





Submitted via email to www.regulations.gov

September 20, 2017

Ms. Hilary Malawer
U.S. Department of Education
400 Maryland Avenue, SW
Room 6E231
Washington, DC 20202

RE: Docket ID ED-2017-OS-0074

Dear Ms. Malawer:

As the national trade associations representing the majority of student loan providers in the higher education finance industry, including those loan holders, servicers, and guaranty agencies in the Federal Family Education Loan (FFEL) program, we thank you for the opportunity to provide public comment and participate in accordance with Executive Order 13777, Enforcing the Regulatory Reform Agenda, in identifying regulations that may be appropriate for repeal, replacement, or modification. We applaud the Department for undertaking this important initiative. Our members understand the complexity of the federal student loan programs and the impact that they have on the ability of borrowers to successfully repay their student loans, as well as the importance of upholding the Department's mission of protecting the federal fiscal interest. We hope that our attached recommendations can help on both fronts and are put forth in the interest of student borrowers.

Our detailed comments include several recommendations to improve and simplify benefits for eligible military servicemembers, improvements to the loan rehabilitation process to better ensure successful repayment post-loan rehabilitation, changes to certain Income-Driven Repayment provisions, and several policy clarifications and technical corrections. Five of the items (N. 1-5) were previously submitted earlier this summer by both the National Council of Higher Education Resources and the

Student Loan Servicing Alliance as recommendations for additional agenda items to include in the upcoming negotiated rulemaking on Borrower Defense to Repayment.

The Department's Regulatory Reform Task Force has been charged with providing recommendations on which federal regulations might be repealed or modified to give institutions of higher education greater flexibility while still protecting students. To this end, we continually hear that institutions would like to be able to provide more counseling to their students about available options to finance their postsecondary education, in regard to both federal and private education loans. Under the Higher Education Opportunity Act enacted in 2008, colleges and universities choosing to maintain a list of preferred lenders for private education loans must comply with a set of complicated disclosure and reporting requirements. These statutory requirements are set forth in regulation. Because of the rules, many schools have shied away from having preferred lender lists and largely ended counseling students and parents on various sources of educational loans, with the result being that students and parents do not learn about the availability of private education loans that may be less costly than federal student loans, particularly Grad PLUS and Parent PLUS loans. We recognize that the rules and regulations are largely reflected in the statute, however there are some areas where we believe the Department may have the flexibility to provide guidance to schools. We also look forward to working with the Department on the preferred lender list statutory issues as part of the reauthorization of the Higher Education Act.

Thank you again for the opportunity to provide public comment on the Department of Education's regulatory reform agenda. We look forward to discussing the recommendations in greater detail with the relevant staff. If you have any questions, please feel free to contact any of the signatories to this letter.

Sincerely,

Consumer Bankers Association (CBA)
Education Finance Council (EFC)
National Council of Higher Education Resources (NCHER)
Student Loan Servicing Alliance (SLSA)

cc: Kathleen Smith, Acting Assistant Secretary of Postsecondary Education

# 2017 Regulatory Reform Recommendations – CBA, EFC, NCHER and SLSA

| # | Topic | Cite | Current Obligation | Issue | Proposed Resolution |
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| N.1 | Administrative forbearance to collect and process supporting information | 682.211<br>685.205 | Current regulations allow use of administrative forbearance for up to 60 days when necessary to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized at the end of the forbearance. | If an IDR plan borrower provides incomplete, missing, or untimely information by the required annual recertification deadline, the delay can cause unnecessary interest capitalization and payment elevation. | 1) Expand the conditions for the use of the 60-day administrative forbearance to include the collection and processing of information for recertification and recalculation of an annual IDR payment request.<br>2) Clarify that interest that accrues during the 60-day administrative forbearance period is not capitalized at the end of the forbearance, but that interest may be capitalized if a subsequent capitalization event either replaces the forbearance period, or occurs after the forbearance period. |
| N.2 | Administrative forbearance for timely recertified and recalculated IDR payments | 682.215<br>685.221 | Current regulations permit administrative forbearance for past-due IDR payments if the new PFH payment is lower than the previous PFH payment or zero, but only if the borrower submitted untimely documentation (i.e., has transitioned to permanent-standard). | Borrowers who provide timely documentation for recertification or recalculation experience the same difficulty making existing IDR payments and can be delinquent when recertifying or recalculating the IDR payment. The current regulations applicable to untimely IDR applicants can provide relief to timely IDR applicants. | 1) Expand the existing authority to permit administrative forbearance to eliminate delinquency for all IDR applicants when a new IDR payment is lower or $0. |
| N.3 | IDR after day 270 of delinquency | 682.215<br>685.221<br>685.209 | Current regulations reflect that a borrower becomes ineligible for an IDR plan after default which occurs when a borrower fails to make payment for 270 days. | Guidance has been provided to encourage servicers to continue working with borrowers between day 270 of delinquency and the date of default claim payment or transfer to ED's Default Management Collection System (DMCS). Such efforts include granting new IDR plans and renewing existing IDR plan payments. | 1) Clarify that a borrower may obtain and continue an IDR plan up to the date of guarantor default claim payment or transfer to DMCS. |

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| N.4 | REPAYE payment application (T.C.) | 685.211 | States that PAYE and IBR plans are excluded from the standard payment allocation order (i.e., charges, collection costs, interest, principal). | REPAYE is not addressed, but follows the same payment application order as PAYE and IBR. | Amend 685.211(a)(1):<br><br>"(a) Payment application and prepayment. (1) Except as provided for the income-contingent repayment plan under §685.209(a)(3), §685.209(c)(3) or the income-based repayment plan under §685.221(c)(1),the Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal." |
| N.5 | Closed school discharge application when borrower fails to respond (T.C.) | 682.402<br>685.214 | If the borrower does not submit a completed closed school discharge application to the loan holder within 60 days, the loan holder must resume collections and send another discharge application to the borrower along with an explanation of the requirements and procedures for obtaining discharge. | The intent of this provision was to send borrowers a second closed school application if a borrower fails to submit an application within 60 days of the date the first application was sent in order to provide another opportunity to encourage borrowers who may be eligible for the closed school discharge to apply. The language should specify that one additional discharge application is to be provided to eliminate any uncertainty whether the word "another" could imply that this provision creates an endless loop to provide discharge applications to the borrower. | Amend sections 682.402(d)(6)(ii)(I), 682.402(d)(7)(ii) and 685.214(f)(5) to clarify that one additional discharge application is provided after the borrower fails to respond to the initial discharge application. |
| R.1 | Payment requirement before making an IBR plan change | 682.215<br>685.221 | Current regulations require a borrower who no longer wishes to pay under an IBR plan, to pay under a Standard plan. The borrower may not change to another plan until the borrower makes one monthly payment under the Standard plan or a smaller payment under a reduced payment forbearance. | Imposes an unnecessary burden for borrowers who seek another plan such as Graduated, Extended, PAYE, or REPAYE. A borrower's right to change repayment plans should not be limited solely because of entering an IBR plan. This restriction for IBR does not apply to other IDR plans (i.e., PAYE, REPAYE, ICR). | 1) Eliminate the payment requirement and replace it with authority for an IBR borrower to directly change from IBR to any other eligible repayment plan. |

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| R.2 | IDR renewal for borrowers serving active duty | 682.215<br>685.221<br>685.209 | ED waivers in effect from September 27, 2012 to September 30, 2017 allows an IDR payment to be automatically extended if a military service status affects the borrower's ability to provide updated income documentation necessary to set a new annual IDR payment. | The current waiver relies on the borrower to trigger a request, and only applies to borrowers serving on active duty during war, military operation, national emergency, or declared a disaster area. | 1) Permit IDR extensions for borrowers serving active duty in the military based on the SCRA active duty definition instead of the HEA definition.<br>2) Permit servicers to extend an IDR payment based on military information it has on system. |
| R.3 | Consolidation of uninsured FFELP loans | N/A | Section 682.206(f) regarding the loan guarantee status was applicable solely to the disbursement of FFELP Consolidation loans. This section was removed by the repeal of new FFELP originations under the SAFRA Act. There is no corresponding regulation or statute in effect for the origination of Direct Consolidation loans. | FFELP borrowers are eligible to enter the Direct Loan program, particularly to obtain benefits in their promissory note including Consolidation, Public Service Loan Forgiveness, and the no accrual of interest benefit for active duty service members, as well as other benefits such as additional IDR plan types. The expectation is that borrowers are to obtain these benefits despite the status of the loan guarantee.<br><br>Outdated language exists in the Federal Direct Consolidation Loan Verification Certificate (OMB No. 1845-0053, Exp. Date 04/30/2019) which should not deter a loan holder from certifying a FFELP loan for a borrower that seeks a Direct Consolidation loan and has signed the promissory note. | 1) Remove language in the Federal Direct Consolidation Loan Verification Certificate (OMB No. 1845-0053, Exp. Date 04/30/2019) regarding servicing and insurance which is not applicable for Direct Consolidation loan originations.<br>2) Until a revised form can be issued, provide confirmation that loan holders and servicers may disregard the certification so that FFELP borrowers are not prevented from obtaining a Direct Consolidation loan. |

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| R.4 | Department of Defense (DOD) Student Loan Repayment Programs (SLRP) payment application | 682.209<br>685.211<br>682.215<br>685.221<br>685.209 | Payments are made on behalf of borrowers by various federal and state entities including the DOD (Student Loan Repayment Programs offered by various branches of the DOD), CNCS AmeriCorps (Segal education award, forbearance interest payments), Peace Corps (transition payments), and various states (e.g., programs for teachers and nurses). Programs, such as the Army's Student Loan Repayment Program, the Navy's Loan Repayment Program, and the Army's Judge Advocate Student Loan Repayment Program often define which loans are eligible for payment. Payment program rules define what costs can be covered by the payment. Most often payments are to be applied to principal and may not be applied to interest or interest that may have previously been capitalized. | Servicers are required to apply the DOD SLRP payment as a principal credit versus applied as a standard installment payment, which can frustrate borrowers when payments cannot be applied to a specific loan, or be used to cover future monthly payments. In some cases, the loan eligible for the DOD SLRP payment may be paid off and the servicer is not permitted to exercise flexibility and direct the payment to another loan. Confusion may increase given the PSLF regulation allows a lump sum DOD SLRP payment to satisfy 12 payments for PSLF discharge eligibility while the payment may not be considered an installment payment and count towards IDR forgiveness, depending on military payment rules. | 1) Work with the applicable program agencies to develop a standard approach for applying future payments.<br>2) Support regulatory and/or program change that would treat all third-party lump sum payments to satisfy future principal and interest payments, unless the borrower requests otherwise.<br>3) Doing so would support standardization across federal and state programs, avoid customer confusion, and ensure future payments are counted towards ED loan forgiveness programs, including IDR loan forgiveness. |
| R.5 | Access to borrower information for IDR processing | 682.215<br>685.221<br>685.209 | Current regulations require borrowers to document their income (e.g., paper tax return, pay stub, Studentloans.gov). | Income documentation for the initial and renewal process is burdensome and can delay enrollment and recertification. The requirement can be particularly unnecessary for delinquent borrowers that have no income and are at risk of default. | 1) Facilitate direct servicer access to IRS data.<br>2) Allow use of either household size on tax returns or family size.<br>3) Allow borrowers to select the frequency of renewal by authorizing servicers to secure information from the IRS for a specific term (e.g., 1 to 5 years), or for the entire term of the loan.<br>4) Allow delinquent borrowers that have no income to orally apply for and recertify IDR plans. |

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| R.6 | Impact of capitalization notice | 682.210<br>682.211 | Current regulation requires a notice at the time of granting forbearance and unsubsidized deferment that provides information to assist in understanding the impact of capitalization of interest. | Guidance has been provided (see July 23, 2010 proposed rule, page 36573) to clarify that that the notice under 682.211(e)(1) is unnecessary and can cause confusion for periods of retroactive forbearance and can cause confusion when interest is not capitalized at the end of the forbearance period. | Technical update to codify existing guidance.<br><br>682.210(a)(3)(ii) – "A borrower who is responsible for payment of interest during a prospective deferment period must be notified by the lender, at or before the time the deferment is granted, that the borrower has the option to pay the accruing interest or cancel the deferment and continue paying on the loan. The lender must also provide information, including an example, on the impact of capitalization of accrued, unpaid interest on loan principal, and on the total amount of interest to be paid over the life of the loan.<br><br>682.211(e)(1) – "At the time of granting a borrower or endorser a prospective period of forbearance when interest during the forbearance is capitalized at the end of the forbearance period, the lender must provide the borrower or endorser with information to assist the borrower or endorser in understanding the impact of capitalization of interest on the loan principal and total interest to be paid over the life of the loan;" |
| R.7.A | Loan rehabilitation | 682.405<br>685.211 | Current regulation requires a rehabilitated loan to be determined based on either:<br>1) 15% of "discretionary income", or<br>2) income and expense information provided on the federal *Loan Rehabilitation: Income and Expense Information* form. | There are instances where payments determined under the regulations yield high payments that would repay the loan balance before the borrower can make the 9 payments required for loan rehabilitation. Such instances may occur for borrowers that no longer experience the financial hardship that previously led to the default, but desires to obtain the benefit of rehabilitation such as retraction of a borrower's record of default previously reported to a Consumer Reporting Agency. | Permit a payment equal to a 10-year amortizing payment (or the applicable payment period for a consolidation loan) if it is less than the both 1) 15% of "discretionary income", and 2) information provided on the federal *Loan Rehabilitation*: *Income and Expense Information* form. This change is a good faith attempt to prevent denying the loan rehabilitation benefit that a defaulted borrower is entitled to under the HEA. |

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| R.7.B | Loan rehabilitation transition to repayment | 682.405 | Current regulation requires a rehabilitated loan to be placed in a Standard repayment plan. | Loan rehabilitation borrowers struggle to make Standard repayment plan payments as demonstrated by higher delinquency rates compared to other borrowers. Despite consistent servicer outreach practices the IBR plan adoption rate for loan rehabilitation borrowers is lower than the IBR adoption rate for other borrowers; however, once enrolled in an IBR plan, loan rehabilitation borrowers are more successful in managing repayment than other borrowers (i.e., lower delinquency rate, less likely to reach late stage delinquency, and less likely to be in forbearance). | 1) Rehabilitated loans are not subject to the conversion to repayment timeframes under 682.209(a).<br>2) Guarantors will transfer reasonable and affordable payment data to the purchasing lender/servicer.<br>3) Servicers will bill borrowers for three reasonable and affordable payments.<br>4) During the 3-month period, servicers will determine borrower interest and eligibility for IBR or another affordable repayment plan.<br>5) Borrowers that do not apply, select or qualify for a plan during the 3-month period will receive the maximum allowable Standard repayment term. |
| R.8 | Military deferment eligibility certification | 682.210<br>685.204 | Current regulations require a borrower to provide either a commanding or personnel officer certification, or a copy of official military orders. | Military orders are frequently confusing, unclear and incomplete for military deferment processing purposes and cannot be relied upon to make an accurate deferment eligibility determination. Military orders are also inconsistent across different military branches, and unclear with respect to the explicit reason for the orders, such as a change in permanent duty station, homeport change for a naval vessel, training in conjunction with a special assignment, or deployment to a contingency operation. Military orders do not always reflect a complete representation of the actual military service performed. | 1) Enhance access to Department of Defense database information to include active duty service that is in connection to a contingency operation, war, national emergency, change of duty station, and the date a reservist is notified to report to active duty.<br>2) Use the authority under the HEROES Act to simplify the requirements and develop reasonable borrower documentation standards. Permit servicers to grant a military deferment request based on a federal deferment form signed by the borrower and one of the following with no further obligation to validate an explicit connection to a specific operation.<br>• a copy of military orders<br>• service information from the Department of Defense's Defense Manpower Data Center (DMDC), or<br>• a military official certification. |

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| R.9 | Administrative forbearance for borrowers enrolling in auto-debit | 682.211<br>685.205 | Current regulations do not address a circumstance for delinquent borrowers that seek to enroll in auto-debit | Can cause advancement in delinquency while a borrower applies to be enrolled in an auto debit repayment program. | 1) Expand the use of administrative forbearance to include enrollment in auto debit so that a borrower can resolve any existing or pending delinquency and start fresh with their new auto debit program. |
| R.10 | Hostile pay benefit | 455(o) | Borrowers serving in a hostile area that qualifies for special pay are eligible for a zero percent interest rate on Direct Loans made on or after October 1, 2008. | Military orders and the Department of Defense database do not contain information to determine if a borrower qualifies for the benefit. | 1) Until ED and DOD can provide a data solution, permit borrowers to provide written documentation from the military or a copy of a paystub that shows the income is not subject to federal income taxes, or shows other indications of eligibility e.g., that the customer is receiving hostile fire pay (HFP) or imminent danger pay (IDP).<br>2) Based on this information, permit the benefit to be applied for the dates of military eligible service provided by a service member (i.e., including prospective or retroactive periods). |
| R.11 | Enforcement Requirements | 682.410 (c)(1)(i)(C) | Current regulations require a guaranty agency to review each school that participates in the agency's program, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR 668, that includes FFEL Program loans, for either of the two immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20%, unless the school is under a mandate from the Secretary under subpart M of 34 CFR 668 to take specific default reduction measures. | As of 7/1/2010, there are no new loans being made under the FFEL program. Seven years after all federal loan originations moved to the Direct Loan program, the number of FFEL loans entering repayment or default within two or three years of entering repayment has dwindled to a point where they have no impact on a school's cohort default rate. With the change in the regulation from a 2-year cohort default rate (under subpart M of 34 CFR part 668) to the 3-year cohort default rate (under subpart N of 34 CFR part 668), the basis on which schools were selected for guarantor review has been phased out – the 2-year cohort default used to trigger a school review no longer exists. Schools are under the oversight of the U.S. Department of Education as the regulator for the Direct Loan program. | Eliminate this provision in the regulation that is no longer applicable. |

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| R.12 | Skip-tracing | 682.411 (h)(1) 682.411 (m)(1)(iii) | Requires a lender to contact the borrower's school(s) and other entities, in an effort to locate the borrower's current address or phone number | The borrower's school(s) usually is no longer in contact with the borrower. This includes the alumni office. "Entities" or "individuals such as prior lender and servicers are not good sources of information as they no longer have a relationship with the borrower. The information they have obtained from contact with the student is typically always older than information the current lender has. The current lender should have the discretion to use the "effective commercial skip-tracing techniques" that will provide the results in the most cost-effective manner. The schools, in particular, have minimal routine information available on the parents' address and phone numbers for PLUS loans. In addition, the current regulatory language requiring the use of "effective skip-tracing techniques" provides appropriate guidance and protection of the federal fiscal interest. | **(h)** Skip-tracing. (1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, to the extent practicable, activities such as~~, but are not limited to,~~ sending a letter to making a diligent effort to contact each endorser, relative, reference, individual, and entity identified in the borrower's loan file.~~,~~ ~~including~~ Except in the case of a parent PLUS loan, the lender must also contact ~~the~~ any schools~~,~~ in the lender's records that the student attended during the two years prior to the identification of the incorrect address. ~~For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing or by phone calls.~~ Skip-tracing ~~These efforts~~ must be completed by the date of default with no gap of more than 45 days between attempts ~~to contact those individuals or entities~~. |

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| | | | | | **(m)(1)(iii)** An unsuccessful effort to ascertain the correct telephone number of a borrower including ~~but not limited to,~~ a directory assistance inquiry as to the borrower's telephone number, and, to the extent practicable, activities such as sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application/promissory note for that borrower held by that lender ~~or most recent school certification for that borrower held by the lender~~. Except in the case of a parent PLUS loan, the lender must also contact any school in the lender's records that the student attended during the two years prior to the identification of the incorrect telephone number. ~~The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.~~ |
| R.13 | REPAYE notice of consequences | 685.209 | At the start of an annual payment period, a notice must be sent advising the borrower of the REPAYE payment amount. Towards the end of the annual payment period, a notice must be sent advising of the renewal requirements and deadline. Both notices must include an explanation of the "consequences" if the borrower does not renew timely. | The cross-references in 685.209(c)(4)(ii)(C) and 685.209(c)(4)(iii)(B) are inconsistent, implying different "consequences" are to be provided in the notices. Also, by cross-referencing §685.209(c)(4)(vi) in its entirety, some of the information to be provided in the "payment amount" notice under §685.209(c)(4)(ii)(C) does not make sense. | Revise the cross-references in §685.209(c)(4)(ii)(C) and §685.209(c)(4)(iii)(B) for consistency as to the "consequences" to be included in these two notices. |

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| R.14 | FERPA - Inclusion of lenders, guarantors and servicers | 34 CFR 99.61-67 | As of January 3, 2012, lenders, servicers, and guarantors are considered to be covered under FERPA, and subject to FERPA enforcement. | FERPA protects the privacy of "education records" maintained by or for "educational agencies or institutions" that receive funds from the U.S. Department of Education. An educational agency or institution is defined in the statute as "any public or private agency or institution" to which any funds have been "made available" under any program administered by the Secretary, if –<br>(1) The "educational institution provides educational services or instruction, or both, to students"; or<br>(2) The "educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions."<br>Lenders, servicers and GAs do not provide educational or services to students and therefore FERPA does not apply to them. | Repeal partially the FERPA regulations that were enacted on December 2, 2011 and effective January 3, 2012, to exclude federal student loan lenders, servicers and guarantors from FERPA. The new FERPA regulations wrongfully and without legal authority expanded the Department's jurisdiction to investigate alleged FERPA violations and to enforce the regulations against not only "educational institutions and agencies" but also "other recipients of Department funds" under any program administered by the Secretary to which PII from education records is non-consensually disclosed. Delete all references to "other recipients of Department funds" in sections 99.61 through 99.67. |