

LEADERSHIP SUMMIT

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▶ Legislative & Compliance Update

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AGENDA

- ▶ Student Loan Forgiveness
- ▶ Fresh Start Initiative
- ▶ New Regulations: 90/10, Changes in Ownership, Borrower Defense
- ▶ FAFSA Simplification Act: SAI Methodology
- ▶ Miscellaneous
- ▶ Resources

Student Loan Forgiveness

- Currently on hold, stay issued by US Court of Appeals for 8th Circuit—action was brought by six states (Nebraska, Missouri, Arkansas, Iowa, Kansas and South Carolina)
- Administration continues to encourage borrowers to apply
- Application will remain open until 12/31/2023



Student Loan Forgiveness

- Forgiveness of \$10,000 of student loan debt, or \$20,000 if the borrower received a Pell Grant, applicable to student loans first disbursed 06/30/2022 or before
- Limit of \$125,000 AGI for non-tax-filers, S, or MFS; \$250,000 for MFJ or HOH (based on 2020 or 2021 AGI)



Student Loan Forgiveness

- Borrowers should apply by 11/15/2022 to have loans forgiven before student loan repayment resumes 01/01/2023—estimate of six weeks for processing
- Over 26 million borrowers have applied, 16 million applications have been approved. ED estimates 43 million eligible borrowers, with about 20 million borrowers eligible to have all student loan debt removed



Fresh Start Initiative

- DCL GEN-22-13 and EA GEN-22-58, both August 2022
- Provides a “fresh start” for borrowers with defaulted student loans, prior to or during the pandemic
- Allows access to T₄ student aid and resets repayment options



Fresh Start Initiative

- Includes Direct Loan, FFEL and Perkins Loan defaults
- Available for previously defaulted borrowers until one year after the end of the pandemic student loan repayment pause (12/31/2023)



10/28/2022 REGULATIONS

- Includes 90/10 changes, changes in ownership (CIO), and Prison Education Program (PEP) implementing regulations—proprietary institutions are prohibited from offering PEPs
- 90/10 changes are statutory from American Rescue Plan (ARP) Act of 2021
- Effective for school fiscal years starting January 1, 2023 and after



10/28/2022 REGULATIONS: 90/10

- 90/10 (668.28): For fiscal years beginning 01/01/2023 or after, federal funds used to calculate the revenue percentage include Title IV funds and any other educational assistance funds provided by a federal agency, either to the institution or to the student
- ED will publish a Federal Register notice every year listing the types of federal funds that must be included



10/28/2022 REGULATIONS: 90/10

- Includes VA funds
- Includes the federal portion of grant funds from a non-federal agency (e.g., some state grants)
 - If the aid is disbursed directly to the student, the institution can rely on a certification from the agency
 - Without such certification, the institution must make a good-faith effort to obtain the information



10/28/2022 REGULATIONS: 90/10

- New requirement that revenue from activities conducted by the institution that are necessary for the education and training of students be related directly to services performed by students
- Must be conducted on campus or at a facility under the institution's control, performed under faculty supervision, and required to be performed by all students in a program



10/28/2022 REGULATIONS: 90/10

- Revenue from non-T4 eligible programs
 - Cannot include revenue from ineligible programs offered through distance education
 - Cannot include any courses offered in an eligible program
 - Ineligible programs must be offered at one of the approved additional locations, or at a site approved by the state or accreditor, or at an employer facility
 - Ineligible programs must be offered by the institution and taught by one of its instructors



10/28/2022 REGULATIONS: 90/10

- Disbursement rule: The institution must request funds and make any disbursements to eligible students by the end of the fiscal year
- Revenue from institutional aid: For institutional loans, the institution can include principal payments received during the fiscal year. For income share agreements or alternative financing agreements, payments must be allocated to the return of capital and a portion allocated to profit



10/28/2022 REGULATIONS: 90/10

- Revenue from institutional aid: For institutional scholarships, the funds must be disbursed from an established restricted account and can be counted as revenue to the extent that they are from an outside source unrelated to the institution, its owners or affiliates, or from income earned on those funds



10/28/2022 REGULATIONS: 90/10

- Sanctions: If an institution fails 90/10 for two consecutive fiscal years, it loses Title IV eligibility for at least two fiscal years
- The institution must report the failure within 45 days after the end of the fiscal year
- The institution is liable for any Title IV funds disbursed after the last day of the fiscal year it becomes ineligible for Title IV



10/28/2022 REGULATIONS: 90/10

- Sanctions: For any fiscal year, the institution must notify students of the possibility of loss of Title IV eligibility (p. 65455)
 - “. . .we would generally expect that a notification would be published on an institution’s website, emailed to students, and communicated in some medium that all students can and do access. Additionally, the notification should use plain language and clearly communicate that a consecutive failure would mean that students are no longer able to use their title IV funds at the school.”



10/28/2022 REGULATIONS: CIO

- Changes in ownership (600.20): New required notice to ED no later than 90 days prior to the CIO, on a form designed by ED, with state and accreditor documentation and financial statements
- Continued requirement for a materially complete application no later than 10 calendar days after the CIO



10/28/2022 REGULATIONS: CIO

- New requirement that the institution must notify enrolled and prospective students of the proposed change in ownership no later than 90 days prior to the change
- Institution must submit evidence that such disclosure was made



10/28/2022 REGULATIONS: CIO

- Changes in ownership without a change of control of at least 5% must be reported to ED
- Changes in ownership of 5% but under 25% (single or combined basis) must be reported quarterly based on the institution's fiscal year
- All changes in existing ownership must be reported prior to the submission of the 90-day notice for a change in ownership



10/28/2022 REGULATIONS: CIO

- Changes in control: At least 25% ownership
 - A person acquires, alone or together with another member or members of their family;
 - An entity acquires, alone or together with an affiliated person or entity;
 - A person or entity acquires, alone or together with another person or entity, under a voting trust, power of attorney, proxy or similar agreement; or



10/28/2022 REGULATIONS: CIO

- A person becomes a general partner, managing member, chief executive officer, trustee or co-trustee of a trust, chief financial officer, director, or other officer of the institution or of an entity that has at least a 25% ownership interest; or
- An entity becomes a general partner or managing member of an entity that has at least a 25% ownership interest



10/28/2022 REGULATIONS: CIO

- Changes in ownership that result in a change of control: For entities that are not closely held nor required to be registered with the SEC, a person or combination of persons acquires at least 50% of the outstanding voting interests or otherwise acquires 50% control
- Some transactions are still excluded



11/01/2022 BDR REGULATIONS

- Effective July 1, 2023, will apply to both Direct Loans and FFEL Loans
- ED will now use a preponderance of evidence standard for reviewing borrower defense (BD) claims
- Two separate decisions for loan discharge and school liability
- Expanded definition of misrepresentation, adds an additional basis for BD based on aggressive and deceptive recruitment



11/01/2022 BDR REGULATIONS

- Eliminates the 3-year post-discharge income monitoring period for total and permanent disability (TPD) loan discharges
- Interest capitalization for Direct Loans is ended except when required by the HEA: when a borrower enters repayment; upon expiration of a forbearance; annually after negative amortization under an income-based repayment plan; when a borrower defaults; PAYE and REPAYE plan departures or borrower failure to recertify income



11/01/2022 BDR REGULATIONS

- Interest still accrues in these situations, but will not be capitalized
- Statutory requirements for capitalization include when a borrower's deferment ends, and when a borrower on IBR is determine to no longer have a partial financial hardship



11/01/2022 BDR REGULATIONS

- Borrower defense definition: ED must determine that *“the institution committed “an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section.”* (685.401(b))
- There will be a rebuttable presumption that such relief is warranted in cases involving closed schools



11/01/2022 BDR REGS: CLOSURE

- Automatic loan discharge after one year of school closure—borrower is eligible for discharge if they are unable to complete the program because the institution closed
- Programs completed as part of a teach-out or as a continuation at another location of the institution are equivalent to program completion and not eligible for loan discharge—if the student does not finish, the automatic loan discharge will apply one year after their LDA in the teach-out/program continuation



11/01/2022 BDR REGS: CLOSURE

- Automatic loan discharge will still apply in situations where students transfer credits to another school
- Lookback period is 180 days—ED will identify any DL borrower (or student on whose behalf a parent borrowed) who appears to be been enrolled at the school on the closure date or to have withdrawn no more than 180 days prior to the closure date



11/01/2022 BDR REGS: CLOSURE

- Lookback period can be extended by ED due to exceptional circumstances which include, but are not limited to:
 - Revocation or withdrawal of institutional accreditation
 - Probation or show-cause order
 - Revocation or withdrawal of state authorization or licensing authority to operate or award academic credentials
 - Termination of participation in the Title IV programs



11/01/2022 BDR REGS: CLOSURE

- A finding by a state or federal government agency that the school violated state or federal law related to education or student services
- A state or federal court judgement that the school violated state or federal law related to education or student services
- The teach-out exceeds the 180-day lookback period
- The teach-out school fails to perform the material terms of the teach-out plan or agreement



11/01/2022 BDR REGS: CLOSURE

- The school discontinued a significant share of its academic programs
- The school permanently closed all or most of its in-person locations while maintaining online programs
- The school was placed on the heightened cash monitoring payment method in 668.162(d)(2) (HCM2)



11/01/2022 BDR REGULATIONS

- The timeline for ED to make a decision on an individual BD application is the later of July 1, 2026 or 3 years after ED determines that the borrower submitted a materially complete application
- If ED needs additional information from either the claimant or the institution, they have 90 days to respond
- ED will issue a written decision to the claimant and provide a copy to the institution



11/01/2022 BDR REGULATIONS

- Group process may be initiated by ED, or in response to a third-party requestor (such as a State or a legal assistance organization)
- Group claims can include institutions with common ownership



11/01/2022 BDR REGULATIONS

- There is no statute of limitations for filing a BD claim, so long as the borrower still has outstanding loans related to attendance at the institution where the borrower is alleging misconduct
- Approved borrower defense claims will result in a full discharge of the outstanding student loan balance; no partial discharges



11/01/2022 BDR REGULATIONS

- “Acts or omissions” that are actionable for purposes of BD:
 - Misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, judgements, and final Secretarial actions



11/01/2022 BDR REGULATIONS

- Recoupment proceedings are separate from the loan discharge process, and will be held through the appeal procedures for audit and program review determinations—institutions can challenge the evidence and findings, and can also appeal the hearing officer's decision to the Secretary
- Recoupment proceedings under these regulations will apply to loans disbursed 07/01/23 and after



11/01/2022 BDR REGULATIONS

- Claims for actions prior to 07/01/23 will only result in recoupment if the claim would have been approved under the 1994, 2016 or 2019 regulations, whichever is applicable
- Institutions will have 45 days to request a review of the determination that they are liable for the amounts discharged, starting with the day the institution receives ED's written notice



11/01/2022 BDR REGULATIONS

- Pre-Dispute Arbitration and Class Action Waivers
 - Institutions that participate in the Title IV programs are prohibited from requiring borrowers to agree to mandatory pre-dispute arbitration agreements or waivers of class action lawsuits with respect to any aspect of a BD claim
 - *“The regulations prohibit institutions from imposing arbitration on Direct Loan borrowers as a mandatory barrier to seeking relief through other means.”* (p. 65954)



11/01/2022 BDR REGULATIONS

- Pre-Dispute Arbitration and Class Action Waivers
 - Institutions will be required to submit arbitral and judicial records in connection with BD claims; ED will publish a centralized database of these records



FAFSA SIMPLIFICATION ACT

- Enacted December 2020
- See DCL GEN-22-15, 11/04/22, for changes effective in 2023-2024 (mostly changes to Cost of Attendance (COA) and Professional Judgment (PJ))



FAFSA SIMPLIFICATION ACT

- Mostly effective with the 2024-2025 aid year
- Automatic data exchange with IRS for FAFSA completion (FUTURES Act 2019)
- Student Aid Index (SAI) replaces EFC



FAFSA SIMPLIFICATION ACT

- Other changes
 - Provisional independent student status
 - COA adjustments (3 meals/day; cost of first professional credential, et al.)
 - Institutions prohibited from having a policy of denying all PJ requests



FAFSA SIMPLIFICATION ACT

- Other changes
 - Presumptive continuation of dependency override status year-to-year
 - Codifies ED guidance that FAAs can set income to zero with documentation of unemployment benefits during qualifying emergencies



FAFSA SIMPLIFICATION ACT

- Changes already implemented
 - Repeal of Selective Service registration, drug-related conviction, and SULA eligibility limitations (early implementation 06/11/21)
 - Applicable questions removed from FAFSA for 2023-2024



SAI METHODOLOGY

- Pell Grant Award separate methodology
 - Maximum Pell eligibility criteria:
 - Non-tax filers receive automatic -\$1500 SAI
 - “Single Parent” filers (AGI \leq 225% of poverty line)
 - Non-single student or parent filers (AGI \leq 175% of poverty line)



SAI METHODOLOGY

- Dependent student's parent for the FAFSA will be the parent who provided more financial support during the base year for financial aid (currently the parent with whom the student lives)
- Number in college will not reduce the SAI (significant impact for families with more than one student in college)
- Child support received will count as asset (currently income)
- Family farms and small businesses will count as assets (currently excluded)



SAI METHODOLOGY

- Impact of SAI Methodology
 - More students will get more Pell dollars (90/10 implications?)
 - Some students may have dramatic negative shifts in eligibility (number in college, dependent student's parent)
 - Consumer information will require modification (catalog, website, etc.)



MISCELLANEOUS

- FY23 FEDERAL BUDGET
 - Continuing Resolution expires 12/16/22
 - WH budget includes \$8670 Pell Grant for 2023-2024, goal of doubling the Pell Grant by 2029
 - Senate bill includes Pell maximum of \$7395; House also \$7395 (\$500 increase over 22-23 Pell maximum)



MISCELLANEOUS

- GAINFUL EMPLOYMENT REGULATIONS
 - ED did not issue final regs by 11/01/22, so any new GE regs will not be effective until 07/01/2024
 - ED has projected an NPRM publication for spring 2023



MISCELLANEOUS

- GAINFUL EMPLOYMENT REGULATIONS
 - Neg reg discussions did not reach consensus so ED is free to publish their own language
 - Proposal included debt-to-income metrics similar to prior GE regs but without a zone alternative
 - Also included a comparison of graduates' earning to HS graduates in that state



MISCELLANEOUS

- GAINFUL EMPLOYMENT REGULATIONS
 - Proposed change for GE programs to be identified at the 4-digit CIP code instead of the 6-digit CIP code
 - PLUS loans will be included in median loan debt for students
 - One study (TICAS) projects 40% of programs at for-profit schools will fail the new GE measures



MISCELLANEOUS

- WITHHOLDING ACADEMIC TRANSCRIPTS
 - AACRAO and NACUBO released framework in April 2022--Holds should not be used for trivial or minor debt
 - States that prohibit withholding academic transcripts include CA, CO, ME, MN, WA, NY, IL



MISCELLANEOUS

- ED in Neg Reg: Schools would not be allowed to withhold transcripts if the balance owed by the student resulted from a school financial aid error. Schools at risk of closure, teaching out or closing, not financially responsible or administratively capable must release all academic transcripts. (March 2022)
- CFPB: blanket withholding of transcripts to pressure borrowers (of institutional loans) is an abusive practice under the Consumer Financial Protection Act (September 2022)



RESOURCES

- New regulations <https://fsapartners.ed.gov/knowledge-center/library/resource-type/Federal%20Registers>
- NASFAA checklist, timeline for SAI Methodology implementation
- NASFAA SAI Modeling Tool (for members only)
- FSA Virtual Conference—registration available at <https://fsaconferences.ed.gov/>
- Watch for ED webinars on new regulations and the SAI Methodology



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