

Archived Information

U.S. DEPARTMENT OF EDUCATION TITLE IV NEGOTIATED RULEMAKING TEAM

TEAM I: LOAN ISSUES

Meeting Summary Second Session March 4 - 6, 2002 Washington, D. C.

Welcome

The second negotiating session of Team I commenced at approximately 9:00 a.m. on March 4, 2002, as scheduled, and adjourned on March 5, 2002, at approximately 5:00 p.m., having completed its agenda. Negotiators for all members of Team I and both facilitators were present.

Review and Adopt Draft Summary of January 14-16, 2002 Meeting

The draft meeting summary was adopted with revisions. The final meeting summary will be released to the public and distributed via the listserv and the Department of Education website.

Issue of Late Disbursements (Fed Up #35)

This issue was originally on the agenda of Team II. Team I requested responsibility for it, but Team II decided to maintain it on its negotiating agenda and invite suggestions from Team I. This was acceptable to Team I. During this session, Team I reviewed the draft language proposed by the Department and provided comments. The facilitators agreed to relate these comments to Team II during its March 6–8 negotiating session. If revised language is provided by the Department for the April negotiating session, that language will be distributed to Team I for review and comment at its April 22-24 meeting.

Review Draft Regulatory Language

The agenda for the meeting was comprised of reviewing documents previously distributed by the Department and updates on other issues, which the Department viewed as non-regulatory items. For each issue, the federal negotiator explained each proposed regulation or Department action, which was then discussed by the negotiators. When possible, the negotiators reached tentative agreements (TA) on draft language for the issue.

Below is the status of each issue on the negotiating agenda resulting from this negotiating session. Where no agreement is indicated, the topic will be addressed at the April 22-24 negotiating session.

FFEL Eligible Lender (Fed Up #4) 682.200(b) **TA**

FFEL Repayment First Payment Due Date (Fed Up #25) 682.209(a)

There was dissent from the Department's proposal.

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FFEL Borrower Repayment Terms (Fed Up #27)	682.209(a)(8)(iv)	TA
FFEL Sovereign Immunity – Proofs of Claims	682.402(f)(4)	TA
FFEL Copies of Promissory Notes (Fed Up #54)	682.402(g)(1)(i)	
The remaining question on this issue revolves around the inclusion of “unpaid refunds” in the draft regulatory language.		
Perkins Transfer of Funds	674.17	TA
Perkins Multiple Monthly Repayments	674.33(b)(2); 674.42(a)(11)	TA
Perkins Economic Hardship for Borrowers	674.34(e)(10)	
The major concern regarding this issue is its proposed application to the FFEL program.		
Perkins Promissory Notes (Fed Up #13)	674.42(a)(10)	TA
Perkins Credit Bureau Reporting (Fed Up #21)	674.45(a)(i)	TA
Perkins Assignment of Cancelled Loans	674.50(e)(4)	TA
Perkins Reimbursement to the Fund	674.50(g)(2)	TA
Direct Loan Definition of Default	668.183(c)(iii)	TA
Direct Loan Master Promissory Note	685.102(b)	TA
Perkins Loan Disbursements	674.2(b); 674.16(d)(2)	TA
Perkins Copies of Promissory Notes (Fed Up #54)	674.19(e)(4)	
There was no substantive objection to applying the proposed written notice provision to Perkins loans, however, given the Department’s intent to have the same promissory note rules for Perkins, FFEL and Direct Loan programs, there was dissent from the proposal at this time.		
Perkins Exit Counseling	674.42(b)	TA
Perkins Litigation (Fed Up #16)	674.46(a)(1)	
The two key items that require additional discussion are: 1) the loan balance threshold and 2) the frequency of an institution’s review to determine whether to pursue litigation.		
Perkins Write-offs (Fed Up #20)	674.47 (h)	
Conceptual agreement pending review by negotiators of revised draft language to be prepared by the Department.		

Perkins Late Charges (Fed Up #14) 674.43(b) **TA**

Perkins Rehabilitation of Loans (Fed Up #17) 674.39
The key question regarding the proposal to disallow the rehabilitation of loans after a judgment is the impact this would have on the borrower's future eligibility for Title IV loans.

FFEL Loan Limits 682.204 **TA**

FFEL Anticipated Graduation Date (Fed Up #33) 682.209(a)(2) **TA**
The Department will review the language in light of the Team's discussion to determine if additional clarification is needed.

FFEL Repayment – Three-times rule (Fed Up #26) 682.209(a)(7)(ii)
There was dissent from the language proposed by the Department.

FFEL Unemployment Deferment 682.210(h)
The Department will revise the draft language based on a number of questions raised by the negotiators.

FFEL Forbearance Simplification (Fed Up #53) 682.211(b)-(e)
Conceptual agreement, pending review of revised language to be provided by the Department.

FFEL Administrative Forbearances 682.211 (f) **TA**

FFEL Disability Discharge on Consolidation Loans (Fed Up # 52) 682.402 (a)-(b) **TA**

FFEL Reinsurance (Fed Up #57) 682.412
The Department's interpretation of the statute suggests that the proposed Fed Up change is not allowed under the Higher Education Act. Some non-federal negotiators are developing an alternative legal analysis of the statute. In addition, the Department will check whether it is permissible to exclude reinsured loans in the calculation of an institution's cohort default rate.

FFEL Promissory Notes 682.414(a)(5) **TA**
The Department agreed to make a technical correction concerning imaging of promissory notes and the negotiators agreed to conclude their discussions regarding destroying paper notes for this round of negotiated rulemaking.

FFEL Entrance and Exit Counseling 682.604(f) & (g)
Various options for providing information regarding indebtedness are under consideration.

FFEL Disability Claims 682.402(h)(1) **TA**
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FFEL Late Disbursements (Fed Up #35 and #36) 668.164(g)(3)(ii)

Team I's comments will be provided to Team II for its review.

FFEL Rehabilitation of Loans (Fed Up #17) 682.405

A key question regarding the proposal to disallow the rehabilitation of loans after a judgment is the impact this would have on the borrower's future eligibility for Title IV loans. An additional concern is the desire of FFEL guaranty agencies to continue to allow lenders to rehabilitate loans after judgments and the Department's intent to apply the same rules to all loan programs.

Direct Loan Rehabilitation of Loans (Fed Up #17) 685.102(b), 685.211(f)

The key question regarding the proposal to disallow the rehabilitation of loans after a judgment is the impact this would have on the borrower's future eligibility for Title IV loans.

Direct Loan Entrance and Exit Counseling 685.304

Various options for providing information regarding indebtedness are under consideration.

Direct Loan Loan Limits

TA

Direct Loan Disability Discharge on Consolidation Loans

682.402; 685.212 & 220 **TA**

Public Comment

Opportunities for public comment were provided at various times throughout the meeting.

Next Meeting

The Department will provide draft regulatory language at least seven days prior to the next session. For all issues resolved by new regulatory language, the Department will provide the amendatory language of the draft Notice of Proposed Rulemaking (NPRM) as well as a redlined version.

The next meeting is scheduled for April 22-24, 2002, during which the Team will undertake a thorough review of each unresolved issue in an attempt to reach tentative agreements on each remaining item, and a final consensus on the complete package.