



★ FROM THE OFFICE OF THE PRESIDENT ★

August 10, 2015

[Docket ID ED-2014-OPE-0161]

Response to NPRM on General Provisions, FFEL/DL Programs
U.S. Department of Education

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), I am responding to your request for comment on the Notice of Proposed Rulemaking published on August 8, 2015. NASFAA represents more than 20,000 financial aid administrators at approximately 3,000 colleges and universities; nine out of every 10 undergraduates attend NASFAA member institutions.

We appreciate the Department of Education diligence in seeking public input throughout the regulatory process.

If you have any questions on any of our comments, please contact Karen McCarthy (mccarthyk@nasfaa.org, or 202.785.6974).

Sincerely,

Justin Draeger
President

NASFAA COMMENTS ON GENERAL PROVISIONS, FFEL/DL NPRM

General

While we remain supportive of the negotiated rulemaking process, this particular negotiating rulemaking session exposed the most glaring weakness in the Department of Education's (ED) negotiating model - namely, ED's incentive to achieve consensus in negotiations is far lower than that of the non-federal negotiators, since lack of consensus permits ED to issue proposed rules as it sees fit. The repercussions are that proposed rules, whether or not consensus was achieved, always reflect ED's regulatory intentions and priorities and may contradict the wishes of all other negotiators at the table. In the case of this negotiated rulemaking session, a large majority of non-federal negotiators objected strongly to ED creating a new income-driven repayment plan rather than modifying the terms of the existing Pay As You Earn plan. In the history of negotiated rulemaking, we have never seen such unanimous objections to an ED regulatory proposal, across all the constituencies represented by the non-federal negotiators. In the end, non-federal negotiators gave up the fight and concentrated their efforts on making the REPAYE plan the "least bad" as possible.

Budget constraints played a significant role in these negotiations, as evidenced by ED's frequent claims that several alternative proposals introduced during negotiations were "too costly to taxpayers." Although non-federal negotiators pleaded with ED several times to share budgetary details and cost estimates for certain proposals so they could negotiate more efficiently, ED declined to provide any budget data. This led to an information imbalance, in which one negotiator (the federal representative) was negotiating with the benefit of useful information to which none of the other negotiators had access.

In combination, these two issues created an environment that did not represent a true negotiation, and, if allowed to continue unchecked in future negotiations, may erode the community's support and belief in the negotiated rulemaking process as a whole.

Participation Rate Index Challenges and Appeals

We strongly support the proposed changes to the cohort default rate (CDR) participation rate index (PRI) challenge and appeal processes that would allow schools to challenge and/or appeal a CDR that exceeds allowable thresholds in any year, rather than only permitting such challenges and appeals from schools that are subject to immediate sanctions and/or loss of Title IV eligibility. The proposed rules provide assurance and predictability to affected schools and hopefully will stem the tide of schools leaving the federal student loan programs as a precautionary measure rather than risk their participation in all Title IV programs.

Given the benefits for schools and the students they serve, we encourage you to implement these proposed rules in 2016 rather than in February 2017 as proposed. We understand that ED's agreement to offer expanded opportunities for schools to challenge and appeal their CDR

was contingent on the 2017 implementation of its computerized data challenge and appeals solution system (DCAS). However, we believe that the increased workload for ED to process additional challenges and appeals with its current process prior to implementation of DCAS will be minimal, since only a handful of schools with borrowing rates low enough to qualify for a PRI challenge/appeal have CDRs that would trigger sanctions.

Servicemembers' Civil Relief Act

We support the proposed rules that would require FFEL Program loan holders to utilize the Department of Defense's Defense Manpower Data Center (DMDC) to determine a borrower's active duty military status for application of the Servicemembers' Civil Relief Act (SCRA) maximum interest rate, rather than requiring a written request and a copy of the military orders from the borrower. This both reduces burden for the borrower and ensures that all eligible servicemembers receive the benefit to which they're entitled, and not only the most savvy.

We encourage ED to collaborate with other federal agencies on other opportunities to exchange relevant information where appropriate in order to streamline Title IV processes.

REPAYE Repayment Plan

The proposed regulations include a new income-driven repayment plan, called Revised Pay As You Earn (REPAYE). While we maintain fundamental concern over the development of yet another repayment plan, we support several of the proposed provisions of REPAYE that better help struggling borrowers, while improving fairness and targeting of benefits, including:

- Removal of the "10-year standard payment cap"
- Treatment of borrowers with a tax filing status of "married filing separately"
- Removal of the partial financial hardship eligibility requirement
- Expansion of eligibility to all Direct Loan borrowers regardless of when they borrowed.

We urge ED to reconsider the tiered loan forgiveness under REPAYE, under which a borrower with only undergraduate loans repays for 20 years before forgiveness and a borrower with any graduate loans repays for 25 years before forgiveness. Although negotiators did eventually come to agreement on this tiered forgiveness, that was only because ED insisted that tiered forgiveness must be included (an example of cited budgetary problems without supporting data to back it up) and this particular proposal was the most tolerable proposal on the table. There was almost universal agreement around the negotiating table that tiered forgiveness is too complicated, sometimes arbitrary and seemingly unfair, and hard to explain to borrowers--an unfortunate outcome for a time in which many stakeholders are working hard to *simplify* the system for students.

As mentioned earlier in our comments, it is hard to offer a counterproposal without seeing the cost estimates upon which ED is relying, but we believe that a 20-year repayment term before forgiveness is a reasonable expectation for all borrowers.

After learning that over half of borrowers enrolled in an income-driven repayment plan fail to re-certify their income and family size before the annual deadline, we strongly support ED's initiatives that comply with the requirement in President Obama's Student Aid Bill of Rights to develop and test alternate communication methods to notify borrowers in income-driven repayment plans of the obligation to annually submit necessary income documentation. We are particularly interested in learning the results of the pilot notification that removes all servicer branding from the communications with borrowers, since this was one of the [recommendations](#) of our joint Loan Servicing Task Force with the Higher Education Loan Coalition (formerly the Direct Loan Coalition). We encourage ED to continue experimenting to find the most effective ways of communicating with borrowers.

In addition to our specific comments about the REPAYE terms, we offer our more basic, underlying concern about the REPAYE plan. The addition of a new income-driven repayment plan which will co-exist alongside four other income-driven plans (income-contingent repayment, "original" income-based repayment, "new" income-based repayment, and Pay As You Earn). This action is a step in the opposite direction of the momentum in the entire higher education community, which is toward simplification of loan repayment. Borrowers are overwhelmed by the repayment options they have now; they certainly don't need another repayment plan on the menu.

This round of negotiated rulemaking was prompted by President Obama's memorandum issued on June 9, 2014, which required ED to "propose regulations that will allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income." Rather than further complicating the loan repayment landscape, ED could have chosen one of the following alternative paths suggested during negotiations, while still complying with the mandate of the memorandum:

- Expanding PAYE eligibility to more borrowers;
- Modifying the terms of the current PAYE to be less costly to taxpayers, and then expanding eligibility to more borrowers;
- Creating the REPAYE plan, but restricting enrollment in PAYE to current enrollees, as a way to slowly phase out PAYE enrollment and limit the "menu" of repayment options.

Expansion of PAYE eligibility to more borrowers was rejected by ED as cost-prohibitive, but without providing any supporting cost estimates to negotiators. Modifying the terms of the current PAYE was rejected by ED because it prefers not to remove borrower benefits, although it is legally permitted to do so. Restricting enrollment in PAYE to current enrollees was simply rejected by ED, with no reason given.

Any of these alternatives would be preferable from a simplification standpoint than the path that ED chose, which is the addition of a new repayment plan with no modifications to the current plans where it has the regulatory authority to do so. Furthermore, as reauthorization approaches, Republicans and Democrats in both the House and Senate find themselves united around the idea of repayment simplification, offering several legislative proposals to simplify the process. It is more than disappointing to watch ED take us a step back in this effort, by adding *more* complexity through the negotiated rulemaking process.

Lump Sum Payments and Public Service Loan Forgiveness

Current regulations allow certain lump sum payments under AmeriCorps and Peace Corps service to qualify for Public Service Loan Forgiveness (PSLF) as individual payments. The proposed regulations would apply the same treatment for loan repayment programs offered by the Department of Defense (DOD), with the rationale of providing equity for borrowers seeking PSLF.

Given the stated goal, the regulation should be restructured to provide the same treatment of lump sum payments from any loan repayment program offered by any federal agency. By not specifying the names of certain repayment programs, the rules would ensure equitable treatment of federal loan repayment programs and could stand without necessary revisions whenever a new federal loan repayment program is established.

State, local, and private, employer-based loan repayment programs also sometimes issue a large, lump-sum payment directly to the loan servicer, which the servicer usually treats as a single qualifying monthly payment. If a loan repayment program administrator wants to make direct payments to a loan servicer and maximize the loan benefit to its employee, it would have to make payments on a monthly basis. To ease the way for borrowers seeking PSLF and reduce the administrative burden on employers seeking to maximize the benefit they provide to employees, ED should consider similar changes for these non-federal loan repayment programs.

Consensus on this regulatory package should not be misconstrued as approval of ED's initiative to further complicate the loan repayment landscape through regulatory action. The entire financial aid community, as well as Congressional representatives and Senators, continue to fight for simplification, not only in repayment, but in all aspects of financial aid administration. We strongly encourage ED to consider both short- and long-term ramifications of additional confusion and burden for the entire financial aid community of borrowers, families, schools and servicers.