★ FROM THE OFFICE OF THE PRESIDENT ★

August 16, 2012

Docket ID ED–2012–OPE–0010

Response to Loan Issues NPRM
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 Loan Issues Notice of Proposed Rulemaking published on July 17, 2012. NASFAA represents more than 18,000 financial aid professionals who serve 16 million students each year at 2,800 colleges and universities of all types throughout the country.

We appreciate the Department's diligence in seeking public input throughout the regulatory process, and the negotiating team's success in reaching consensus through the negotiated rulemaking process.

If you have any questions on any of our comments, please contact Karen McCarthy (mccarthyk@nasfaa.org or 202.785.6974) or Joan Berkes (berkesj@nasfaa.org, or 202.785.6970).

Sincerely,

Justin Draeger
President

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NASFAA COMMENTS ON LOAN ISSUES NPRM

Total and permanent disability discharge

674.61, 682.402, and 685.213

We support the proposed changes, which streamline the process for all involved parties, standardize procedures, and provide additional clarity and transparency to borrowers.

We have the following questions about the proposed rules:

- Under proposed 674.61(b)(1)(ii), 682.402(c)(1)(iv)(A), and 685.213(a)(4), a representative is defined as "…a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application." This wording is unclear as to who is providing the authorization. Must the individual be authorized by the borrower, for example, or can an individual be authorized by a court to act on behalf of the borrower?

- Under proposed 674.61(b)(2), 682.402(c)(2), 685.213(b) (and the associated proposed regulations for veterans), it's not clear how incomplete applications affect the 120 day collection suspension window. For example, if an incomplete application is submitted on day 119, and the application is not complete until day 130, does collection resume on day 121, or is the incomplete application sufficient to keep the collection suspension in place?

- Proposed 674.61(b)(2)(ix), 682.402(c)(2)(ix), 685.213(b)(3)(iv) (and the associated proposed regulations for veterans) list the required information that must be included in the notice sent by the Secretary after the Secretary receives a disability discharge application. However, it is not clear if this notice is required for incomplete applications as well.

- If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the proposed rules include steps that the Secretary must take. However, 685.213(b)(1) does not include all of the steps required of the Secretary under the proposed Perkins and FFEL rules. Specifically, 685.213(b)(1) does not require the Secretary to provide the borrower with the information needed to apply for a total and permanent disability discharge and inform the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time. Is there a specific reason these requirements were not included in the Direct Loan proposed rules?

- Proposed 674.61(b)(3)(vi), 682.402(c)(3)(v), 685.213(b)(4)(iv) (and the associated proposed regulations for veterans) state "If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled…". Is this referring to the physician's certification or some other certification? If it's the physician's certification, we would recommend changing "certification provided by the borrower" to "physician's certification."

- Proposed 674.61(b)(3)(vii), 682.402(c)(3)(vi), and 685.213(b)(4)(v) specify that if a borrower requests the Secretary to reconsider an application that had been previously denied, the "request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application." There could be information that was available, in the broad sense, at the time of initial application, but was not included as part of the application for whatever reason. For that reason, we would recommend rewording this as "…request must include new information regarding the borrower's disabling condition that was not included in the borrower's initial application."

- The proposed rules specify requirements when a borrower receives an additional Title IV loan or TEACH Grant. Sections 674.61(b)(4), 682.402(c)(4), and 685.213(b)(5) state: "If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section…." The concept of what it means to receive a Title IV loan or TEACH Grant can be easily misunderstood. It's confusing, for example, to read that a loan was received before a certain date and disbursed after that date. Does the proposed regulation mean that a loan or TEACH Grant was partially disbursed before the physician's certification and a second or subsequent disbursement was also made between the certification date and the discharge date? Or does ED mean that a loan or TEACH Grant was originated or awarded to the borrower before the physician's certification date and disbursed after that date? If the latter, does it matter when the student signed the promissory note or other document accepting the award?

- Similarly, 674.61(b)(5), 682.402(c)(5), and 685.213(b)(6) state "If a borrower receives a disbursement of a new title IV loan or receives a new Teach Grant made on or after the date the physician certified the borrower's discharge application and before the date the Secretary grants a discharge under this section,…" Is this referring to situations where the Title IV loan or TEACH Grant was originated or awarded on or after the date of certification and before discharge, and disbursements took place during that same window? The proposed wording is confusing, since loans are generally understood to be "made" at the point of disbursement and grants are not "made" at all. Also, "TEACH" should be capitalized.

- The proposed rules [674.61(b)(6), 682.402(c)(7), and 685.213(b)(8)] specify the borrower's responsibilities after a total and permanent disability discharge, but don't include any repercussions if the borrower doesn't fulfill these responsibilities. For example, one of the requirements is for the borrower to provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary. What are the consequences if the borrower doesn't provide the documentation?

Income-Contingent and Income-Based Repayment

- The proposed rules would double the number of income-dependent repayment plans from two to four. Four income-dependent repayment plans can arguably be justified so that the great majority of borrowers would have at least one income-dependent plan available to them, since they each have different eligibility requirements. However, we are concerned about borrowers' ability to wade through the varying eligibility requirements, monthly payment calculations, and benefits to determine the most appropriate repayment plan for their individual circumstances. We would encourage ED to develop an online calculator that provides all of the relevant, individualized information to the borrower so he or she can make a straightforward, well-informed choice of repayment plan.

- The NPRM notes that during negotiations, it was suggested that the income documentation would be simpler, streamlined, and less error-prone by allowing borrowers to submit documentation electronically, or by establishing an electronic process for loan holders to obtain the necessary income information directly from the IRS. The Department agreed to explore such options in the future but noted that there were associated privacy issues. We agree with the suggestion by the non-federal negotiators and we would point to the IRS data retrieval process during the FAFSA application process as a model for resolution of privacy issues. Reduction in the burden associated with income documentation would likely lead to an influx of distressed borrowers to the income-dependent repayment plans, which is a goal of the Obama administration. We therefore encourage the Department to continue pursuing its electronic and data-retrieval strategies in the loan repayment context.