

From: Jessica Ranucci, Primary Negotiator for Consumer Advocates; Yael Shavit, Primary Negotiator Representing State Attorneys General; Kyra Taylor, Primary Negotiator Representing Legal Assistance Organizations that Represent Students or Borrowers; and John Whitelaw, Primary Negotiator for Individuals with Disabilities or Groups Representing Them

To: U.S. Department of Education

Re: Proposed revision to 34 C.F.R. § 30.80(f)-(g) to include waiver of debts incurred for institutions/programs that have lost Title IV eligibility

Background:

We appreciate the Department's commitment to providing debt relief to students who attended schools or programs that did not provide them sufficient financial value. We further appreciate that the Department has recognized that the loss of a program or institution's Title IV eligibility in certain circumstances enumerated in the Department's draft, specifically, under the gainful employment rules and cohort default rate, is an appropriate basis for debt relief. While we generally support the Department's proposal (with one important exception, noted in the section below), we propose that the Department instead consider providing debt relief in broader circumstances in which the Department takes an accountability action that would lead to a borrower's institution's or program's loss of Title IV eligibility.

Department actions for loss of Title IV eligibility only happen in extreme circumstances, after the Department has satisfied a high evidentiary burden. Such an action is a clear marker of a program or school that did not provide sufficient value to its students: that is exactly why the Department is prohibiting its participation in the future. This proposed regulatory language encompasses additional instances where the Department takes action to end Title IV eligibility in response to school misconduct that harms students. Further, one important circumstance covered by this proposed regulation that is not covered by the Department's current proposal is when an institution loses accreditation, resulting in a Department action for loss of Title IV eligibility, but remains open.

Proposed Regulatory Text:

§ 30.80 Waiver of Federal student loan debts.

(f) Programs or institutions subject to a loss of eligibility

(1) The Secretary may waive the outstanding balance on any loan obtained to attend a program or institution with respect to which the Secretary takes any termination action, revocation action, or similar action to remove title IV, HEA eligibility, with respect to any borrowers who were enrolled during an appropriate period of time prior to the action, as determined by the Secretary, which shall not be less than one year prior to the action.

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

~~(i) The Secretary determines that the GE program has failed the debt to earnings (D/E) rates measure, or has failed the earnings premium measure,~~

~~under paragraph (f) (2) of this section in two out of any three consecutive award years for which the program's D/E rates or earnings premium, as applicable, are calculated.~~

~~(ii) The borrower—~~

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

~~(B) Withdrew from the program within—~~

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

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

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

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

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

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

~~(ii) For award years 2015-2022 and any subsequent award year where the Secretary does not calculate D/E rates and the earnings premium for a program under part 668, subpart Q for reasons other than those described in § 668.403(f) or § 668.404(d), as applicable, the Secretary will calculate the measures by [using available data and a methodology that reasonably approximates those described in §§ 668.403, 668.404, and 668.405].~~

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

(g) [reserved]

Alternative proposal on existing Gainful Employment language in proposed 30.80(f): Our proposal above would largely encompass the Department's Gainful Employment proposal. However, the Department may choose to keep its initial approach, or add our proposed language in addition to its Gainful Employment language. In that circumstance, we propose certain revisions to the Department's Gainful Employment proposal below. Specifically, this proposal provides relief to borrowers who attended a cohort that failed the debt to earnings and income premium measures, regardless of whether that cohort failure ultimately resulted in the program losing Title IV eligibility.

Additionally, as we raised in the second session, we have serious concerns about the acknowledgement provision in proposed 30.80(f). This section excludes from debt relief all borrowers who enroll in a gainful employment program after that program has failed the D/E metric or earnings premium for one year, but before the program has lost Title IV eligibility because all prospective students are required to complete an acknowledgement to obtain further Title IV aid under 668.605(g). These are some of the most disadvantaged borrowers. We are extremely concerned that this acknowledgement will be manipulated by predatory actors. In the past, predatory schools have rushed students through enrollment paperwork without providing them the opportunity to understand or even read what they are signing. Further, this could not be more contrary to the original purpose of the acknowledgement provision, which was to "assist students in making informed choices about their postsecondary education" by giving prospective students an early warning that a program could potentially lose Title IV. It was not intended to have a punitive effect of excluding borrowers from receiving debt relief. Additionally, we have concerns that this provision is not administrable. Would the Department require that the acknowledgment indicate that the borrower understands that they are essentially waiving the right to future waiver of their loan balance if the program fails the metrics again? This is not specified in the regulation. If not, wouldn't such an acknowledgement be materially incomplete? Finally, 668.605(h) makes clear that an acknowledgement is not "considered as dispositive evidence against a student's claim if applying for a loan discharge." Yet, the Department's proposed requirement that a borrower not complete the acknowledgement seems like an end-run around that principle, as it makes the acknowledgement dispositive that a student cannot obtain a waiver of their loan balance.

Proposed Regulatory Text:

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

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

(ii) The borrower—

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

(B) Withdrew from the program within—

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

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

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

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

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

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

(ii) For award years 2015-2022 and any subsequent award year where the Secretary does not calculate D/E rates and the earnings premium for a program under part 668, subpart Q for reasons other than those described in § 668.403(f) or § 668.404(d), as applicable, the Secretary will calculate the measures by [using available data and a methodology that reasonably approximates those described in §§ 668.403, 668.404, and 668.405].