and would reduce the number of borrowers whose loans are reinstated due to the borrower's failure to provide such documentation.

**Issue Paper #16**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Title IV Closed School Loan Discharge

**Statutory Cites:** §§437(c)(1) and 464(g)

**Regulatory Cites:** §§674.33(g), 682.402(d), and 685.214

**Summary of Issue:**

Under current regulations, borrowers in the Federal Perkins Loan, Direct Loan, and FFEL programs (and PLUS loan endorsers) may receive a loan discharge if the borrower (or the student on whose behalf a parent borrowed) could not complete the program of study at the school because the school closed while the borrower (or student) was enrolled, or the borrower (or student) withdrew from the school no more than 90 days before the school closed.

The regulations provide that the 90-day period may be extended if the U.S. Department of Education (ED) determines that exceptional circumstances related to the school closure justify an extension. The school's closure date is the date the school ceases to provide educational instruction in all of its programs, as determined by ED. For closed school discharge purposes a "school" is a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible for title IV purposes.

Public commenters suggested that the 90-day window for student withdrawal prior to a school's closure date may be insufficient, because, in some cases, there may be indications of a school's pending closure that may prompt a student to withdraw more than 90 days prior to the school's identified closure date. The commenters also noted that ED has never specified or provided examples in the regulations of the exceptional circumstances under which ED would extend the 90-day window.

**Issue Paper #17**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Satisfactory Repayment Arrangements on Defaulted Title IV Loans for Borrowers who also Rehabilitate the Loan

**Statutory Cite:** §428F(b)

**Regulatory Cites:** §§674.2(b), 674.39(a)(2), 682.200(b), 682.405(a)(2)(i) and 685.102(b)

**Summary of Issue:**

A borrower who has defaulted on a Title IV loan may regain eligibility for Title IV aid by making satisfactory repayment arrangements on the defaulted loan. For this purpose, satisfactory repayment arrangements are defined as making six consecutive on-time monthly payments. A borrower may regain Title IV eligibility by making satisfactory repayment arrangements on a defaulted loan only once.

Defaulted borrowers also have the option of rehabilitating a defaulted Title IV loan by making a series of on-time, voluntary, full monthly payments as part of a rehabilitation agreement with the loan holder. To rehabilitate a loan in the Direct Loan or FFEL programs, borrowers are required to make 9 reasonable and affordable payments within 20 days of the due date during 10 consecutive months. In the Perkins Loan program, to rehabilitate a loan, a borrower is required to make 9 consecutive monthly payments. In the course of making loan rehabilitation payments, a borrower could also make the six consecutive on-time monthly payments necessary to regain eligibility for Title IV aid. However, a borrower who is working to rehabilitate a defaulted loan might not have plans to return to school or to seek additional Title IV aid at the time the borrower makes the rehabilitation payments.

Under the Department of Education's current policy on the one-time opportunity for making satisfactory repayment arrangements, if a borrower re-defaults on a loan that was previously rehabilitated, the borrower is not considered to have already used up the one-time opportunity to make satisfactory repayment arrangements. However, we understand that some program participants have interpreted the law to provide that a borrower automatically makes satisfactory repayment arrangements at the time the borrower rehabilitates a defaulted loan even if the borrower has no intent to receive additional Title IV aid at that time and is unaware that he or she is using the one opportunity to make satisfactory repayment arrangements afforded under the law. Under this interpretation, if a borrower re-defaults on a previously rehabilitated loan, the borrower has no other opportunity to make satisfactory repayment arrangements to regain Title IV eligibility.

ED is examining whether the six consecutive, on-time, monthly payments made as part of a rehabilitation agreement should count as satisfactory repayment arrangement payments only if the borrower and the loan holder agree that the payments are also intended to be satisfactory repayment arrangements to regain Title IV aid eligibility and the borrower applied for and received such aid within a reasonable time after making the six payments.

**Issue Paper #18**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** School Enrollment Status Reporting Requirements

**Statutory Cites:** §§428(b)(1)(P), 454(a)(1)(E)(i), and 487(a)(3) and (5)

**Regulatory Cites:** §§682.610(c) and 685.309(b)

**Summary of Issue:**

Current FFEL Program regulations require a school, upon receipt of a student status confirmation report from the Secretary or a similar report from a guaranty agency, to complete and return the report to the Secretary or guaranty agency, as appropriate. Unless the school expects to submit its next student status confirmation report to the Secretary or guaranty agency within the next 60 days, current regulations require a school to notify the guaranty agency or lender within 30 days if the school discovers that a student who received a FFEL Program loan has changed his or her permanent address, or discovers that: (1) a FFEL Program loan has been made to or on behalf of a student who enrolled at the school, but who has ceased to be enrolled on at least a half-time basis; (2) a loan has been made to or on behalf of a student who has been accepted for enrollment, but who failed to enroll on at least half-time basis; or (3) a loan has been made on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

Current Direct Loan Program regulations include comparable requirements for schools to submit student status confirmation reports and address and enrollment status changes to the Secretary, except that there is no requirement for a school to report that a student who received a Direct Loan has ceased to be enrolled on a full-time basis. In addition, current Direct Loan Program regulations specify that the Secretary provides student status confirmation reports to a school at least semi-annually, and that the Secretary may provide these reports in either paper or electronic format.

Current Perkins Loan regulations do not include comparable requirements for enrollment status reporting to the Department of Education for Perkins Loan borrowers. Some Perkins Loan participating schools and Perkins loan servicers have indicated that having enrollment information on Perkins borrowers from all schools would improve loan servicing in the Perkins program.

The regulations for both the FFEL and Direct Loan programs reflect terminology and procedures that are no longer consistent with current practices (e.g., the term “student status confirmation report,” the means by which schools report enrollment information, and the references in the Direct Loan Program regulations to the frequency with which the Secretary provides student status confirmation reports and the format of those reports). In addition, the FFEL Program requirement for a school to report that a student has ceased to be enrolled on a full-time basis reflects an obsolete eligibility requirement.

**Issue Paper #19**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Federal Perkins Loan Graduate Fellowship Deferment Eligibility

**Statutory Cite:** §464 (c)(2)(A)(i)(II)

**Regulatory Cite:** §674.34(f)

**Summary of Issue:**

As specified in the Federal Student Aid (FSA) Handbook, the Department of Education (ED) uses the eligibility criteria in §682.210(d) of the FFEL program regulations (which also apply to Direct Loan Program borrowers) to determine if a Perkins borrower qualifies for a graduate fellowship deferment (2010-11 FSA Handbook, p. 6-68). Perkins schools and their loan servicers are expected to use the same criteria in making determinations of graduate fellowship deferment eligibility. Using the same eligibility criteria in the Perkins program that is used in the FFEL and Direct Loan programs provides for consistent borrower treatment across the three Title IV loan programs. However, the Perkins regulations do not currently include or even cross-reference the FFEL graduate fellowship deferment eligibility criteria. Rather, Perkins regulations simply state that to qualify for a graduate fellowship deferment a borrower “must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.”

Under the FFEL program regulations, an eligible graduate fellowship program is a program that:

- Provides sufficient financial support to allow for full-time study for at least six months;
- Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
- Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and
- In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

The FFEL regulations also require a statement signed by an official of the program certifying:

- That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;
- That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and
- The borrower's anticipated completion date in the program.

ED is considering adding these criteria to the Perkins graduate fellowship deferment regulations.

**Issue Paper #20**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Social Security Number Requirement for Assignment of Federal Perkins Loans to the Department of Education

**Statutory Cite:** N/A

**Regulatory Cite:** §674.50(e)(1)

**Summary of Issue:**

Under current regulations, the Department of Education (ED) does not accept assignment of a Perkins Loan if the school assigning the loan cannot provide a Social Security Number (SSN) for the borrower. The exception in §674.50(e)(1) for loans assigned through mandatory assignment pursuant to §674.8(d)(3) does not apply because ED no longer has the authority under the HEA to require mandatory assignment of Perkins Loans under this regulatory provision.

Schools participating in the Perkins Loan program are required to liquidate their Perkins Loan portfolios and assign all of their outstanding loans to ED if they close, undergo changes of ownership, voluntarily leave the Perkins Loan program, or are terminated from the program. In the early years of the Perkins Loan Program, schools were not required by ED to obtain SSNs from borrowers when awarding and servicing Perkins Loans. As a result, schools often do not have SSNs for older loans in their Perkins portfolios that were made during this period and that have proven over time to be uncollectible. Because current regulations require schools to provide the SSNs of borrowers when assigning loans to ED, schools that are liquidating their Perkins Loan portfolios are unable to assign these loans. Since ED did not require collection of the borrowers' SSNs when the loans were awarded, schools are not considered to be out of compliance with Perkins Loan program requirements in this situation and are not required to reimburse their Perkins Loan funds for the amount of these loans. In addition, schools have only limited authority to write-off federal student loan assets. Schools may only write-off Perkins Loans that have an outstanding balance of less than \$50. Thus, these Perkins loans remain uncollectible by either the school or ED, resulting in no return to the school's Perkins fund to make new loans and no return to the taxpayers.

ED has worked over the last few years to streamline the Perkins liquidation process to facilitate required liquidations and encourage voluntary liquidations. ED is unable to complete full liquidation of some schools' Perkins Loan portfolios without in some way relaxing the SSN requirement for Perkins Loans assignments.

**Issue Paper #21**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Federal Perkins Loan Cancellation Rate Progression Across Cancellation Categories

**Statutory Cite:** §465(a)(3)(A)

**Regulatory Cites:** §§674.52, 674.53(d), 674.56(h), 674.57(c)(2), 674.59(c)(2) and 674.60(b)

**Summary of Issue:**

Perkins Loan Program borrowers may receive cancellation of their Perkins Loans under various cancellation categories. The cancellation categories include teaching in certain schools or subject areas, employment in an eligible position in a child or family service agency, employment in an eligible position in a law enforcement agency, and several other categories related to public service. The cancellation rates are progressive, with a percentage of the principal balance of the borrower's loan cancelled for each year of eligible service. The cancellation rates are generally 15% for the 1<sup>st</sup> and 2<sup>nd</sup> years of service, 20% for the 3<sup>rd</sup> and 4<sup>th</sup> years of service, and 30% for the 5<sup>th</sup> year of service.

If a borrower changes jobs, and, as a result, switches from one cancellation category to another, the cancellation rate progression starts over at the first -year service rate for the new cancellation category. For example, if a borrower receives cancellation at the 15% rate for each of the first two years of employment as a teacher, and then changes to a different job that qualifies the borrower for a child or family service cancellation, the borrower will receive a 15% cancellation for his or her first year of service as an employee of a child or family service agency, rather than the 20% cancellation the borrower would have received for a 3<sup>rd</sup> year in an eligible teaching position.

The requirement that a borrower who switches cancellation categories start over at the first-year cancellation rate is a longstanding policy, based on ED's interpretation of the statutory and regulatory provisions governing cancellations in the Perkins Loan program. However, this policy is not explicitly addressed in the statute or regulations.

**Issue Paper #22**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** Federal Perkins Loan Economic Hardship Deferment Debt-to-Income Ratio Provision

**Statutory Cite:** §435(o)

**Regulatory Cite:** §674.34(e)(4)

**Summary of Issue:**

The College Cost Reduction and Access Act (CCRAA) amended the definition of “economic hardship” in §435(o) of the HEA by eliminating §435(o)(1)(B), which included a borrower who is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower’s adjusted gross income (AGI), if the difference between the borrower’s AGI and the borrower’s Federal debt burden is less than 220 percent of either the annual minimum wage or the poverty line.

The Department of Education published final regulations to implement the CCRAA on October 23, 2008. The final regulations eliminated the debt-to-income economic hardship deferment category from the Perkins, Direct Loan and FFEL regulations that was based on former §435(o)(1)(B) of the HEA. The final regulations also eliminated a similar debt-to-income economic hardship deferment category for a borrower who is working less than full-time from the Direct Loan and FFEL regulations, but inadvertently retained this category in the Perkins regulations, thus creating a disparity between the economic hardship deferment eligibility criteria in the Perkins program and the eligibility criteria in the Direct Loan and FFEL programs.

**Issue Paper #23**  
**Proposed Regulatory Language**

**Loans Group**

**Issue:** Federal Perkins Loan Program: Break in Cancellation Service Due to a Condition Covered Under the Family and Medical Leave Act (29 U.S.C. 2601 et. seq.)

**Statutory Cites:** §§465(a)(3)(A) and 465(a)(4)

**Regulatory Cites:** §§674.52(b)(2), 682.216(c)(7)(ii), and 685.217(c)(7)(ii)

**Summary of Issue:**

A Perkins borrower must perform a complete year of eligible service to qualify for a partial cancellation of a Perkins Loan. The year of service can either be an academic year (for teacher and early childhood education cancellations) or 12 consecutive months (for the other cancellation categories). Under §674.52(b)(2) of the Perkins regulations, a partial academic year of eligible teaching service may qualify a Perkins borrower for teacher cancellation if the teacher did not complete the second half of the academic year due to an illness or pregnancy and if the borrower’s employer considers the borrower to have fulfilled the teacher contract for the year. For the other cancellation categories, the Perkins regulations provide no exceptions to the requirement for a borrower to perform 12 consecutive months of service.

There are similar provisions in the Direct Loan and FFEL teacher loan forgiveness regulations. To qualify for teacher loan forgiveness, a Direct Loan or FFEL borrower must perform 5 consecutive, complete academic years of eligible teaching service. If the borrower is unable to complete the second half of an academic year of teaching due to a condition covered under the Family and Medical Leave Act (FMLA), the teaching service may still count as a year of eligible teaching service if the borrower’s employer considers the borrower to have fulfilled the teacher contract requirements for that academic year.

Conditions covered under the FMLA include:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee’s spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty;” and
- to care for a covered service member with a serious injury or illness who is the spouse, son daughter, parent, or next of kin to the employee (military caregiver leave).

The Department of Education is considering replacing the Perkins exception to the complete academic year requirement due to illness or pregnancy with the Direct Loan/FFEL exception due to a condition covered by the FMLA. This would provide for more consistent treatment of similarly situated borrowers who are performing teaching service that may qualify them for either Perkins teacher cancellation or Direct Loan/FFEL teacher loan forgiveness.

In addition, we are considering applying the exception for a condition covered under the FMLA to the 12-consecutive months of eligible service requirement that applies to the other Perkins cancellation categories.

**Issue Paper #24**  
**Proposed Regulatory Language**

**Loans Group**

**Issue:** Standard for On-Time Rehabilitation Payments in the Federal Perkins Loan Program

**Statutory Cites:** §§428F(a)(1)(A) and 464(h)(1)(A)

**Regulatory Cites:** §§674.39(a)(2), 682.405(a)(2)(A)(3), and 685.211(f)(1)

**Summary of Issue:**

In the FFEL and Direct Loan programs, a qualifying payment made under a loan rehabilitation agreement must be received “within 20 days of the due date” for the payment. In the Perkins Loan program, there is no uniform standard for when a payment made under a loan rehabilitation agreement must be received. A rehabilitation payment in the Perkins Loan program must be on-time “as determined by the institution.” The Perkins regulatory language reflects the statutory language for Perkins Loan rehabilitation payments, which requires a borrower to make “9 on-time, consecutive monthly payments of amounts owed on the loan as determined by the institution.”

Schools may have different standards for when a rehabilitation payment qualifies as “on-time.” These different standards can be confusing for borrowers who are rehabilitating Perkins Loans from different schools, or are rehabilitating Perkins Loans as well as FFEL or Direct Loans. The different institutional standards for on-time rehabilitation payments also make it difficult for collection agencies servicing loans held by different Perkins schools to track qualifying loan rehabilitation payments.

Non-federal negotiators have proposed applying the standard for on-time rehabilitation payments used in the FFEL and Direct Loan programs to the Perkins Loan Program.

**Issue Paper #25**  
**Proposed Regulatory Language**  
**Loans Group**

**Issue:** FFEL Program Administrative Wage Garnishment (AWG) Hearings for Defaulted Borrowers

**Statutory Cite:** §488A

**Regulatory Cite:** §682.410(b)(9)

**Summary of Issue:**

Section 488A of the HEA authorizes the Secretary and guaranty agencies in the FFEL program to garnish up to 15% of a defaulted borrower's disposable income, unless the individual consents to a greater percentage. Borrowers that are subject to such garnishment must be provided with a notice no less than 30 days prior to initiation of garnishment proceedings against the borrower informing the borrower of the nature and the amount of the debt, the intention of the guaranty agency or Secretary, as appropriate, to initiate garnishment, and an explanation of the rights of the individual. The borrower is also provided with an opportunity to inspect and copy records relating to the debt, the opportunity to enter into a written agreement to repay the debt, and an opportunity for a hearing on the existence or amount of the debt or the terms of the repayment schedule.

Under FFEL program regulations governing AWG hearings, the hearing may be, at the borrower's option oral or written. If a borrower's written request for a hearing is received on or before the 15th day following the borrower's receipt of the notice, the hearing must be conducted before any garnishment order may be issued to the borrower's employer. A hearing may be requested after that date so that a decision may be rendered within 60 days but it does not delay the issuance of the withholding order to the employer unless the guaranty agency determines that the delay in filing the request was beyond the borrower's control or the agency has received information that it believes justifies delaying or cancelling the withholding order.

Sub-regulatory guidance provided to guaranty agencies on the conduct of AWG hearings also provides for the guaranty agency's consideration of whether the rate or amount of the proposed garnishment would result in financial hardship to the borrower or the borrower's dependents. This factor of consideration is not currently reflected in FFEL program regulations. Loan Committee members asked that the regulations governing AWG be revised to include this as part of the hearing requirement.