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# Loan Notes

Courtesy of American Education Services

## THE REAUTHORIZATION OF THE HIGHER EDUCATION ACT

After 14 extensions, the Higher Education Act (HEA) was finally reauthorized by the Higher Education Opportunity Act (HEOA) on August 14th, 2008. In terms of the Federal Family Education Loan Program (FFELP) loans, the HEOA reauthorizes federal insurance and interest subsidies through federal fiscal year 2014 and for FFELP loans to existing borrowers, through federal fiscal year 2018. Although the HEOA reauthorizes the HEA, the HEOA also contains provisions that both modify existing statutory language and add new statutory language. Some of the HEOA provisions became effective retroactively, others became effective on the date of enactment, and the remaining provisions become effective in future months and years. The date of enactment is August 14th, 2008, i.e. the date on which President Bush signed the HEOA.

The U.S. Department of Education (ED) has determined that some provisions in the HEOA are self-implementing. However, other provisions will be implemented through new or revised federal regulations. For some of the provisions to be implemented through regulations, there will be a negotiated rulemaking process and for other provisions, ED plans to use a notice and comment process or to make the changes as technical corrections.

Within the next several months, ED will begin a negotiated rulemaking process with a notice in the *Federal Register* to address those provisions determined to be subject to negotiated rulemaking. ED also plans to publish a Dear Colleague Letter to provide a summary of each provision of the HEOA. However, *affected parties are responsible for taking the steps necessary to comply by the effective dates established by the HEOA*. ED advises all affected parties to review the legislation immediately in order to determine the proper measures that must be taken in order to comply.

NASFAA (National Association of Student Financial Aid Administrators) has developed a sample letter that may be revised and used by the financial aid office to inform a school's president about the provisions of the HEOA. These provisions not only change financial aid processes but also affect other school activities and offices.

The HEOA provisions affecting student loans are being discussed in the 2008 Fall Training Workshops offered by AES.

## RECENT STATUTORY AND REGULATORY CHANGES AFFECTING FFELP LOANS

During the past 12-month period, there have been three statutory or legislative acts modifying the Higher Education Act (HEA) that have been addressed in Loan Notes. The first was the College Cost Reduction and Access Act (CCRAA) which became Public Law 110-084 on September 27, 2007 (see the December 2007 issue of Loan Notes). The second was the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) which became Public Law 110-227 on May 7, 2008 (see the June/July 2008 issue of Loan Notes). The most recent legislative changes result from the Higher Education Opportunity Act (HEOA) which became Public Law 110-315 on August 14, 2008. The provisions of the HEOA related to student loans will be addressed in future issues of Loan Notes.

In addition to the changes in statute or law, there have been federal regulatory changes and proposed federal regulatory changes during the past 12-month period that have been addressed in Loan Notes. These include the final rules published on November 1, 2007 (see the January/February and the March/April 2008 issues of Loan Notes) and the notice of proposed rulemaking resulting from the CCRAA which is addressed in this issue of Loan Notes. It is anticipated that there will be additional federal regulatory changes by the U.S. Department of Education in response to the HEOA.

## NOTICE OF PROPOSED RULEMAKING PUBLISHED

On July 1, 2008, the U.S. Department of Education (ED) published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. This NPRM is a result of negotiated rulemaking through public hearing and through the Loans Committee, one of two committees, established by ED to propose federal regulations on statutory provisions in the College Cost Reduction and Access Act (CCRAA). In addition to the Federal negotiators on the Committee, there were 13 non-Federal negotiators who participated based on each member's experience and expertise.

Comments on the NPRM were due by August 15, 2008. In order for the final rules to be effective on July 1, 2009 in accordance with the Master Calendar in the Higher Education Act, ED must publish the final rules on or before November 1, 2008.



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## NOTICE OF PROPOSED RULEMAKING PUBLISHED *continued from page 1*

A summary of the proposed changes that will affect the Federal Family Education Loan Program (FFELP) as a result of the NPRM follows:

### Economic Hardship Deferment

Effective October 1, 2007, the CCRAA changed one component in the eligibility requirements by increasing the allowable income for a borrower from 100% of the poverty line for a family of two to 150% of the poverty line applicable to the borrower's family size.

The NPRM provides a standard definition for family size that would include the borrower, borrower's spouse, borrower's children, if the children receive more than half their support from the borrower. A borrower's family size also includes other individuals, if at the time the borrower requests the subject deferment, the other individuals live with the borrower and receive, and will continue to receive, more than half of their support from the borrower.

In addition, the NPRM designates the poverty guideline for the 48 contiguous States as the guideline to be used when a borrower is not a resident of State, e.g. a borrower who resides in a foreign country.

Although the CCRAA eliminated the provision under which a borrower, working full or part time, could be considered to have an economic hardship if his/her Federal educational debt to income equaled or exceeded a defined standard known as the "20/220 Rule", ED retained the provision in federal regulation. The NPRM, however, eliminates the "20/220 Rule" for any deferment requests on or after July 1, 2009.

### Military Service Deferment

The NPRM provisions state that a military service deferment may be granted, without supporting documentation to an eligible borrower for a period not to exceed 12 months from the date the qualifying service began based on a request from the borrower or the borrower's representative. However, supporting documentation is required for any subsequent deferment period.

The provisions also clarify that the 180-day period after the demobilization date is available to borrowers who were/are serving on active duty on or after October 1, 2007.

### Post Active Duty Student Deferment (previously known as the Military Active Duty Student Deferment)

The change in deferment titles clarifies that the deferment covers a qualified post-active duty period.

The deferment is available to borrowers who serve on active duty on or after October 1, 2007.

Active duty, defined in section 101 (d) (1) of title 10 in the U.S. Code, means duty for at least a 30-day period including:

- Active State duty for members of the National Guard under which a governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds.
- Full-time National Guard duty under which a Governor is authorized, with the approval of the U.S. President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds.

Active duty does not include:

- Active duty for training or attendance at a service school.
- Employment in a full-time, permanent position in the National Guard unless the borrower is reassigned to active duty as defined above.

### Military Service Deferment / Post Active Duty Student Deferment

The NPRM clarifies in regulations that if a borrower qualifies for a military service deferment with the 180-day post demobilization date period and then is also qualified for a post active duty student deferment of 13 months, the 180 days and the 13 months run concurrently.

### Mandatory Forbearance

If a member of the National Guard, who qualifies for a post active duty student deferment but does not qualify for a military service or other deferment, is engaged in State duty for a period of more than 30 consecutive days, a lender must grant a forbearance in increments not exceeding a year and beginning either:

- On the day after the end of the grace period for a Stafford loan that has not entered repayment, or
- On the day after the borrower ceases enrollment, for a FFELP loan in repayment.

### Income-Based Repayment Plan

A borrower who has a *partial financial hardship* may elect the income-based repayment (IBR) plan. Under this plan, which becomes effective on July 1, 2009, the borrower's monthly loan payments are determined by calculating the amount by which the borrower's Adjusted Gross Income exceeds 150% of the poverty guideline applicable to the borrower's family size and then multiplying the amount by .15 and dividing the result by 12.

A borrower has a partial financial hardship if his or her annual loan payments, based on a 10-year standard repayment plan, exceed 15% of the amount by which the borrower's Adjusted Gross Income exceeds 150% of the poverty guideline applicable to the borrower's family size.

An eligible loan under this plan is any outstanding FFELP or Direct loan except for a parent PLUS loan or a FFELP or Direct Consolidation loan that repaid a parent PLUS loan. If a borrower's eligible loans are held by more than one holder, proposed regulations would require each holder to determine the monthly loan payment amount based on the percentage of the total outstanding principal amount of eligible loans held by that loan holder.

If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's subsidized Stafford loan(s) or the subsidized portion of the borrower's Consolidation loan(s), ED remits the unpaid accrued interest to the loan holder for a period not to exceed 3 consecutive years from the date that the borrower began repayment on each loan under the IBR plan. On a Consolidation loan that repays loans on which ED has paid accrued interest, the 3-year period includes the period for which ED paid interest on the underlying loans. The 3-year period does not include any period during which the borrower was on an Economic Hardship Deferment.

The loan holder determines the borrower's eligibility for the IBR plan on a yearly basis. To make this determination, the loan holder requires the borrower to provide regulatory-defined eligibility documentation and verification, as appropriate.

## Income-Based Repayment Plan (continued)

If a borrower ceases to have a partial financial hardship or fails to provide the required documentation to determine if he or she has a partial financial hardship, the borrower's recalculated maximum monthly loan payment is the amount that he or she would have paid under the standard 10-year repayment plan based on the eligible loans outstanding at the time the borrower began repayment under the IBR plan. This may result in a repayment period that exceeds 10 years. If a borrower decides not to pay under the IBR plan, the borrower must pay under the standard repayment plan. However, the borrower's monthly repayment amount is based on the time remaining under a 10-year repayment plan (or for a Consolidation loan, the applicable repayment period) for the amount of the borrower's loans that were outstanding at the time the borrower opted out of the IBR plan.

ED will repay the outstanding balance and accrued interest on any eligible loan for a borrower who participates in the IBR plan for a period not to exceed 25 years and makes qualifying payments or received an economic hardship deferment on eligible FFELP loans. For FFELP loans, the beginning date of the 25-year period will be no earlier than July 1, 2009.

On a loan subject to IBR, accrued interest may be capitalized only when the borrower (1) elects to leave the IBR plan or (2) ceases to have a partial financial hardship. The current regulations for calculating special allowance payments (SAP) apply to the unpaid principal balance of the loan and capitalized interest. Proposed regulations include the calculation of SAP on accrued interest for an IBR loan with the existing calculations except that the applicable interest rate is zero.

## Eligible Not-For-Profit Holder

The proposed regulations incorporate the changes made by Public Law 110-109, i.e. the Third Higher Education Extension Act of 2007, that was signed by the President on October 31st, 2007. The changes include (1) the removal of the requirement that an entity qualified for not-for-profit status only if the entity was an eligible lender as defined in the Higher Education Act and (2) the addition of the requirement that a not-for-profit entity - eligible for the higher special allowance payment - not be owned or controlled by a for-profit entity. In *Dear Colleague Letter* FP-07-12, dated December 28, 2007 (see the May 2008 issue of Loan Notes), ED detailed the standards and process by which an entity qualifies for not-for-profit status.

## Public Service Loan Forgiveness

Instead of defining specific jobs that would qualify a borrower for public service loan forgiveness, the NPRM defines the types of organizations that would qualify as eligible employers for the purpose of public service loan forgiveness. These include:

- A Federal, State, local, or Tribal government organization, agency, or entity.
- A public child or family service agency.
- A defined non-profit organization.
- A tribal college or university.
- A private organization that provides emergency management, military service, public safety, law enforcement, public interest law services, public child care, public service for individuals with disabilities and the elderly, public health, public education, public library services, school library or other school-based services.

*(Please note that this list was revised by the Higher Education Opportunity Act.)*

Borrowers may request forgiveness on all eligible loans after making 120 qualifying monthly payments. Eligible loans include Direct Consolidation, Direct Subsidized, Direct Unsubsidized, and Direct parent or Grad PLUS.

Effective July 1, 2008, FFELP borrowers may obtain a Direct Consolidation loan for the purpose of public service forgiveness. Payments made on a FFELP loan before Direct Consolidation do not count toward the 120-month requirement. For forgiveness eligibility, the 120 monthly payments must be made under one or a combination of the income based repayment plan, the standard repayment plan, the Direct loan income-contingent repayment plan, or any other repayment plan if the monthly payment amount is not less than what would have been paid under the standard repayment plan.

## Part II of Ensuring Continued Access to Student Loans Act of 2008 (ECASLA)

During the spring of 2008, a much-discussed topic was Lender-of-Last Resort. To that end, the U.S. Congress included the following provisions in ECASLA.

### Lender-of-Last Resort Authority

Effective May 7, 2008, ECASLA made the following changes to Lender of Last Resort (LLR) provisions:

- All FFELP loans, except Consolidation loans, must be made available under an LLR program.
- All LLR loans must be made with the statutory maximum interest rate, origination fee, and federal default fee that apply to the loan type.
- ED is authorized to designate an entire school as eligible for LLR loans for its students and for parents of its dependent students. All designations expire on June 30, 2009.

To receive a designation, the school is required to demonstrate that - working in conjunction with the designated guarantor for its state - the school made at least 3 attempts to find participating lenders that will make conventional FFELP loans beyond those lenders which had previously provided FFELP loans to the student's school. The school is then required to determine the percentage of its student and parent borrowers who are not able to obtain conventional FFELP loans. If this percentage equals or exceeds 80%, the school may be eligible for an institution-wide designation for LLR loans.

To request the designation, the school must provide the guarantor with documentation supporting its determination of at least 80% as well as its attempt to find other FFELP lenders. The guarantor then provides its opinion on the school's eligibility to ED. If ED determines that, notwithstanding the school's determination, there are lenders willing to make conventional FFELP loans to the school's students; ED will provide the school and the guarantor with information about these lenders.

{ Guarantors and lenders are prohibited from marketing and from violating inducement provisions in the making of LLR loans. However, guarantors are not prohibited from disseminating information about the availability of LLR loans to schools in the designated states for which the agency is required to provide LLR loans. }

ED has published two *Dear Colleague Letters* (DCL) GEN-08-03/FP-08-03 and GEN-08-05/FP-08-05 to provide guarantors with guidance and responses to specific questions about implementation of the LLR program.

## 2008-2009 FIXED AND VARIABLE INTEREST RATES

The fixed interest rates for Stafford, Parent PLUS, and Grad PLUS loans are as follows:

Loan Type Grad Level	Interest Rate
Subsidized Stafford Loans to Undergraduate Students	6.0%*
Subsidized Stafford Loans	6.8%**
Unsubsidized Stafford Loans	6.8%**
Parent PLUS Loans	8.5%**
Grad PLUS Loans	8.5%**

\* For loans first disbursed on or after July 1, 2008 and prior to July 1, 2009.

\*\* For subsidized Stafford loans first disbursed to undergraduate students on or after July 1, 2006 and prior to July 1, 2008 and for subsidized Stafford loans to graduate students, unsubsidized Stafford loans, and PLUS loans first disbursed on or after July 1, 2006.

The variable interest rates, from July 1, 2008 through and including June 30, 2009, for Stafford and Parent PLUS loans first disbursed on or after July 1, 1998 and prior to July 1, 2006 are as follows:

Loan Type	Interest Rate
Stafford (during in-school, grace, and deferment status)	3.61%
Stafford (during all other periods)	4.21%
PLUS (parent only)	5.01%

Interest rates for variable-rate Stafford and PLUS loans are determined annually and are generally based on the bond equivalent rate of the 91-day Treasury bill plus an additional percentage as defined in the Higher Education Act of 1965, as amended (HEA). The bond equivalent rate of the 91-day Treasury bill auctioned on May 27, 2007 was 1.905%, which rounds to 1.91%.

## DEFAULT AVERSION AND CLAIMS STANDARDIZATION UPDATE

The National Council of Higher Education Loan Programs (NCHELP) Program Operation's Default Aversion and Claims Standardization Subcommittee (DACs) has recently revised the Default Aversion Assistance Request Form (DAAR), the Claim Form, and has developed an Addendum to the Claim Form in order to incorporate and support the various legislative, regulatory, and operational changes.

The changes and new addendum are as follows:

### FFELP Default Aversion Assistance Request (DAAR) Form

Incorporates the new post-active duty deferment (Deferment type "MR") and associated instructions into the list of available deferments and forbearances.

### FFELP Claim Form

Incorporates the new Identity Theft claim type code of "ID" and associated changes in the filing instructions. Also modifies the definitions and associated instructions for the Ineligible Borrower claim type code "IN" to include "the responsible party" and additional documentation requirements for fraud convictions.

### FFELP Claim Form Addendum

Ineligible Borrower/Identity Theft - A standardized form designed to accompany the FFELP Claim Form that is used to support and provide additional information necessary for requesting claim reimbursement for an Ineligible Borrower or Identity Theft claim.

These forms are available for immediate use and have an effective date of July 1, 2008. The revised forms have been posted to the AES web site at [www.aesSuccess.org](http://www.aesSuccess.org). If you have any questions pertaining to these changes, please contact the Loan Assets Management Department at 800-892-7576.

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In making an education affordable, we do more than help students go to college. We guarantee the next generation of leaders, thinkers and doers.



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