

# BREAKOUT SESSION #18

Regulatory Update - Session 1

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U.S. Department of Education

2022 Virtual FSA Training Conference for Financial Aid Professionals

# AGENDA

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1. Review of Negotiated Rulemaking (Neg Reg)
2. Affordability and Student Loans –Table 1
3. Negotiated Topics - Consensus and Non-consensus
4. Notice of Proposed Rulemaking
5. Final Rule
  1. Interest Capitalization
  2. Total and Permanent Disability
  3. False Certification
  4. Public Service Loan Forgiveness
  5. Closed School Discharge
  6. Pre-Dispute Arbitration
  7. Borrower Defense to Repayment
6. Contact Information

# REVIEW OF NEGOTIATED RULEMAKING PROCESS



# WHAT IS NEGOTIATED RULEMAKING?

A process by which the Department works to develop a Notice of Proposed Rulemaking (NPRM) in collaboration with representatives of the parties (negotiators) who will be affected significantly by the regulations.

This is done through a series of meetings during which these negotiators work with the Department to come to consensus on the Department's proposed regulations.

These meetings are facilitated by a neutral third-party.



# WHAT IS CONSENSUS?

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Consensus means there is no dissent by any member of the negotiating committee.

All agreements reached during the negotiations are assumed to be tentative agreements until members of the committee vote on the entire proposed regulatory language at the end of the final session of the negotiated rulemaking.

If final consensus is achieved, the Department will use this consensus-based regulatory language in its NPRM. Only under very limited circumstances may the Department depart from this language.

# STEPS TO RULEMAKING PROCESS

For more detailed information - [Regulations.gov](https://www.regulations.gov)



## FEDERAL REGISTER NOTICES

- Publish intent to establish committee
- Negotiator Nominations and schedule committee meetings
- Public Hearings



## COMMITTEE MEETINGS AND DEPARTMENT ACTIONS

- Three Meetings - October, November, and December 2021
- Publish Notice of Proposed Rulemaking in *Federal Register*
- Comment Period 30-days



## PUBLICATION OF FINAL RULE EFFECTIVE DATES

- Publish Final Rule and Regulations by November 1, 2022
- Effective date of July 1, 2023, for new regulations
- Possible early implementation if authorized by Secretary

# AFFORDABILITY AND STUDENT LOANS NEGOTIATED RULEMAKING (TABLE 1)

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# AFFORDABILITY AND STUDENT LOANS

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The Department convened the Negotiated Rulemaking for the Affordability and Student Loans Committee in 2021

Negotiations were held:

- Session 1 held October 4-8, 2021
- Session 2 held November 1-5, 2021
- Session 3 held December 6-10, 2021

More information available at [OPE's negotiated rulemaking website](#).



# AFFORDABILITY AND STUDENT LOANS

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Topics From First Neg Reg Session published in Institutional and Programmatic Eligibility NPRM

- Pell Grants for Prison Education Programs Subcommittee
  - Session 1 held October 18-20, 2021
  - Session 2 held November 8-10, 2021
- Income-Driven Repayment (IDR) Plans

**(See On-Demand session - B0: 19 Regulatory Update 2)**

# NEGOTIATED TOPICS

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## CONSENSUS

- Total and Permanent Disability Discharge
- Eliminate Interest Capitalization
- False Certification Discharge
- **Pell Grant Eligibility for Prison Education Programs\*\***

## NON-CONSENSUS

- Closed School Discharge
- Public Service Loan Forgiveness (PSLF)
- Borrower Defense to Repayment
- Pre-Dispute Arbitration
- **Income-Driven Repayment (IDR) Plans\*\***

# NOTICE OF PROPOSED RULEMAKING (NPRM)

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# AFFORDABILITY AND STUDENT LOANS

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NPRM – Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

- Published in *Federal Register* on July 13, 2022
- Proposed Amendatory Text
- Comment Period closed on August 12, 2022
  - Over 4,000 comments posted to Regulations.gov

# FINAL RULE



# INTEREST CAPITALIZATION

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- Interest capitalization: unpaid interest added to the principal loan amount which further increases the outstanding principal balance
- Some interest capitalization required by law
  - Borrower leaves IBR Plan
- Removed interest capitalization non-statutory events:
  - Failure to Recertify Enrollment on Income-Driven Repayment (IDR) Plans
  - Leaving ICR Plans
  - Negative Amortization in ICR Plans
  - Exiting Forbearance
  - Entering Repayment
  - Default
  - When a borrower is repaying under an alternative repayment plan
  - When a borrower no longer has a partial financial hardship under the PAYE repayment plan

# TOTAL AND PERMANENT DISABILITY (TPD) DISCHARGE

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The Department proposed to streamline and ensure uniformity of the TPD discharge across all the loan programs by:

- Eliminating the three-year post-discharge income monitoring requirement [We will still monitor for receipt of Title IV loans]
  - This was done to ensure uniformity with VA, SSA, and physician determinations
- Expanding SSA categories that would allow borrowers to qualify for TPD. Currently only Medical Improvement Not Expected (MINE) qualifies. Expand to include:
  - Medical Improvement Possible (MIP)
  - An established onset date for SSDI or SSI based on disability at least five years prior to the application, or receipt of benefits at least five years prior

# TPD - CONT.

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Currently only Medical Improvement Not Expected (MINE) qualifies. Expand to include (cont.):

- Compassionate Allowance
- Borrowers currently on SSA retirement who met the SSA disability requirements prior to receiving SSA retirement benefits
- Expanding allowable SSA documentation
  - Benefit Planning Query (BQPY) rather than just SSDI or SSI notice of award
- Accepting TPD certifications from other health care professionals
  - Nurse practitioners and physician assistants who are licensed to practice in the US
  - Licensed certified psychologists at the independent practice level



# FALSE CERTIFICATION

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A borrower may be eligible for a false loan certification if the institution falsely certifies a student's eligibility to obtain a loan under that student's:

- Ability to Benefit (ATB)
- Disqualifying status,
- Unauthorized signature or Identify Theft

To establish a uniform standard for false certification, we included:

- Tying the eligibility requirements when loan was originated (Direct Loan) or certified (FFEL), not disbursement date -
  - Standardize the different false cert requirements across all loans, regardless of disbursement date
  - Ensure students meet eligibility requirements and that schools do not authorize disbursements to ineligible students
  - Ensure students meet eligibility requirements and that schools do not authorize disbursements to ineligible students

# FALSE CERTIFICATION – (CONT.)

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To establish a uniform standard for false certification, we included:

- Rescinding regulation on borrowers who attested they obtained a high school diploma or recognized equivalent is potentially eligible for false certification discharge
  - If borrowers were coerced or deceived and had not reported having a high school diploma or its equivalent, they can seek a False Cert discharge
- Qualifying for a school's false certification of Satisfactory Academic Progress (SAP) without an application [i.e., group discharge]
- Removing requirements regarding signature specimens for unauthorized signature false cert discharge

# FALSE CERTIFICATION – (CONT.)

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- Expanding acceptable supporting evidence for false certification due to such as judicial determinations of ID theft to include (cont.):
  - A Federal Trade Commission identity theft affidavit
  - A police report alleging identity theft
  - Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies
  - Other evidence acceptable to the Secretary

# PUBLIC SERVICE LOAN FORGIVENESS (PSLF)

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Definitions were added, modified, and restructured to clarify the definitions of qualifying employer and full-time for PSLF purposes:

- New definitions relating to qualifying services for nonprofit organizations that are not 501(c)(3) organizations include-
  - non-tenure track employment
  - public health
  - Non-governmental public service
  - public service for individuals with disabilities
  - public service for the elderly
  - public education service
  - public library services
  - school library services
  - qualifying repayment plan

## PSLF – (CONT.)

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Definitions were added, modified, and restructured to clarify the definitions of qualifying employer and full-time for PSLF purposes (cont.):

- Expanded or clarified current definitions to include-
  - employee or employed
  - full-time
  - military service
  - other school-based service and qualifying employer

# PSLF – (CONT.)

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Improving PSLF application processes to:

- Simplify and streamline borrower payments Improving the application process such that:
  - On-time payments, lump sum or multiple payments are considered
  - Allow months spent in certain forbearances and deferments to count as payments if borrower certifies qualifying employment
  - Count as qualifying payments qualifying payments made by a borrower on an eligible Direct Loan that the borrower later consolidates into a Direct Consolidation Loan.
- Grant forgiveness without an application
- Establishing a reconsideration process if there is sufficient information to determine the borrower's eligibility without an application

# PSLF – (CONT.)

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Improving PSLF application processes to (cont.):

- Formalize the reconsideration process
- Count time toward forgiveness for a borrower who postponed monthly payments under a deferment or forbearance that is not a qualifying payment under the proposed regulations if certain actions are met

# CLOSED SCHOOL LOAN DISCHARGE (CSLD)

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The HEA allows the Secretary to discharge loans when a school closes.

To qualify for a closed school discharge, a borrower must have:

- Been enrolled at the school on the date of its closure or have withdrawn no more than 120 days prior to its closure (180 days for loans made on or after July 1, 2020)
- Not have graduated from the school or transferred their credits to complete the same or a comparable program at another school.



# CSLD – (CONT.)

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To help borrowers get a fresh start when their schools closed, we included:

- Reinstatement of automatic closed school loan discharges for borrowers who don't enroll elsewhere
- Closing window from 3-year to 1-year before auto discharge occurs; after school closes
- Establishing a standardized 180-day window prior to closure for students who withdrew before school closure
  - Standardize the window of eligibility to 180 days because these windows have not been consistent

# CSLD– (CONT.)

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To help borrowers get a fresh start when their schools closed, we included (cont.):

- Defining a “comparable program” - different iterations of the CSLD regulations defined “comparable program” differently by:
  - Using the Same four-digit CIP Code
  - Allowing an attestation that most credits didn’t transfer at the same credential level and same field of study
  - Borrower NOT accepting an accreditor approved teach-out program at another school

# CSLD– (CONT.)

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To help borrowers get a fresh start when their schools closed, we included (cont.):

- Expanding non-exhaustive list of exceptional circumstances by adding :
  - A finding by government agency
  - Accreditor actions besides loss of accreditation
  - Termination of the school's participation in a title IV, HEA program
  - Teach-out exceeding the 180-day look-back period
  - Failure to perform the material terms of the teach-out by the school responsible for the teach-out
  - Permanent closure of all or most of its in-person locations while maintaining online programs by the closed school
  - Placement of the closed school on the heightened cash monitoring 2

# PRE-DISPUTE ARBITRATION

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For pre-dispute arbitration and class-action waivers, the Department will:

- Prohibit Direct Loan-participating institutions from obtaining through the use of contractual provisions or other agreements, a pre-dispute arbitration agreement to resolve potential borrower defense claims
- Prohibit institutions from including arbitration or other forms that require borrower to waive their right to a class action lawsuit regarding borrower defense claims in their institutional agreements
- Prohibit institutions from compelling an internal dispute process before borrower may contact a government or accrediting agency regarding borrower defense claims

# PRE-DISPUTE ARBITRATION (CONT.)

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Additional pre-dispute arbitration and class-action waivers provisions include:

- Requirement for institutions to report judicial and arbitral records
  - Secretary will publish in a centralized database
- Technical corrections

# BORROWER DEFENSE TO REPAYMENT

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The Department's final rules improve borrower defense to include:

- Revised Federal standard based on applications pending with ED on 7/1/2023 or received on or after this date
  - Federal standard to include:
    - Substantial misrepresentation
    - Substantial omission of fact
    - Breach of contract
    - Aggressive and deceptive recruitment
    - Judgments and Secretarial final actions
  - Preponderance of the evidence that the act or omission occurred; caused detriment to the borrower that warrants relief
  - Preserves State law standard as a basis for a BDTR upon reconsideration

# BORROWER DEFENSE TO REPAYMENT (CONT.)

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The Department's final rules improve borrower defense to include (cont.):

- Allowing group claims process while preserving individuals the opportunity to file a BDTR
  - Allowing third-party requestors (State AGs, legal assistance organizations) to request a group formation
  - Group process based on prior Secretarial final actions
- Institutional response process
- Placing a borrower's loans in forbearance or stopped payment collections during adjudication
- Establishing timeframes to adjudicate; periodic updates to borrowers

# BORROWER DEFENSE TO REPAYMENT (CONT.)

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The Department's final rules improve borrower defense to include (cont.):

- Establishing a reconsideration process
  - Administrative or technical errors
  - State law standard (only for loans first disbursed before July 1, 2017)
  - New evidence
- Secretary may recover from the institution the amounts discharged
  - Uses Part 668, Subpart H procedures



# CONTACT INFORMATION

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