

# GENERAL SESSION #4

Federal Update

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U.S. Department of Education

2022 Virtual FSA Training Conference for Financial Aid Professionals

# AGENDA

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1. Negotiated Rulemaking 2021-2022
2. Recent Policy Guidance
3. FAFSA Simplification
4. Relief for Student Borrowers
5. Operational Updates and Reminders

# NEGOTIATED RULEMAKING

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- Affordability and Student Loans Committee (Committee 1)
  - October, November, and December 2021
  - Pell Grants for Prison Education Programs Subcommittee – Oct. & Nov. 2021
- Institutional and Programmatic Eligibility Committee (Committee 2)
  - January, February, and March 2022
- Consensus checks by issue (not by groups or full package)
- OPE's negotiated rulemaking website
  - [www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html)
- Unified Agenda
  - [Reginfo.gov](http://Reginfo.gov)

# NEGOTIATED RULEMAKING 2021-2022

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# COMMITTEE 1

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- Final rules on topics the first Committee negotiated (except IDR) published on Nov. 1, 2022 (topics below, except PEP) and Oct. 28, 2022 (PEP)
- Effective date is July 1, 2023 (unless early implementation applies)
- Consensus Reached
  - Total and Permanent Disability Discharge (TPD)
  - Interest Capitalization
  - False Certification Discharge
  - Prison Education Programs (PEP)
- Consensus Not Reached
  - Closed School Discharge
  - Public Service Loan Forgiveness (PSLF)
  - Borrower Defense to Repayment (BD)
  - Pre-Dispute Arbitration
  - Income-Driven Repayment (IDR) Plans

# TOTAL AND PERMANENT DISABILITY (TPD)

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- A borrower who becomes totally and permanently disabled may qualify for a loan discharge
- The final rule streamlines the TPD discharge process by:
  - Expanding SSA disability categories and SSA documentation that may qualify a borrower for a TPD discharge
  - Eliminating the 3-year post-discharge income monitoring requirement
  - Expanding the list of health professionals who may certify that a borrower is TPD

# INTEREST CAPITALIZATION

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- Occurs when unpaid interest is added to the principal loan amount which further increases the outstanding principal balance
- Removes interest capitalization for non-statutory events including:
  - Entering Repayment
  - Exiting Forbearance
  - Failure to Recertify Enrollment on IDR Plans
  - Leaving ICR Plans
  - Negative Amortization in ICR Plans
  - Default
  - When a borrower is repaying under the Pay As You Earn repayment plan under § 685.209(a)(2)(iv)(A)(1) or the alternative plan under § 685.208(1)(5)

# FALSE CERTIFICATION

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- A borrower may qualify for discharge if an institution falsely certified borrower eligibility or obtained a loan without the borrower's authorization
- The final rule establishes a uniform standard for false certification discharges regardless of disbursement date
  - Ties false certification discharge eligibility to the borrower's status at the time the loan was originated (Direct Loan) or certified (FFEL)
  - Rescinds the regulation prohibiting a borrower who attested to meeting high school graduation requirements from obtaining a false certification discharge
  - Removes requirements for signature specimens for discharges due to unauthorized signature/payment and identity theft



# PRISON EDUCATION PROGRAM (PEP)

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- A confined or incarcerated student may access a Federal Pell Grant by enrolling in an eligible PEP
- The final rule ensures PEPs are in the *best interest of students* by:
  - Further regulating the definition of a PEP as defined in the HEA
  - Establishing application requirements to ED and accrediting agency for approval of PEPs
  - Defining the “best interest determination” - the process for oversight entities (DOJ-Bureau of Prisons and State Depts. of Correction) in approving PEPs

# CLOSED SCHOOL DISCHARGE

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- A borrower may qualify for a discharge if their school closes while the borrower is enrolled, or within a specified time frame after the borrower withdrew from the school
- The final rule:
  - Establishes a 180-day time frame prior to closure during which a borrower who withdrew from the school may still qualify for the discharge
  - Expands the list of exceptional circumstances where ED may extend the 180-day time frame
  - Eliminates the requirement prohibiting a borrower who re-enrolls in a comparable program from receiving a discharge, except in the case of a teach-out
  - Provides for a discharge without an application, based on information ED possesses, if the borrower did not complete a teach-out

# PUBLIC SERVICE LOAN FORGIVENESS (PSLF)

- Borrowers employed in public service may receive a discharge of remaining loan balances after making the equivalent of 10 years of qualifying payments
- The final rule:
  - Expands the definitions of full-time employment and public service
  - Clarifies eligible employers
  - Defines qualifying payments (and counts certain forbearance and deferment time)
  - Formalizes a reconsideration process
  - Creates hold harmless provisions (forbearance steering)

# BORROWER DEFENSE TO REPAYMENT (BD)

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- ED specifies which acts or omissions of an institution a borrower may assert as a defense to repayment of a DL, regardless of any other provision of a State or Federal law
  - Substantial misrepresentation or omission of fact
  - Breach of contract
  - Aggressive and deceptive recruitment
  - Judgments and Secretarial final actions
- Establishes an individual and groups adjudication process
- Includes an opportunity for institutions to respond
- Includes an opportunity for reconsideration under three conditions
- Outlines recoupment for amounts discharged

# PRE-DISPUTE ARBITRATION

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- ED conditions an institution's Direct Loan (DL) participation; cannot use mandatory pre-dispute arbitration agreements or class action waivers that relate to the making of a DL or the provision of educational services for which the DL was provided, and could form the basis of borrower defense (BD) claims
- Prohibits institutions from using a pre-dispute arbitration agreement to resolve potential BD claims and other mandatory agreements that require a borrower to waive the right to a class action lawsuit
- Prohibits institutions from compelling a borrower to use an internal dispute process before that borrower contacts a govt. or accrediting agency
- Requires institutions to report judicial and arbitral records
  - ED will publish in a centralized database

# IMPROVING INCOME-DRIVEN REPAYMENT (IDR) PLANS

Proposals for improving IDR plans remain under development:

- Topic was part of the first negotiated rulemaking Committee's work
- Did not reach consensus
- ED seeking public comments on a proposed rule
- Final rule planned for 2023

# COMMITTEE 2 – INSTITUTIONAL ELIGIBILITY AND ACCOUNTABILITY

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- Table 2 topics:
  - 90/10\* and CIO – published final rules Oct. 28, 2022/effective July 1, 2023
  - Other topics – proposed rules TBD in 2023
    - Ability to Benefit (ATB)\*
    - Administrative Capability
    - Gainful Employment (GE)
    - Financial Responsibility
    - Changes in Ownership (CIO)
    - Certification Procedures

\* = Consensus reached

# 90/10

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- The final rule aligns the 90/10 regulations with the statutory change in the American Rescue Plan to include all Federal aid, not just Title IV aid, in the calculation.
- It also modifies the 90/10 calculation by:
  - Requiring that institutions timely disburse Title IV funds by the end of their fiscal year.
  - Disallowing the proceeds from the sale of institutional loans to count in the 90/10 calculation.
  - Revise the requirements that non-Title IV programs must meet for institutions to be able to count the proceeds from those programs as non-Federal revenue in the 90/10 calculation.
- The rule establishes that institutions are liable for all Title IV funds they disburse after the fiscal year they become ineligible due to failing 90/10, except funds they are entitled to disburse under §668.26.



# CHANGE IN OWNERSHIP (CIO)

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- Regulatory changes address the growing number of CIOs (some of which also seek a conversion from proprietary to nonprofit or public status), the increasing complexity of ownership, and the heightened risk to students and taxpayers.
- The changes:
  - Clarify the definitions of “additional location,” “branch campus,” “main campus,” and “nonprofit institution” and describe characteristics of institutions that do not generally meet the definition of a nonprofit institution.
  - Require that institutions provide ED with 90 days' notice of an impending change in ownership, ensure that accreditation and State licensure are in effect as of the day before the proposed change, and codify practices on submission of financial statements and provision of financial protection.
  - Clarify what constitutes a CIO and a change in control, distinguishing between natural persons and entities in 34 CFR 600.21 and the conditions under which they constitute a change of control.

# NEGOTIATED RULEMAKING

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- Session 10: Negotiated Rulemaking: How to Get Involved
- FSA Training Conference: 2020 Sessions (ed.gov)
  - Provides an overview of the negotiated rulemaking process, with an emphasis on opportunities for involvement for financial aid administrators and other institutional officials
  - <https://fsaconferences.ed.gov/2020sessionlist.html>

# RECENT POLICY GUIDANCE

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- [DCL GEN 22-05](#): Requirements for Distribution of Voter Registration Forms
  - Reminder about the requirement for institutions to make a good faith effort to distribute voter registration forms to their students
- [DCL GEN 22-06](#): Changes to 2022-2023 Verification Requirement
  - Provides information about a waiver of certain verification requirements for the 2022-2023 award year
- [DCL GEN 22-07](#): Written Arrangements
  - Provides guidance to institutions about certain types of written arrangements between eligible institutions and third-party entities that are not eligible for Title IV funds under the Higher Education Act (HEA) and ED regulations

# RECENT POLICY GUIDANCE

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- [DCL GEN 22-08](#): Eligible Noncitizen Update – Afghan Arrivals
  - ED announced that certain categories of Afghan Arrivals to eligible for FSA funds
- [DCL GEN 22-09](#): 2023-2024 FAFSA Information to be Verified and Acceptable Documentation
  - Annual verification notice
- [DCL GEN 22-14](#): Cash Management
  - Reminds institutions of their regulatory obligations in overseeing Tier 1 and Tier 2 arrangements with financial institutions

# RECENT POLICY GUIDANCE

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- DCL GEN-22-15: FAFSA Simplification Act Changes for Implementation in 2023-24
  - Published in conjunction with November 4, 2022 Federal Register Notice
  - Describes requirements that ED is implementing for cost of attendance (COA), professional judgment, and independent student statuses in the 2023-24 award year
  - Addresses Pell Grant eligibility for incarcerated students
  - Describes changes to the 2023-24 FAFSA form
  - Extensive Q&A section

# FAFSA SIMPLIFICATION

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## FAFSA® Simplification Phased Implementation

- Repeal of Subsidized Usage Limited Applied (SULA) calculation
- Removal of negative consequences associated with drug convictions or failure to register for Selective Service

- Comments on applicant's Student Aid Report (SAR) updated to make it clear that they are now eligible for federal student aid regardless of how they answered FAFSA questions on drug convictions and Selective Service

- Removal of drug conviction and Selective Service FAFSA questions
- Addition of demographic survey
- Expansion of Pell Lifetime Eligibility Used restoration
- Extension of Pell eligibility to incarcerated students
- Carry over of responses to homeless/unaccompanied youth questions
- Changes to cost of attendance and professional judgment
- Adjustments for applicants who cannot provide parental info
- Expanded acceptable documentation for unaccompanied/homeless youth

- Modified FAFSA form to include the remaining FAFSA Simplification provisions
- Tool for estimating aid eligibility
- Expanded accessibility of FAFSA forms to 11 most common languages
- Student Aid Index (SAI) replaces Expected Family Contribution (EFC)
- Changes to Pell Grant formula
- Changes to verification selection criteria
- Direct Data Exchange to import Federal Tax Information (FTI) for FAFSA, IDR and TPD forms
- Re-engineered FAFSA processing systems

Award Year 2021-2022

Award Year 2022-2023

Award Year 2023-2024

Award Year 2024-2025



# 2023-2024 FAFSA SIMPLIFICATION CHANGES

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- Continued phased implementation of provisions of *FAFSA Simplification Act* as amended by *Consolidated Appropriations Act, 2022*
- These changes are effective for **2023-24 award year**
- Schools are expected to incorporate changes for 2023-2024 awards even if the awarding and packaging process occurs prior to July 1, 2023
- Full overview of guidance published in Dear Colleague Letter GEN-22-15, published Nov. 4 along with Q&A



# 2023-2024 FAFSA SIMPLIFICATION CHANGES

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## Awarding and Packaging Changes

- Revisions to cost of attendance (COA) components and consumer information that must be made publicly available
- Provisions for FAAs to exercise professional judgment in addressing an applicant's circumstances that may impact aid eligibility
  - Defines categories of professional judgment: special circumstances and unusual circumstances
  - Provides additional flexibility and requirements for making determinations of independence (dependency overrides)
  - Updates acceptable documentation

# 2023-2024 FAFSA SIMPLIFICATION CHANGES

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## **Federal Pell Grant eligibility**

- Restoration of Lifetime Eligibility Used (LEU) for students with certain loan discharges and successful borrower defense claims
- Establishes eligibility for students who are confined or incarcerated and enrolled in prison education programs as of July 1, 2023

## **FAFSA form changes**

- Fully removes Selective Service and drug conviction FAFSA questions
- Collects race/ethnicity and sex/gender questions via voluntary, post-application survey
- Carries forward answers to three existing homeless youth questions, which are now renewal eligible

# WHAT TO EXPECT FOR 2024-2025

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- Improved FAFSA experience for students
- Student Aid Index (SAI) to replace Expected Family Contribution (EFC)
- Income generally provided by IRS through Direct Data Exchange (DDX)
- Changes to Pell Grant calculation
- Changes to verification selection criteria
- Collection of Federal Work Study (FWS) earnings in COD
- *For more information on 2023-24 and 2024-25 FAFSA Simplification changes, see General Session #5*

# RELIEF FOR STUDENT BORROWERS

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# STUDENT DEBT RELIEF

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- In August, the administration announced that it planned to provide targeted debt relief to address the financial harms of the pandemic
- Under the plan, borrowers could qualify for one-time debt relief if they met certain income requirements; if so, they could qualify for:
  - Up to \$20,000 in debt relief if they received a Federal Pell Grant
  - Up to \$10,000 in debt relief if they did not receive a Pell Grant
- Courts have issued orders blocking the student debt relief program and the Department is not currently accepting applications
- The Department has retained applications that were completed and will reopen applications and grant relief if we succeed in court.

# ONE-TIME IDR AND PSLF ADJUSTMENT

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- The Department will make a one-time adjustment to provide credit toward IDR and PSLF for past periods of repayment, deferment, and forbearance that would otherwise not qualify:
  - Prior Periods of Repayment
  - Periods in Deferment
  - Periods in Forbearance
- Currently scheduled to occur on or after July 1, 2023.
- Direct Loans and FFEL program loans managed by the Department will qualify; other federal loans must be consolidated into Direct Loans to qualify

# FRESH START

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- Restores repayments options, including the opportunity to enter an IDR plan allowing a more affordable monthly payment
- Immediately restores Title IV eligibility
- Restores one-time rehabilitation if used during payment pause
- Provides beneficial credit reporting features
- Protects borrowers from involuntary collections





# FRESH START

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## **Qualifying loans:**

- Defaulted Federal Direct Loans
- Defaulted FFEL Loans (Commercial and ED-held)
- Defaulted ED-held Perkins Loans

## **Non-qualifying loans:**

- Defaulted school-held Perkins loans
- Defaulted HEAL program loans
- Student loans remaining with the Department of Justice
- Direct Loans and FFEL loans that default after the end of the pause

# FRESH START

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Borrowers will have one year following the end of the payment pause to:

- Communicate with DMCS or a guaranty agency to request transfer to a non-default servicer or
- Request Title IV aid at an eligible school

To document Title IV eligibility, school must maintain:

- NSLDS screenshots showing eligible and
  - Signed statement from borrower agreeing to transfer of defaulted loans to non-default servicer
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- *For more information on the one-time IDR adjustment and Fresh Start, see Breakout Session #14*

# OPERATIONAL UPDATES AND REMINDERS

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# CONSOLIDATED APPROPRIATIONS ACT, 2022

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## MAXIMUM PELL GRANT

Increases maximum 2022-2023 Pell Grant to **\$6,895**



## CAMPUS-BASED PROGRAM FUNDING

Allocates **\$1.21 billion** to FWS and **\$895 billion** to FSEOG for 2022-23



## VIOLENCE AGAINST WOMEN ACT

Reauthorizes the Violence Against Women Act (VAWA)

# 2022–23 VERIFICATION

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- Requirements described in Dear Colleague Letter published May 18, 2022 (GEN-22-06)
- All 22-23 verification waived except Identity/Statement of Educational Purpose for V4 and V5
- Must still resolve conflicting information
- Must report valid verification status code
  - “S” for ED-selected students not verified



# 2023–24 VERIFICATION

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- Verification **required** for V1, V4, and V5
- Exception for confined or incarcerated individuals (in Second Chance Pell experiment or in local jails)
  - V1 verification **not** required
  - V4 and V5 verification for identity/statement of educational purposes only
- Reminder: COVID-19 waivers and flexibilities apply to any award year verification being completed through end of the payment period that begins after national emergency rescinded

# AFGHAN PAROLEE TITLE IV ELIGIBILITY

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- Certain Afghan parolees can qualify as eligible non-citizens if they are otherwise eligible and meet the following criteria:
  - Paroled into U.S. between July 31, 2021 and Sept. 30, 2022
  - Paroled into U.S. *after* Sept. 30, 2022 if spouse, child, or parent/guardian of Afghan national previously paroled into U.S. between July 31, 2021 and Sept. 30, 2022
- Applies through later of March 31, 2023 or term of parole
- See Dear Colleague Letter GEN-22-08 for more information

# UKRAINIAN PAROLEE TITLE IV ELIGIBILITY

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Certain Ukrainian parolees can qualify as eligible non-citizens if they are otherwise eligible and meet the following criteria:

- Paroled into U.S. between Feb. 24, 2022 and Sept. 30, 2023
- Paroled into U.S. *after* Sept. 30, 2023 and:
  - Spouse, child, or parent/guardian of Ukrainian national previously paroled into U.S. between or
  - Parent/guardian/primary caregiver of unaccompanied noncitizen child paroled into U.S. Feb. 24, 2022 and Sept. 30, 2023



# COVID-19 NATIONAL EMERGENCY CONTINUES

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- COVID-19 national emergency continues through at least February 2023
- COVID-19 Title IV flexibilities and waivers continue to apply
- *For more information, see Breakout Session #8, COVID-19: What Now and What Next*

