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Statutory Changes

United States Department of Education
Washington, D.C. 20202

December 1990

SUMMARY: Description of Statutory Changes Made by Public Law 101-508, Public Law 101-517, Public Law 101-542, and Public Law 101-647

Dear Colleague:

Four recently enacted statutes made several changes that affect the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (the Act). Public Law 101-508 (the Omnibus budget Reconciliation Act of 1990), which includes the Student Loan Default Prevention Initiative Act of 1990, and Public Law 101-517 (the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991) were signed by the President on November 5, 1990, and Public Law 101-542 (the Student Right to Know and Campus Security Act) was signed on November 8, 1990. Public Law 101-647 (the Crime Control Act of 1990), which includes the Federal Debt Collection Procedures Act of 1990, was signed by the President on November 29, 1990.

Enclosed with this letter is a summary of the major changes made by these laws. 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.

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

Sincerely,

Ernest C. Canellos
Acting Deputy Assistant Secretary
for Student Financial Assistance

Enclosure

Changes Resulting From Pub. L. 101-508, Pub. L. 101-517, Pub. L. 101-542, and Pub. L. 101-647.Table of Contents

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I. Changes Resulting From Pub. L. 101-508

A. General Provisions:

Ability-to-Benefit - §484(d) of the Act.

Pub. L. 101-508 of 1990 requires that, in order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any Title IV student assistance, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary. This language applies to any student assistance to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1991. To participate in the Title IV student assistance programs, an institution may admit as regular students only persons who have a high school diploma or GED or who have the ability to benefit from the education or training offered. Thus, to remain an eligible institution for periods of enrollment beginning on or after January 1, 1991, an institution that admits regular students on the basis of their ability-to-benefit may do so only if such students have passed an independently administered examination approved by the Secretary.

In addition, while Pub. L. 101-508 requires that the Secretary approve the student examination, the test shall be developed, administered, and graded by one or more organizations determined by the Secretary to be independent of the institutions using the test. This requirement is effective for award year 1991-92, which begins July 1, 1991. On December 19, 1990 the Department published a Notice in the Federal Register which provides additional guidance.

B. Provisions affecting the Guaranteed Student Loan (GSL) Programs:

1. Refusal to Provide Statement to Lender - §428(a)(2)(F) of the Act.

Under prior law, an institution could not refuse to certify a Guaranteed Student Loan programs loan application except in instances that would result in certifying a loan in excess of the applicable annual Stafford loan amount. Pub. L. 101-508 amends §428(a)(2)(F) of the Act to permit an institution either to refuse to provide the certification statements required by the Act or to reduce the determination of need for the loan if the institution determines, on a case-by-case basis, that the student's expenses to be covered by the loan, *i.e.*, the estimated cost of attendance, can be met more appropriately by the institution or directly by the student from other sources.

We view this amendment as being consistent with the authority already provided to financial aid administrators under §479A of the Act. In making the choice permitted by the new law, the aid administrator should use procedures consistent with §479A of the Act which requires that determinations be made on a case-by-case basis and that documentation supporting the determination be retained in the student's file. Please note that the law does not authorize the institution to refuse to certify a Stafford Loan application based on the institution's perception of the student's unwillingness to repay the intended loan or on the identity of the lender.

This provision became effective on November 5, 1990.

2. Preclaims and Supplemental Preclaims Assistance - §§428(c)(6)(C) and 428(1) of the Act.

Each guarantee agency that has a Reinsurance Agreement is now required, upon request of a lender, to provide preclaims assistance on accounts that are less than 120-days delinquent and supplemental preclaims assistance (SPA) on accounts that are delinquent at least 120-days. The preclaims assistance performed must generally be comparable in intensiveness to the level of preclaims assistance performed by each guarantee agency as of October 15, 1990.

In order to permit those agencies that do not currently offer SPA sufficient time to implement this requirement, both preclaims and SPA must be performed for accounts for which the first day of delinquency occurs on or after November 5, 1990. Those guarantee agencies are encouraged to provide as soon as possible SPA on other accounts, *i.e.*, those for which the first day of delinquency occurred before November 5, 1990. Agencies that currently offer SPA must continue to do so on accounts that are delinquent at least 120-days for which preclaims assistance has been performed.

The legislation also changes the way in which guarantee agencies are reimbursed for the SPA costs. Under prior law guarantee agencies received payment for SPA expenses as part of the reinsurance payments paid by the Department on defaulted loans. The Department will now make SPA payments to guarantee agencies of \$50 on each account on which SPA is performed and for which a default claim is not presented to the guarantee agency on or before the 150th day after the 120th day of delinquency. This new provision applies to all loans for which the first day of delinquency occurs on or after November 5, 1990. SPA costs on accounts for which the first day of delinquency occurred prior to November 5, 1990, and on which the agency pays the lender a default claim will continue to be reported on Part A of the Guarantee Agency Monthly Claims and Collections Report (ED Form 1189). Those costs will be reimbursed to the extent provided by §428(c)(6)(C)(iv), *i.e.*, the amount which is the least of the actual SPA costs incurred, two percent of the outstanding balance of the claim, or \$100.

We are currently developing the forms, instructions and computer systems that will be required to effect the new SPA payments. We will provide additional guidance in a future Dear Colleague letter.

3. Restricted Eligibility for Student at High Default Institutions - §428A(a)(2) of the Act.

The Act prohibits an 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. Pursuant to §2003(a)(3)(A) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), this provision applied to all SLS loans certified on or after January 1, 1990 and first disbursed before October 1, 1991. Section 2003(a)(3)(A) has been amended to specify that this requirement remains in effect until October 1, 1996.

4. Minimum Period for Annual SLS Loan Amounts - §428A(b)(1) of the Act.

Under prior law the SLS annual loan limits applied to the longer of the academic year or a period of at least nine consecutive months. Section 428A(b)(1) of the Act has been amended to specify that the SLS annual loan limits, including the reduced loan limits for students in programs of study of less than a full academic year in length, now apply to a period which is the greater of the length of the institution's academic year (consistent with the definition of "academic year" found in 34 CFR 668.2) or seven consecutive months. This change became effective November 5, 1990. The new minimum period requirement applies to new SLS loans certified on or after that date. Please note that no change has been made to the determination of the maximum SLS for which a student is eligible, including the reduced SLS loan amounts applicable to students who have not successfully completed the first year of a program of undergraduate education and who are enrolled in programs that are less than one academic year in length. See §428A(b)(1)(A) - (C).

In addition, students who currently have loans that were previously subject to the nine-month minimum period requirement may regain eligibility for new SLS annual loan maximums once the new minimum period, *i.e.*, the greater of the length of the institution's academic year or seven consecutive months, has expired. Thus, the minimum nine-month period would no longer apply to these students.

The guidance provided in section II.F. of Dear Colleague letter GEN-90-33 regarding the determination of the beginning date of the minimum period and the certification of SLS loan applications still applies to the new minimum period requirement.

Pursuant to §2003(b)(2) of Pub. L. 101-239, the "minimum period" and reduced annual SLS loan limits requirements of §428A(b)(1) of the Act applied to all SLS loans certified on or after January 1, 1990 and first disbursed before October 1, 1991. Section 2003(b)(2) has now been amended to specify that these provisions remain in effect until October 1, 1996.

5. Disbursement and Endorsement Requirements for Stafford and SLS Loans - §428G(b)(1) of the Act.

The Act now provides that an institution may not deliver the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study. This provision applies to a student who previously has been enrolled in another program but who has not completed the equivalent of the first year of the undergraduate program in which the student currently is enrolled. Under prior statute, the institution could deliver the first installment of an SLS loan to a student who had not completed the first year of an undergraduate program only if it certified that the student continued to be enrolled, in attendance and making satisfactory progress. The certification requirement has been deleted from §428G(b)(1) of the Act. Institutions are reminded that they are still required to determine that a student has maintained eligibility for the loan, pursuant to 34 CFR 682.201, prior to delivering loan proceeds to the student

These amendments apply to the first disbursement of all covered Stafford and SLS loans for periods of enrollment beginning on or after January 1, 1991. Institutions must provide the lender with a disbursement schedule, as required by §428G of the Act, that will ensure that the first disbursement of the Stafford or SLS loan will be received by the institution just prior to the 30th day of the student's enrollment in his or her program of study.

6. Ineligibility of High Default Institutions - §435(a) of the Act.

The new legislation prohibits an institution from participating in the GSL programs if the Secretary determines that the institution's cohort default rate calculated for each of the three most recent fiscal years is equal to or exceeds 35 percent. In fiscal year 1993 and beyond, a rate that is equal to or exceeds 30 percent for each of the three most recent fiscal years will be used.

In FY 1991, actions by the Secretary will be based on the FY 1987, FY 1988, and FY 1989 cohort default rates. Institutions which are ineligible under this provision will be notified of that determination when they are notified by the Department of their FY 1989 cohort default rate. This notification will occur prior to July 1, 1991, the effective date of this provision. The loss of eligibility to participate in the GSL programs applies to the fiscal year in which the determination is made and the two fiscal years immediately following.

Institutions that are notified of the loss of eligibility may appeal such action based on a demonstration that the calculation is not accurate or on the basis that there are in the judgment of the Secretary exceptional mitigating circumstances. The Secretary intends to publish regulations in the near future to define such exceptional mitigating circumstances.

Institutions should note that the new statutory provisions do not affect the Secretary's authority under the June 5, 1989 default reduction initiative regulations to take actions to terminate an institution's participation in all Title IV student assistance programs when an institution has a cohort default rate of greater than 60 percent.

7. Amendments to the Bankruptcy Laws.

Section 3007 of Pub. L. 101-508 makes two changes to the Bankruptcy Code that affect the Title IV student assistance programs. First, the new law exempts certain actions against institutions from application of the automatic stay of proceedings in bankruptcy. In particular, the new law exempts the following actions from the automatic stay: actions by an accrediting agency regarding the accreditation status of an educational institution in bankruptcy, actions by a State licensing body regarding the licensure of the debtor as an educational institution, and actions by a guarantee agency or the Department regarding the eligibility of the debtor to participate in the Title IV programs.

This change should help ensure that institutions that no longer meet accreditation, licensure, or eligibility standards, or that have violated program requirements so as to warrant limitation, termination, or disqualification from participation in one or more of the Title IV programs, will not be able to thwart actions to address those defects by invoking the protection of bankruptcy law. Because of the close connection among licensure, accreditation, and eligibility to participate in the Title IV programs, the Department suggests that any party that plans to take action regarding the licensure, accreditation or eligibility of an institution in bankruptcy notify the Department prior to taking that action, so that any court challenge to that action or the ensuing loss of Title IV funds will be handled, to the extent possible, by the regulating parties in a consistent and mutually supportive manner.

Prior law had made student loans made or guaranteed under Title IV nondischargeable if the borrower filed for relief under Chapter 7 (liquidation) of the Bankruptcy Code, but not, generally, under Chapter 13 (adjustment of debts of an individual). Now that same provision applies in both Chapter 7 and Chapter 13: a Title IV loan is, generally, nondischargeable in a bankruptcy case filed under either Chapter 7 or Chapter 13 within five years after the loan first came due, exclusive of periods during which repayment obligations are suspended, e.g., authorized periods of deferment and forbearance. This change applies to cases filed on or after November 5, 1990. However, please refer to Section IV of this Dear Colleague letter regarding an additional change to the Bankruptcy Code.

Current Department regulations direct the lender to file a claim with the guarantee agency if the borrower has filed a petition for relief under Chapter 13. See 34 CFR 682.402(d)(4)(iii)(A). This provision remains effective for Chapter 13 filings.

II. Changes Resulting From Pub. L. 101-517

A. Provisions Affecting the Pell Grant Program:

1. Special Conditions - §479A of the Act.

A financial aid administrator's authority under §479A of the Higher Education Act of 1965, as amended, to make individual adjustments based on adequate documentation, to a student's expected family contribution under the Pell Grant Program was rescinded for the 1991-92 award year. Instead, Pub. L. 101-517 provides that any student whose special circumstances meet special conditions prescribed by the Secretary shall have his or her Pell Grant Index (PGI) calculated using the expected year income for the 1991 calendar year instead of using base year income for the 1990 calendar year.

The Department will publish regulations defining applicable special conditions. The special conditions for the 1991-92 award year will be the same as those used in the 1990-91 award year. The application procedure will also be the same as the one for the 1990-91 award year (*i.e.*, students will use the Student Aid Report (SAR) or the Correction Application for Federal Student Aid [AFSA] to apply).

2. Less-than-half-time Students.

For the 1991-92 award year less than half-time students will not be eligible for Pell Grants.

3. Maximum Award.

Based upon the appropriations for fiscal year 1991, the maximum award for the 1991-92 award year will be \$2,400.

B. Provisions Affecting the Guaranteed Student Loan Programs

Pro Rata Refunds.

The Department's appropriations act for fiscal year 1990 (Pub. L. 101-166) specified that each institution participating in the GSL programs that had a default rate exceeding 30 percent must implement a *pro rata* refund policy for all Title IV aid recipients. This requirement has not been included in Pub. L. 101-517. Therefore, after the 1990-91 award year (*i.e.*, the award year ending June 30, 1991), Title IV aid recipients at an institution with a default rate over 30 percent will no longer be subject to a mandatory *pro rata* refund policy if the Title IV aid does not include GSL. However, institutions with a default rate over 30 percent must maintain a *pro rata* refund policy for GSL recipients under 34 CFR 682.606(b).

III. Changes Resulting From Pub. L. 101-542

A. General Provisions:

Consumer Disclosure Requirements.

Pub. L. 101-542 contains a number of provisions that affect the consumer disclosure regulations published in the *Federal Register* on June 5, 1989. Under the new law, the Secretary, in conjunction with representatives of institutions of higher education, is required to analyze the feasibility and desirability of making graduation rates and other similar statistical measures of institutional outcomes available to students and prospective students. The results of this analysis are to be reported to Congress by July 31, 1991. Institutions will be required to disclose to students and prospective students the completion or graduation rate of degree-seeking, full-time students beginning on July 1, 1993.

In the meantime, the law suspends the current regulations set forth in 34 CFR 668.44(c) - (f). Therefore, institutions currently participating in any of the Title IV student assistance programs that were required to collect and report completion and placement rates to prospective students under this provision are no longer required to do so. This does not prohibit institutions from providing this information to students.

Institutions are reminded that the suspension of 34 CFR 668.44(c) - (f) does not suspend the statutory requirement that institutions that make marketing claims regarding job placement to recruit students must disclose information supporting their claims to prospective students at or before the time of application. Specifically the institution must provide the most recent available data concerning employment statistics, graduation statistics and other information necessary to substantiate the truthfulness of the institution's claims. See §487(a)(8) of the Act. However, institutions are not required to use the methods of calculation, formats, or forms that were required by 34 CFR 668.44(c) - (f).

Under the regulations, institutions have been required to submit to the Department each year by December 31 a sample Track Record Disclosure Form (TRDF) for each program covered by the requirements of 34 CFR 682.610(g). Effective immediately, institutions should not send TRDFs to the Department.

IV. Changes Resulting From Pub. L. 101-647

A. Amendments to the Bankruptcy Law:

Section 3621 of Pub. L. 101-647 further modifies the Bankruptcy Code in two ways that affect Title IV student assistance obligations. First, the period during which a Title IV loan may not generally be discharged in bankruptcy has been extended from five years, as under current law, to seven years, calculated from the date the loan first came due to the date the bankruptcy action was filed, exclusive of periods during which repayment obligations are suspended, *e.g.*, authorized periods of deferment and forbearance. Second, in addition to Title IV student loans, obligations to repay an "overpayment" of, or any other obligation to repay, an "educational benefit" provided by a governmental unit or under a program funded by a governmental unit or non-profit institution are now also dischargeable during that same seven-year period only if the borrower proves that repayment would constitute an undue hardship.

These two changes to §523(a)(8) of the Bankruptcy Code take effect on May 28, 1991, which is 180 days after November 29, 1990, the date of enactment of Pub. L. 101-647.

P-90-18 (LD)**Floppy Disk Data Exchange****United States Department of Education**

Washington, D.C. 20202

November 1990

SUMMARY: This letter describes the benefits of the Floppy Disk Data Exchange process, details participation requirements, and provides updated technical information.

Dear Financial Aid Administrator:

The Pell Grant Branch, Division of Program Operations and Systems, announces that over 800 schools signed an agreement to participate in the first full year of the Floppy Disk Data Exchange process. The Floppy Disk Data Exchange process allows you to submit and receive Payment Data by IBM PC compatible diskette instead of hardcopy submissions. Floppy Disk Data Exchange continues to be offered in addition to our well-established Recipient Data Exchange (RDE) and Electronic Data Exchange (EDE) processes.

This letter provides information on the Floppy Disk Data Exchange Program including:

- Who should participate
- Benefits of the Floppy Disk Data Exchange Program
- Hardware and Software Requirements
- Participation Information

WHO SHOULD PARTICIPATE

Floppy Disk Data Exchange, while providing the same benefits as the Electronic Data Exchange (EDE) and Recipient Data Exchange (RDE) processes, focuses on institutions that currently submit their Payment Data by hardcopy Payment Vouchers. To participate in Floppy Disk Data Exchange, your institution must function as a funded independent or central campus. Branch campuses with unique Pell IDs should participate through their central offices. You may submit Payment Data on either 5 1/4" or 3 1/2" diskettes. The maximum batch size for submitting data in any one batch is 750 records for 5 1/4" diskettes or 1500 records for 3 1/2" diskettes. However, you can submit up to 60 batches per year. If you are currently submitting hardcopy Payment Vouchers and your batch size falls within the appropriate maximum size, we strongly encourage you to consider Floppy Disk Data Exchange. Schools with over 500 Pell Grant recipients, however, should also consider participating in either RDE or EDE. We provide each participating institution with a Data Base Management System designed specifically for Floppy Disk Data Exchange users. The system is very user friendly and provides many report and query functions to better analyze your Payment Data submissions and reconcile your Processed Payment Data batches.

BENEFITS OF THE FLOPPY DISK DATA EXCHANGE PROGRAM

The benefits of the Floppy Disk Data Exchange Program include:

- Minimal cost for your automated data processing (ADP) equipment and/or operation;
- Reduced costs in mailing a Floppy Disk versus a batch of hardcopy vouchers;
- Operation of the system by your Financial Aid staff without the external ADP resources and budget expenses normally associated with RDE or EDE;
- Quicker adjustment of institutional authorizations due to faster processing time for diskettes versus for hardcopy submissions;
- Higher accuracy in reporting resulting from the ability to pre-edit Payment Data submissions;
- Fulfillment of your reporting requirements for both batch-specific Institutional Payment Summary (IPS) and student payment data; you will not complete a hardcopy IPS. (You should retain the IPS we send you in case you need to change the information in Section I);
- Ability to produce student payment lists for analysis or review at your convenience;
- Ability to print facsimiles of Processed Payment Vouchers at any time;
- Elimination of possible losses of Payment Data due to mailroom or post office error by copying (backing up) your data base onto your hard disk or another floppy diskette; and
- Elimination of the need to complete or maintain hardcopy Payment Vouchers (SAR Part 3).

HARDWARE AND SOFTWARE REQUIREMENTS

To participate in the Floppy Disk Data Exchange Program, you need the following hardware and software:

- 1) IBM or IBM-compatible PC with at least 640k of installed, conventional memory and a minimum of 570k available for use;
- 2) A hard disk with at least one megabyte of available storage space;
- 3) A disk drive that accepts 5 ¼" or 3 ½" inch, double-sided, double density, DOS formatted diskettes;
- 4) PC-DOS or MS-DOS operating system Version 2.0 or greater; and
- 5) Printer capable of printing standard 8 ½ x 11" reports.

By design, the Floppy Disk software runs on a single PC and does not incorporate networking capabilities at present.

PARTICIPATION INFORMATION

The Pell Grant Data Exchange Certification Form (Enclosure) provides basic institutional identification information and specifies the conditions of participation for your institution. (You may also use the Certification Form to request participation in the RDE process.) The type of diskettes (5 ¼" or 3 ½") that you specify determine which type of Program and Payment Data diskettes that you receive. To initiate your request to participate in the Floppy Disk Data Exchange process, submit your Pell Grant Data Exchange Certification Form to:

**Pell Grant Program
c/o Advanced Technology, Inc
12001 Sunrise Valley Drive
Box G-2.04
Reston, VA 22091**

Once we receive and process your Certification Form, we will send you the following: (1) Floppy Disk Data Base Management Software, (2) Floppy Disk Data Exchange Program User's Guide, and (3) Payment Data diskettes and Floppy Disk mailers. If our review of your past reporting indicates that your Pell Grant activity exceeds the capacity for reporting by Floppy Disk we will notify you and return your Certification Form.

If you have any questions regarding the Floppy Disk Data Exchange process and whether you should participate, please call a Floppy Disk Specialist at (202) 708-9168.

Sincerely,

Gary L. Crayton
Chief, Pell Grant Branch
Division of Program Operations and Systems

Enclosure

PELL GRANT DATA EXCHANGE CERTIFICATION
 (Certification Regarding Institutional Participation in the
 Pell Grant Floppy Disk Data Exchange or
 Recipient Data Exchange Process)

Name of Institution	Pell Institution No.
Street	Entity Number
City	State
	Zip Code

(and its agents), hereafter referred to as the institution, hereby agrees to comply with all applicable provisions pursuant to Part A, Subpart 1 of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a), the regulations promulgated thereunder (34 CFR Part 690), and such policy statements as may from time-to-time be promulgated by the U.S. Department of Education regarding the administration of the Pell Grant Program, as those provisions apply to participation in the Pell Grant Data Exchange designated below. The institution agrees to maintain the payment data which it submits for five years beyond the end of the award year for which the data is applicable (retention on microfilm, microfiche is acceptable). The completion and retention of the Payment Voucher (SAR Part 3) is not required, provided that the institution maintains or can generate all information collected on the Payment Voucher in an acceptable hardcopy (or microfilm or microfiche) form for each Pell Grant recipient.

PLACE AN X IN PART A OR PART B BOX TO INDICATE YOUR METHOD OF PARTICIPATION AND COMPLETE PART C.

A. FLOPPY DISK DATA EXCHANGE PARTICIPATION ()

Sending student payment data and receiving processed payment data on pre-formatted floppy disks and receiving the Student Payment Summary as hardcopy (Check one): () 5 1/4" () 3 1/2"

B. RECIPIENT DATA EXCHANGE PARTICIPATION ()

(Check one):

- _____ 1. Sending student payment data and receiving processed payment data by magnetic tape or cartridge, and receiving the Student Payment Summary tape (with hardcopy report);
- _____ 2. Sending student payment data by magnetic tape or cartridge, and receiving Processed Payment Vouchers and the Student Payment Summary as hardcopy;
- _____ 3. Receiving only the Student Payment Summary on tape (in addition to the hardcopy report).

C. CERTIFICATION AND SIGNATURES

The institution agrees that the "Official Signature Flag" in the header record of its submissions constitutes certification that the data submitted have been examined and all information is true and complete to the best of the institution's knowledge. The institution understands that the name and telephone number of an authorized institutional official must be provided in the trailer record of its submissions and that an authorized institutional official must:

- (1) Sign the Tape Transmittal (for RDE Tape submissions); OR
- (2) Complete the Submission Authorization on the diskette (for Floppy Disk submissions).

Signature of Authorized Institutional Official Date

Signature of Institutional Data Exchange Contract Date

Name (Print or Type)

Name (Print or Type)

Title (Print or Type)

Title (Print or Type)

()

Telephone

()

Telephone

Return to: Pell Grant Program
 c/o Advanced Technology Inc.
 12001 Sunrise Valley Drive
 Box G-2.04
 Reston, VA 22091

SG-90-6**Teacher Shortage Areas****United States Department of Education**

Washington, D.C. 20202

September 1990

SUMMARY: This letter conveys to each State the final regulations regarding teacher shortage areas for the Paul Douglas Teacher Scholarship Program and the Guaranteed Student Loan programs and information on the implementation of those regulations.

Dear Chief State School Officer:

We are requesting your assistance in implementing the enclosed final regulations published in the *Federal Register* on August 27, 1990, regarding the targeted teacher deferment for borrowers under the Stafford Loan and Supplemental Loans for Students (SLS) programs, two of the Guaranteed Student Loan (GSL) programs, and the reduction of teaching obligation for scholars under the Paul Douglas Teacher Scholarship Program. To initiate the process your office needs to propose, for designation by the U.S. Secretary of Education, teacher shortage areas in the public and private nonprofit elementary or secondary schools in your State for the 1990-91 school year. This letter also explains the options available to your State to provide the required certification of teaching in a teacher shortage area for a borrower or Paul Douglas scholar.

Please note: The teacher shortage area designation process required by the enclosed regulations is different from the one in which you currently participate to designate low-income schools for the purpose of teaching service cancellations in the National Direct (Defense) Student Loan or Perkins Loan programs.

Background

These regulations are required to implement sections 427(a)(2)(C)(vi), 428(b)(1)(M)(vi), 428(b)(4), and 553(b)(4)(A) of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498 (October 17, 1986). The first three of these sections permit a borrower to defer repayment of principal owed on a Stafford loan or an SLS loan, for up to three years during which time the borrower is engaged as a full-time teacher in a designated teacher shortage area in a public or nonprofit private elementary or secondary school. Section 553(b)(4)(A) of the HEA also reduces the teaching obligation for scholars under the Paul Douglas Teacher Scholarship Program for teaching service in a designated teacher shortage area in a public or nonprofit private elementary or secondary school. The term "shortage area" is defined in section 428(b)(4)(B) of the HEA which specifically limits the types of areas to be designated by a State to the following categories:

- A geographic region of a State in which there is an inadequate supply of elementary or secondary teachers.
- A State-wide area of shortage of elementary or secondary school teachers in specific grade levels.
- A State-wide area of shortage of elementary or secondary school teachers in specific academic, instructional, subject-matter, and discipline classifications.

The Secretary published a notice of proposed rule making (NPRM) on January 31, 1989, which proposed procedures and guidelines for the States and the Department to use in identifying teacher shortage areas for the purposes described above. The Council of Chief State School Officers announced the publication of the NPRM and provided a brief synopsis on the February 17, 1989, transmission of their electronic bulletin board.

As a result of the comments received in response to the NPRM, the final regulations provide your office greater flexibility in the methodology for selecting the areas which you propose the Secretary designate as teacher shortage areas. The final regulations also provide that, instead of the Chief State School Officer (CSSO) providing all teacher shortage area certifications, the chief administrative officer of a public or nonprofit private elementary or secondary school in which a Douglas scholar is teaching may, under certain circumstances, provide the certification that the scholar is teaching in a teacher shortage area in order for the scholar to qualify for a reduction of teaching obligation. The final regulations also provide for the same procedures with respect to the deferment certification for GSL borrowers.

Section 682.210(j)(6)(i) provides the due date, January 1 of the calendar year in which the school year begins, for your annual submission of proposed teacher shortage areas. Therefore, we plan to send a letter to you each year to initiate the teacher shortage area designation process for the next elementary and secondary school year. Since there were no final regulations in effect on January 1 of this year, we were unable to begin the designation process last January for the 1990-91 elementary and secondary school year. We are initiating the teacher shortage area designation process for this school year with this letter in order to provide the deferment for GSL program borrowers and a reduction in teaching obligation for Douglas scholars for the 1990-91 school year. The teacher shortage areas that you propose for the 1990-91 school year must be based on data from either the 1989-90 school year or data from the preceding 1988-89 school year, provided that the 1988-89 data is the most currently available data.

Proposing Teacher Shortage Areas for Designation by the Secretary

Sections 682.210(j)(6) and (7) of the enclosed regulations provide you with two options to propose teacher shortage areas for designation by the Secretary. Section 682.210(j)(6) prescribes a specific methodology and set of procedures for your agency to use to propose teacher shortage areas. If your agency does not elect to use the option discussed in §682.210(j)(7) then you must use the prescribed methodology for proposing teacher shortage areas.

Section 682.210(j)(7) describes an option which you may elect to use as an alternative to the one prescribed in the regulations. If you elect this option you must propose, in writing, an alternate methodology for selecting the shortage areas for approval by the Secretary. This option was added to the regulations as a result of comments that we received in response to the NPRM from the State agencies. The commenters requested that we include the ability for the States to propose shortage areas identified using a methodology currently in use for other purposes or a methodology based upon other data currently collected by the States. Upon receipt of the Secretary's approval, you may use your alternate methodology to identify and obtain Secretarial designation of the teacher shortage areas in your State. You may submit, with your request for approval of an alternate methodology, your initial proposed shortage areas developed using that methodology prior to its approval by the Secretary. However, you should understand that if modifications are required to your proposed alternate methodology, then you will have to propose new shortage areas developed using the approved methodology.

Whichever methodology you use, the regulations require you to submit a proposed list of teacher shortage areas for review and designation by the Secretary. Enclosure B is a Proposed Teacher Shortage Area Submission Check List. This check list itemizes the information that you should submit to the Secretary in order for him to designate the teacher shortage areas in your State for the 1990-91 school year.

Please submit your proposed teacher shortage area materials to the following address as soon as possible but no later than 45 days from the date of this letter:

Office of Student Financial Assistance
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5345

Attn: Pamela A. Moran, Acting Chief
GSL Branch, DPPD

If, by that date, we do not receive a written response from you concerning this matter, we shall assume that your State is not requesting the Secretary to designate teacher shortage areas for the 1990-91 school year.

Teacher Shortage Area List and the Certification Process

Sections 653.40(b)(2) through (6) and 682.210(j)(1) through (4) of the enclosed regulations discuss the process by which GSL program borrowers and Douglas scholars are certified as teaching in a designated teacher shortage area. An eligible borrower or scholar must obtain the following two certifications to obtain his or her respective benefit:

- (1) The scholar or borrower must obtain a statement from the chief administrative officer of the public or nonprofit private elementary or secondary school in which he or she is teaching, certifying that he or she is employed as a full-time teacher.
- (2) The scholar or borrower must also obtain a statement that he or she is teaching in a designated teacher shortage area. This certification must be provided by the CSSO of the State in which the scholar or borrower is teaching unless the CSSO has provided a list of teacher shortage areas to the chief administrative officers of schools affected by the teacher shortage area designation or, with respect to Douglas scholars teaching in the State from which they received a Douglas Scholarship, to the State agency administering the Douglas Program. If such a list has been provided, then the chief administrative officer at the affected school may provide both the full-time teaching certification and the teacher shortage area certification.

Section 682.210(j)(3) permits the chief administrative officer at the school in which the borrower is teaching to provide the teacher shortage area certification only if the CSSO has provided the Secretary with a one-time written assurance that he or she provides the annual list of teacher shortage areas to the affected chief administrative officers and the designated guarantee agency for the State. Similarly, under sections 653.40(b)(4)(i) and 653.40(b)(5) of the Paul Douglas regulations, the chief administrative officer of a State may substitute his or her teacher shortage area certification for that of the CSSO subject to the same condition. Note, however, that the Douglas regulations do not require the CSSO to provide the list of designated teacher shortage areas to the State agency administering the Douglas program, and, therefore, you are not required to provide an assurance that you will do so. However, we suggest that you provide the Douglas agency in your State with that list on an annual basis in order to simplify the certification process.

My staff is looking forward to working with you to establish the 1990-91 school year teacher shortage areas, and I want to thank you in advance for your assistance and cooperation in this matter. If after reading this letter and enclosures, you have questions, please call the Guaranteed Student Loan programs staff on (202) 708-8242 or the Paul Douglas Teacher Scholarship Program staff on (202) 708-4607.

Sincerely,

Ernest C. Canellos
Acting Deputy Assistant Secretary for Student Financial Assistance

Enclosure A *Federal Register*
Enclosure B Proposed Teacher Shortage Area Designation Submission Check List

[Refer to the paper copy of the September 1990 Dear Chief State School Officer Letter for the "*Federal Register*".]

PROPOSED TEACHER SHORTAGE AREA DESIGNATION SUBMISSION CHECK LIST

What you need to include in your Teacher Shortage Area submission to the U. S. Department of Education.

I. PRESCRIBED METHODOLOGY

If you use the prescribed methodology discussed in §682.210(j)(6), your submission needs to include:

- (1) an assurance that written objective standards were used in developing the proposed teacher shortage areas;
- (2) an assurance that the CSSO consulted with private nonprofit school officials within the State;
- (3)
 - (a) an assurance that the proposed teacher shortage areas meet the specific requirements found in §682.210(j)(6)(iii); **or**
 - (b) if your proposed teacher shortage areas exceed the automatic designated limit of 5 percent unfilled FTEs, a statement that you are submitting supporting documentation as required in §682.210 (j)(6)(iv) for the consideration of the Secretary;
- (4) an assurance that 1989-90 academic year data (or 1988-89 if most current data available) was used to determine the proposed teacher shortage areas;
- (5) at your option, the one-time assurance, discussed in §682.210(j)(3), that the CSSO will provide an annual list of designated teacher shortage areas to the chief administrative officers of the affected schools in your State;
- (6)
 - (a) the name and original signature of the CSSO;
 - (b) the name, address, and telephone number of a contact person;
- (7) A list of proposed teacher shortage areas containing the following information:
 - (a) Name of State.
 - (b) Applicable school year.
 - (c) Date prepared.
 - (d) If proposed areas are a geographic region, list the names of specific areas such as counties or school districts. For example:

State of Columbia - 1990-91 school year - September 20, 1990

*Northwest Independent School District
Central Independent School District*

State of Ventura - 1990-91 school year - September 10, 1990

*McLean County
Jenkins Hill County*

- (e) If proposed areas are for a State-wide shortage of a specific grade level or academic discipline, list the grade level or specific academic disciplines. For example:

State of Albion - 1990-91 school year - September 5, 1990
Fifth and Sixth Grade Teachers

State of Platte - 1990-91 school year - September 17, 1990
Mathematics
Physics

State of Albemarle - 1990-91 school year - September 18, 1990
Special education for handicapped children

- (8) If you propose more than the 5 percent limit in item I.7., the listing of teacher shortage areas ranked according to priority as required by §682.210(j)(6)(iv) along with supporting documentation showing the methods used for identifying shortage areas and an explanation of why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas.

OR

II. STATE-DEVELOPED ALTERNATE METHODOLOGY

If you are proposing an alternate methodology for designation of teacher shortage areas as permitted by §682.210(j)(7), your submission needs to include:

- (1) a statement that your submission contains a request for approval of an alternate teacher shortage area selection methodology and that the submission contains supporting documentation as described in §682.210(j)(7);
- (2) an assurance that written objective standards were used in developing the proposed teacher shortage areas;
- (3) an assurance that the CSSO consulted with private nonprofit school officials within the State;
- (4) an assurance that 1989-90 academic year data (or 1988-89 if most current data available) was used to determine the proposed teacher shortage areas;
- (5) at your option, the one-time assurance, discussed in §682.210(j)(3), that the CSSO will provide an annual list of designated teacher shortage areas to the chief administrative officers of the affected schools in your State;
- (6) (a) the name and original signature of the CSSO; (b) the name, address, and telephone number of a contact person;
- (7) a list of proposed teacher shortage areas following the instruction in I.7. However, this list can only be evaluated for designation if your alternate methodology for proposing teacher shortage areas is approved by the Secretary.
- (8) If you propose more than the 5 percent limit in item II.7., the listing and other information described in item I.8.