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Statutory Changes

United States Department of Education
Washington, D.C. 20202
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SUMMARY: Description of Statutory Changes Made by Public Law 101-166 and Public Law 101-239.

Dear Colleague:

Two recently enacted statutes made several changes in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (the Act). Public Law 101-166 (the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990) was signed by the President on November 21, 1989; Public Law 101-239 (the Omnibus Budget Reconciliation Act of 1989), which includes the Student Loan Reconciliation Amendments of 1989. was signed by the President on December 19, 1989.

Enclosed with this letter is a summary of the major changes made by Pub. L. 101-166 and Pub. L. 101-239. The sections of the Act that are affected by these changes and the effective date of each change are also indicated in the enclosure.

This letter is intended to address aspects of these statutes on which the public requires immediate guidance. As with each new piece of student financial assistance legislation, we expect that questions will arise concerning various provisions of these amendments during the course of their implementation. We will contact you via future "Dear Colleague" letters to provide additional guidance on these statutes.

Institutions should note that their certification of loan applications will now cover the following items, in accordance with the applicable effective dates:

(1) Supplemental Loans for Students (SLS) eligibility, based on institutional default rate;

(2) compliance with new SLS loan limits;

(3) compliance of institutional disbursement schedules with the new §428G of the Act; and

(4) SLS eligibility for ability-to-benefit students based on possession of a GED or high school diploma.

Guarantee agencies should note that they must review their existing institutional certification language to determine whether these items are covered and, if they are not covered, provide institutions with addendum language that covers them.

If you have further questions, please contact the Regional Office or the guarantee agency serving your State.

Sincerely,

Robert B. Dunn
Deputy Assistant Secretary for Student Financial Assistance

William L. Moran
Director, Student Financial Assistance Programs

Enclosure

I. Changes Resulting From Pub. L. 101-166

A. General Provisions:

Pro rata refunds.

Each institution participating in the Guaranteed Student Loan programs that has a default rate, as determined by the Secretary, that exceeds 30 percent must implement a pro rata refund policy for all Title IV aid recipients. That policy must provide for at least as great a refund as the refund calculated under the pro rata refund policy set forth in 34 CFR 682.606(b)(2) and (c). Under the statute and regulations, a student is entitled to a pro rata refund if the student's last recorded day of attendance at the institution falls before the earlier of--

(1) The halfway point (in time) for the student's program of study; or

(2) Six months after the commencement of the student's program.

A number of institutions have been notified by the Secretary that they are not subject to 34 CFR 668.606(b)(2) and (c) because their default rate exceeds 30 percent. Each such institution must now apply this pro rata refund calculation to any student who received or benefitted from a GSL loan made for a period of enrollment that begins on or after October 1, 1989, but before October 1, 1990, and to any student who receives aid under any other Title IV program for the 1990-91 award year. This requirement includes institutions on notice under Dear Colleague letter 89-S-59 (August 1989) that they are considered to have certain default rates as a result of their involvement in institutional status changes *e.g.*, conversion of an institutional location to a free-standing institution.

B. Provisions Affecting the Pell Grant Program:

1. Professional Judgment - §479A of the Act.

The new legislation affects the professional judgment provisions under the Pell Grant Program for the 1990-91 award year. Public Law 101-166 rescinds the authority of a financial aid administrator to make individual adjustments, based on adequate documentation, to a student's Pell Grant Index (PGI - formerly the Student Aid Index or SAI) and cost of attendance. However, the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101-164, November 21, 1989), allows that in those instances where special conditions exist (as determined by the Secretary), a student's PGI shall be based upon expected year income instead of base year income. That is, any student whose family circumstances meet a special condition criterion shall have his or her PGI calculated using the expected income for the 1990 calendar year instead of the base year income for the 1989 calendar year. This use of expected year income in the Pell Grant formula is identical to the use of expected year income in the Pell Grant formula for the 1989-90 award year.

The above mentioned provisions are effective only for the Pell Grant Program and only for the 1990-91 award year. A financial aid administrator's authority to make adjustments to a student's family contribution (FC) and cost of attendance in the other Title IV programs is not affected by these changes.

2. Less-than-half-time Students.

For the 1990-91 award year, a Pell Grant cannot be awarded to any student who is attending on a less than half-time basis. For the 1989-90 award year, a student who is attending on a less than half-time basis on or after January 1, 1990 may receive a Pell Grant in accordance with §411(b)(6)(B) of the Act, but only if he or she received a Pell Grant for a payment period beginning before January 1, 1990 based on an enrollment status of less than half-time.

3. Maximum award.

According to §411(b)(2)(A) of the Act, the authorized maximum Pell Grant award for an eligible student for the 1990-91 award year is $2,900. However, based upon the appropriations for fiscal year 1990, the actual maximum award for the 1990-91 award year will be $2,300.

II. Changes Resulting From Pub. L. 101-239

A. General Provisions:

1. Aid Administrator Discretion - §479A(a) of the Act.

The language of §479A of the Act has been amended to clarify that financial aid administrators may use professional judgment in determining financial aid awards only on a case-by-case basis and may not adjust award amounts for groups of students. This clarification is intended to curtail the incorrect use of financial aid administrator discretion to substitute data elements for a group of students when such a substitution is not necessarily based on special circumstances that have an effect on a student's ability to meet educational costs. It is recognized that individual students may have financial problems that may be addressed by professional judgment on a case-by-case basis. Although several individual students may have similar financial problems that may be resolved in a similar way by the use of professional judgment, this does not authorize treatment of similar cases on other than a case-by-case basis.

Although Pub. L. 101-39 amends §479A of the Act, which governs the use of financial aid administrator discretion, this does not supersede Pub. L. 101-166, which eliminated financial aid administrator discretion for the Pell Grant program for the 1990-91 award year. Public Law 101-239 states the rule for proper use of financial aid administrator discretion in those award years for which it is allowed.

2. Effect of Loss of Accreditation - §§435 and 481(a) of the Act.

Changes to §§435 and 481 of the Act provide that an institution may not be certified or recertified as an eligible institution under any of the definitions contained in those sections if the institution has had its institutional accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months or if the institution withdrew voluntarily from its institutional accreditation under a show cause or suspension order during the preceding 24 months, unless--

(a) That accreditation has been restored by the same nationally recognized accrediting agency or association that withdrew, revoked, or otherwise terminated that accreditation or

(b) The institution has demonstrated its academic integrity to the satisfaction of the Secretary in accordance with §1201(a)(5)(A) or (B) of the Act.

The impact of these changes is that generally an institution loses its eligibility (or is denied initial eligibility) for 24 months from the date that the institution's accreditation or preaccreditation is withdrawn, revoked, or otherwise terminated for cause or the date that the institution withdraws voluntarily from accreditation or preaccreditation under a suspension of that status or under an order to show cause why that status should not be withdrawn. This consequence applies to an institution even if the institution is accredited or preaccredited by another nationally recognized accrediting agency or association. This requirement does not apply to an institution at which the accreditation or preaccreditation of a particular program has been withdrawn, revoked, or otherwise terminated for cause or placed under a show cause or suspension order, but whose institutional accreditation or preaccreditation remains in good standing.

If an institution's eligibility is denied or revoked under the circumstances described above and if the same accrediting agency restores the institution's accreditation or preaccreditation, revokes the suspension, or removes the show cause order, the institution's eligibility may be restored (or initial eligibility may be granted). In addition, if the Secretary is satisfied that the institution has demonstrated academic integrity by obtaining preaccredited status as defined in 34 CFR 600.2 or by meeting the requirements of 34 CFR 600.8 concerning the transfer-of-credit alternative to accreditation and the institution is otherwise eligible, the institution's eligibility may be restored (or initial eligibility may be granted).

An additional change in §481 of the Act provides that whenever the Secretary determines the eligibility of an institution to apply for participation in the Pell Grant, Campus-based, Income Contingent Loan (ICL), or State Student Incentive Grant (SSIG) programs, the Secretary does not recognize the accreditation of any eligible institution of higher education if the institution of higher education is in the process of receiving new accreditation or changing its nationally recognized accrediting agency or association unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.

These provisions took effect on December 19, 1989.

3. GED Program Required for Ability-to-Benefit Students - §487(a) of the Act.

In order to be an eligible institution for purposes of participation in any Title IV program other than the SSIG and Byrd Scholarship programs, an institution that admits students on the basis of their ability to benefit from the education or training provided by the institution (as determined under §484(d) of the Act) must make available to these students a program that is proven successful in assisting students in obtaining a certificate of high school equivalency (i.e., a GED.) An institution is not required to develop its own GED program but must ensure that such a program is available to students.

This provision takes effect on January 1, 1990.

B. Provisions Affecting the Guaranteed Student Loan Programs:

1. Default Reduction Program and Loan Rehabilitation - §428F of the Act.

The Secretary is now required to establish a six-month default reduction program for borrowers who are in default on a GSL loan as of December 19, 1989, to commence March 1, 1990. Under §484 of the Act, a student who is in default on a Title IV loan is ineligible for any assistance under the Title IV, HEA programs. Under this Default Reduction Program, a defaulter who is otherwise eligible to receive Title IV assistance may receive such assistance after he or she has paid in full all of the outstanding principal and interest on the defaulted loan(s).

In addition, an otherwise eligible borrower who (a) has made twelve consecutive monthly payments on a defaulted GSL and (b) whose loan is therefore sold to an eligible lender under the loan rehabilitation provisions of §428F(b)(1) regains eligibility for additional Title IV assistance and regains those rights with respect to the loan, such as deferment rights, otherwise available to borrowers who are not in default.

2. <u>Effects on Sequestration Under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177)</u>.

Under §11002(b)(2) of Pub. L. 101-239, the provisions of §256(c) of Pub. L. 99-177 triggered by the final sequester order issued by the President on October 16, 1989, apply to any loan made on or after October 1, 1989, but before January 1, 1990. For purposes of the sequester, a loan is considered to be made on the date that loan proceeds are disbursed by the lender; a multiply-disbursed loan is considered to be made on the date of the first disbursement.

a. <u>Origination Fees</u>.

If a Stafford loan is made on or after October l, 1989, but before January 1, 1990, the origination fee is 5.5 percent on all disbursements of that loan, regardless of the date they are made.

b. <u>Special Allowance</u>.

Stafford, PLUS, SLS, and Consolidation loans made on or after October 1, 1989, but before January 1, 1990, are subject to a reduced special allowance for the first four quarters following the date of the first disbursement. Special allowance payments will be reduced by .4 percent for loans made or purchased with tax-exempt funds and .25 percent for all other loans.

c. <u>Reporting on the "Lender's Interest and Special Allowance Request and Report" (ED Form 799)</u>.

The new ED Form 799 accommodates reporting of loans subject to the sequester provisions. <u>See</u> section C of Dear Colleague letter 89-G-169 (September 1989).

3. Deferment and Loan Eligibility Under the Guaranteed Student Loan and the Perkins Loan Programs During Medical Internship or Residency - §§427(a)(2)(C)(i), 428(b)(1)(M)(i), and 464(c)(2)(A)(i) of the Act.

a. Deferment Eligibility

Under prior law, a borrower in a medical internship or residency at certain institutions could receive an in-school deferment for the full length of the internship or residency. The statute now prohibits a borrower who is serving in a medical internship or residency program from receiving or continuing a deferment of repayment on a Stafford or SLS loan based on the borrower's full-time or half-time study at a participating school. For the purpose of this deferment eligibility restriction, a medical internship does not include an internship in dentistry. This provision applies to all Title IV loans and is effective January 1, 1990, but does not apply to any portion of a deferment period that was completed prior to January 1, 1990. A borrower serving in such an internship may, if otherwise eligible, receive an internship deferment for up to two years pursuant to §427(a)(2)(C)(vii), §428(b)(1)(M)(vii), or §464(c)(2)(A)(vi). After the two-year period, the borrower is eligible for forbearance. See section II.B.4., below.

Lenders are urged to send a notice of this change in the statute to all graduate and professional students who have been certified for an in-school deferment. However, a lender is not required to attempt to identify borrowers currently in deferment who are no longer eligible under the new provisions or to take affirmative steps to terminate the deferment status of any such borrowers.

Institutions offering medical internship or residency programs should alert individuals in these programs of this change. Institutions are not required to take affirmative steps to terminate the current deferment status of borrowers enrolled in these programs. However, institutions may not certify a borrower's eligibility for a deferment for which the borrower is ineligible under this provision.

b. Loan Eligibility.

The statute further provides that an individual is ineligible to receive Perkins, Stafford, or SLS loans while serving in a medical internship or residency program. For the purpose of this loan eligibility restriction, a medical internship does not include an internship in dentistry. This restriction is effective January 1, 1990 and applies to any loan proceeds not yet delivered to the borrower as of that date. A loan amount disbursed by the lender before, but received by the school after January 1, 1990, must be returned promptly to the lender.

4. <u>Forbearance for Medical and Dental Internship/Residency - §§428(b)(1) and 428(c)(3) of the Act</u>.

The statute now requires lenders to grant forbearance to a borrower who is serving in a medical internship/residency program and who has already received the maximum two-year internship deferment as provided under §427(a)(2)(C)(vii) or §428(b)(1)(n)(vii). <u>See</u> section II.B.3.a., above. The forbearance must be requested by the borrower in writing and is renewable at 12-month intervals for a period not to exceed the time remaining in the borrower's medical or dental internship or residency program. The terms of the forbearance agreement must be otherwise consistent with the provisions of 34 CFR 682.211. As with other forbearances, lenders are prohibited from charging an administrative or other fee in connection with granting this forbearance and are prohibited from reporting any adverse information regarding a borrower to a credit bureau organization solely as a result of granting the forbearance.

5. <u>Restricted SLS Eligibility for Students at High Default Schools - §§428A(a) and 435(m) of the Act</u>.

The statute prohibits any undergraduate student from borrowing under the SLS program if that student is enrolled at an institution that has a cohort default rate of 30 percent or more. Each institution's cohort default rate is calculated by the Secretary. Each institution subject to this provision restricting SLS eligibility for its students will be notified annually by the Secretary as to the time period covered by the restriction and will be given the opportunity to present evidence contesting the applicability of the restriction. An institutional presentation will be limited to the issue of the accuracy of the calculation of the cohort default rate for the institution for that year.

This provision applies to all loans certified on or after January 1, 1990 and first disbursed before October 1, 1991. However, students who are enrolled in a program of study on the date of enactment (December 19, 1989) of this requirement and who have already received an SLS for that program may receive additional SLS loans to complete that program regardless of the institution's default rate. But, if the duration of a student's program of instruction at an institution subject to the restriction is extended on or after November 8, 1989, the student may not receive an SLS loan for the extension period if the loan is certified on or after January 1, 1990.

By this bulletin, the Secretary provides notice to each institution that has previously been notified by the Secretary that its fiscal year 1987 default rate exceeds 30 percent that the institution is covered by the new restriction. This notice includes institutions on notice under

Dear Colleague letter 89-S-59 (August 1989) that they are subject to certain default rates as a result of their involvement in institutional status changes. *e.g.*, conversion of an institutional location to a free-standing institution.

The statute requires the Secretary to publish regulations codifying the treatment of institutional status changes and their effect on default rate applicability. This requirement does not alter the current interpretation of the effect of such status changes on the applicability of default rates for purposes of the current default reduction regulations, the pro rata refund requirements discussed above, or the new statutory SLS restriction. However, by statute, those new regulations must ensure that an entity on or after October 1, 1989 is not able to avoid the applicability of the default rate calculation if it would otherwise have applied to that entity. Please note that this result differs in some respects from the Secretary's interpretation set forth in Dear Colleague letter 89-S-59 as to the applicability of default rate-related measures in change of ownership situations.

An institution subject to this restriction is responsible for ensuring that it does not certify SLS applications in violation of the restriction. Lenders and guarantee agencies may rely on an institution's certification to the effect that the institution is not subject to the restriction. Each guarantee agency should ensure that this item is covered either by general language in its current certification or by a certified addendum to the loan application.

The Secretary reserves the right in the future to establish a procedure under which guarantee agencies would be notified of the institutions subject to the new restriction and would be required to ensure that they did not issue guarantees on SLS loans to students attending those institutions.

6. Reduced Annual SLS Loan Amounts - §428A(b)(l) of the Act.

The statute provides for a reduction in the annual limit on SLS loans for a student in a program of study of less than a full academic year in length. Specifically, a student who has not successfully completed the first year of a program of undergraduate education, including transfer students and students who may have completed previous programs of study at other institutions, and who is enrolled in a program of study of less than a full academic year in length is subject to the following new SLS annual loan limits:

(a) $2,500 for a student enrolled in a program of study of at least 2/3 of an academic year but less than a full academic year in length and

(b) $1,500 for a student enrolled in a program of study of less than 2/3 but at least 1/3 of an academic year in length.

A student enrolled in a program that is less than 1/3 of an academic year in length is not eligible to receive any SLS loans for study in that program. The maximum annual limit of $4,000 continues to apply to a student who is not subject to the reduced SLS limits. The determination of whether or not a student has completed the first year of study must be made by the institution that certifies the SLS application and must be based on the grade-level classification of students in the program in which the SLS applicants are <u>currently</u> enrolled. A first-year student enrolled in a program that is normally completed in less than one academic year is subject to the reduced limits noted above regardless of the actual length of time it takes the student to complete the program. The term "academic year" is defined by regulation in 34 CFR 668.2.

The statute further specifies that the SLS limits, including the reduced limits noted above, apply to a period of at least nine consecutive months. Thus, nine months is now the minimum period to which SLS annual loan limits can apply, notwithstanding existing guarantee agency policy (pursuant to 34 CFR 682.401(b)(2)(iii)) that may provide otherwise.

These reduced annual SLS limits apply to loans certified on or after January 1, 1990 and first disbursed prior to October 1, 1991.

The institution is responsible for ensuring that it does not certify SLS applications in violation of the new limits. Lenders and guarantee agencies may rely on an institution's certification to the effect that a loan does not violate the new limits. Each guarantee agency should ensure that this item is covered either by general language in its current certification or by a certified addendum to the application.

Each guarantee agency must also make some provision in the SLS loan application process that enables an institution to ensure that a borrower receives no more than the maximum SLS loan amount. For example, the agency may wish to instruct institutions to enter the maximum SLS amount applicable to an SLS borrower in the "Loan Amount Requested" box on the application or to attach an addendum to the application indicating that the borrower should only receive the applicable maximum amount.

7. <u>Multiple Disbursement Requirements - §428G of the Act</u>.

   a. <u>Multiple Disbursement of Stafford and SLS Loans</u>.

      i. The proceeds of any Stafford or SLS Loan must now be disbursed in two or more installments regardless of the amount of the loan or the length of the period of enrollment for which the loan is made. None of these installments may exceed more than one-half of the loan. The second installment may not be disbursed until at least one-half of the loan period (i.e., the period of enrollment for which the loan is intended) has elapsed. For example, the second installment of a loan made for a six-month loan period may not be made earlier than three months following the beginning of the loan period. The second or subsequent disbursement may be made prior to the expiration of one-half of the loan period only if it is necessary for that disbursement to be delivered at the beginning of the second semester, quarter, or similar division of the institution's academic period. In that situation, the disbursement may be made up to 30 days prior to the beginning of the semester, quarter, or similar division. If the date on which the first disbursement is made occurs on or after the earliest date that the second disbursement could be made, the lender may deliver the proceeds of all disbursements on the loan using a single check.

This provision applies to all Stafford and SLS loans guaranteed on or after January 1, 1990 and made for periods of enrollment beginning on or after that date.

ii. The statute now requires that the student provide the lender with a statement from the institution setting forth a schedule, consistent with the requirements of §428G, for disbursement of the proceeds of a Stafford or SLS loan in installments. The loan must then be disbursed by the lender (or escrow agent pursuant to the escrow provisions of Section §428(i) of the Act) in accordance with that schedule.

This provision applies to all Stafford and SLS loans certified on or after March 1, 1990 for periods of enrollment beginning on or after January 1, 1990. Lenders may not disburse a loan for which a schedule is required and that is required to be multiply-disbursed without first receiving the disbursement schedule.

A lender may rely on the school's certification that the schedule complies with the provisions of §428G. Each guarantee agency should ensure that this item is covered either by general language in its current certification or by a certified addendum to the application.

b. Disbursement and Endorsement Requirements for Stafford and SLS loans.

An institution now may not deliver the first installment of an SLS loan to a student borrower who has not successfully completed the first year of the program of undergraduate education in which the student is currently enrolled until 30 days after the first day of the student's program of study. The institution may thereafter deliver the proceeds of the disbursement only if it certifies in the student's file that the student continues to be enrolled, is in attendance, and is maintaining satisfactory progress. Delivery of loan proceeds includes crediting the student's account as well as paying loan funds directly to the student.

Please note that, among other things, this provision prohibits the delivery of the proceeds of a late first disbursement of a covered SLS loan -- that is, a first disbursement received by the institution after the borrower has left school. The delivery of such proceeds was formerly permitted by regulation in certain situations. See 34 CFR 682.604(e).

This requirement applies to the first disbursement of all covered SLS loans delivered to a student on or after December 19, 1989 for periods of enrollment beginning on or after January 1, 1990. As already provided by regulation, the earliest date that a lender may disburse the first installment for any loan to a student borrower is 30 days prior to the first day of the period of enrollment for which the loan is made. See 34 CFR 682.207(b)(1)

c. Withholding By Lenders of Second and Subsequent Disbursements.

A lender or escrow agent may not disburse the second or any subsequent disbursement of a Stafford or SLS loan after it is informed by the student or the institution that the student has ceased to be enrolled at the institution. These withheld disbursements must be applied to reduce the student's outstanding loan balance. The lender must refund to the student's account the insurance premium and origination fee attributable to the disbursement so withheld.

Please note that this provision prohibits the making of late second or subsequent disbursements on Stafford or SLS loans, i.e., second or subsequent disbursements made after the lender learns that the student has left school. These disbursements were formerly permitted by regulation in certain situations. See 34 CFR 682.207(d) and 682.604(e). This provision does not prohibit a lender from disbursing the proceeds of the first disbursement of a Stafford or SLS loan after the borrower has left school. However, such a disbursement may only be made subject to existing regulatory limits.

This provision applies to all second or subsequent disbursements made on or after December 19, 1989 for periods of enrollment beginning on or after January 1, 1990.

d. Students Receiving Overawards.

An institution must withhold and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid obtained by the student. However, instead of returning the entire undelivered disbursement, the school may choose promptly to return to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution must provide the lender with a written statement describing the reason for the return of the loan funds.

The amount returned to the lender must be applied to reduce the student's outstanding loan balance and the lender must return to the student's account the insurance premium and origination fee attributable to the amount returned. An institution previously was not required to return a student's Stafford or SLS loan proceeds if the student received financial aid that the institution did not know about when it certified the loan application. This amendment now requires an institution to do so, effective for all Stafford and SLS loan proceeds not delivered to students as of December 19, 1989 for loans made for periods of enrollment beginning on or after January 1, 1990.

Please note that the above provisions (section II.B.7.) do not apply to Stafford or SLS loans made to cover the cost of attendance at an eligible institution outside of the United States or to PLUS or Consolidation loans. Also, Stafford and SLS loans made for periods of enrollment beginning <u>before</u> January 1, 1990 remain subject to the disbursement requirements of the Act in effect prior to the enactment of Pub. L. 101-239.

8. <u>GED Required of Ability-to-Benefit Students Under the SLS Program - §428A(a)(1)</u>.

A student admitted on the basis of the ability to benefit from the education or training provided by an institution (as determined under §484(d) of the Act) is ineligible for SLS loans until he or she receives a GED or high school diploma. The institution is responsible for ensuring that it does not certify SLS applications in violation of this requirement. Lenders and guarantee agencies may rely on an institution's certification to the effect that a loan does not violate the new requirement. Each guarantee agency should ensure that this item is covered either by general language in its current certification or by a certified addendum to the application.

This provision applies to all SLS loans certified on or after January 1, 1990.