

BREAKOUT SESSION #19

Regulatory Update - Session 2

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U.S. Department of Education

2022 Virtual FSA Training Conference for Financial Aid Professionals



AGENDA

1. Negotiated Rulemaking Review
2. Steps to the Rulemaking Process
3. Improving Income-Driven Repayment (IDR) Plans: Non-Consensus
4. Pell Grants for Prison Education Programs (PEP): Consensus
5. 90/10: Consensus
6. Changes in Ownership: Non-Consensus

NEGOTIATED RULEMAKING (NPRM) REVIEW

- Table 1 - Affordability and Student Loans Committee (IDR and PEP)
 - October, November, and December of 2021
 - Pell Grants for Prison Education Programs Subcommittee:
 - October and November of 2021
- Table 2 - Institutional and Programmatic Eligibility Committee
 - January, February, and March of 2022

NEGOTIATED RULEMAKING REVIEW

- Affordability and Student Loans Committee
 - NPRM - IDR publication date (TBD) and will have 30-day comment period
- Institutional and Programmatic Eligibility Committee in 2022
 - NPRM published on 07/28/2022 and the 30-day comment period ended on 08/26/2022 and included PEP
 - Final Rule including Amendatory Changes published no later than November 1, 2022
- More information available at [OPE's negotiated rulemaking website](#)

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

NPRM: INCOME-DRIVEN REPAYMENT (IDR) PLANS

INCOME-DRIVEN REPAYMENT (IDR) PLANS: NON-CONSENSUS

Improve Income-Driven Repayment (IDR) plans

- Restructure and rename the repayment plans under the umbrella term of “Income-Driven Repayment (IDR) plans.”
 - Amend § 685.208 – Fixed plans
 - Restructure on § 685.209 – Income-Driven Repayment plans
 - Reposition the Alternative Repayment plan to § 685.221
- Amend REPAYE
 - Remove the stipulation for resetting the clock for receiving forgiveness when consolidating eligible loans in all IDR plans

IMPROVING INCOME-DRIVEN REPAYMENT (IDR) PLANS

- Streamline recertification process
- Establish 2 separate provisions for allowing Forbearances and Deferments to be counted toward Loan Forgiveness:
 - Allow for over 10 specific Forbearances and Deferments to receive forgiveness credit
 - Give credit toward forgiveness for “qualifying payments” made during forbearance or deferment
- Automatic enrollment for borrowers who are at least 75 days delinquent

IMPROVING INCOME-DRIVEN REPAYMENT (IDR) PLANS

Improve the Revised Pay as You Earn (REPAYE) Repayment plan:

- Propose increasing non-discretionary income threshold from 150% to 225% of the Federal Poverty Guideline (FPL)
- Reduce percentage of discretionary income when determining loan payments (UG = 5%, Grad =10%)
- Stop monthly accumulation of unpaid interest
- Shorten repayment period to receive forgiveness for lower loan balances
- Limit future enrollment in non-statutory IDR plans

PELL GRANTS FOR PRISON EDUCATION PROGRAMS (PEP)

PELL GRANTS FOR PEP: CONSENSUS

- Federal Pell Grant eligibility for confined or incarcerated individuals in (prison education programs (PEP))
- The Department's proposals for PEP include:
 - Define a prison education program in accordance with HEA
 - Amend requirements about an institution enrolling more than 25% enrollment of regular students that are confined or incarcerated
 - Application requirements to Secretary and accreditor for approval of an additional locations
 - Establish reporting requirements

PELL GRANTS FOR PEP: CONSENSUS – (CONT.)

- The Department's proposals for PEP include - continued:
 - Process for oversight entities (DOJ-BOP; States Departments of Correction)
 - Establish disclosure requirements with respect to licensure or employment
 - Prohibition of enrolling individuals in a P.E.P. in the event of criminal conviction requirement
 - Outline wind-down process for a P.E.P.
 - Outline process for needs analyses when Pell Grant exceeds a student's COA

90/10



90/10: CONSENSUS

- The American Rescue Plan Act amended the Higher Education Act to require at least 10 percent of a proprietary institution's revenue be derived from sources other than Federal educational assistance funds
 - Numerator of the calculation previously consisted only of Title IV funds
 - Must now broadly include Federal funds disbursed or delivered to or on behalf of a student

90/10: CONSENSUS (CONT.)

- Propose to amend 34 C.F.R. § 668.28 to account for this statutory change, close existing loopholes in the 90/10 calculation, and provide clarification on the treatment of revenue
 - Designate as Federal educational assistance funds any educational assistance for students sent directly to the institution by the awarding agency
 - Disallow counting the sale of receivables, including from institutional loans, as non-Federal educational assistance revenue
 - Require proprietary institutions to timely request and disburse Title IV funds
 - Clarify circumstances when funds paid for an ineligible education or training program may count as revenue for 90/10 purposes

CHANGES IN OWNERSHIP



CHANGES IN OWNERSHIP: NON-CONSENSUS

- The Department has recently observed an increase in the number of institutions applying for changes in ownership, some of which also seek a conversion from proprietary to nonprofit or public status
- These arrangements are often complex and/or high-risk, sometimes included “insider involvement” in the purchasing entity, and in some instances preceded sudden closures
- Proposed regulatory changes would better accommodate the growing number of changes in ownership, the increasing complexity of ownership arrangements, and the heightened risk to students and taxpayers

CHANGES IN OWNERSHIP: NON-CONSENSUS

- The Department's proposals for changes in ownership would - continued:
 - Modify the definitions of additional location, branch campus, distance education locations, and main campus to address existing confusion
 - Clarify the definition of a non-profit institution by providing some examples of arrangements that are not considered to meet that definition
 - Require institutions undergoing a change in ownership to provide adequate notice to the Department

CHANGES IN OWNERSHIP: NON-CONSENSUS

- The Department's proposals for changes in ownership would - continued:
 - Codify existing practice concerning the submission of a new owner's audited financial statements
 - Provide that the Department may require additional financial surety as needed
 - Clarify that the Department is not required to rely on the same terms and conditions of the institution's PPA prior to a change in ownership
 - Enhance reporting requirements to ensure that the Department has greater awareness of voting blocs and other types of corporate changes that may warrant greater scrutiny

CHANGES IN OWNERSHIP: NON-CONSENSUS

- The Department's proposals for changes in ownership would - continued:
 - Revise standards for identifying changes of ownership to focus on changes that are historically more closely aligned with changes in control
 - Revise excluded transactions language to allow the Department to more easily determine whether a particular type of transaction qualifies as excluded

RESOURCES

- [OPE's negotiated rulemaking website](#)
- <https://www.Regulations.gov>
- <https://www.federalregister.gov/>
- <https://www.ecfr.gov>
- <https://fsaconferences.ed.gov/>

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