

## Economic Hardship Deferment (HRD)

### Questions and Answers Related to July 1, 2009 Changes in Eligibility Criteria

April 27, 2009

**Background:** The Economic Hardship Deferment (HRD) remains a viable option for many FFEL borrowers. However, two eligibility criteria for the deferment are being eliminated effective July 1, 2009. Those criteria are what is commonly known as the “20/220” criterion and the criterion that allows a borrower “working less than full time” but making less than an established threshold to receive the deferment. (These are options #5 and #6 on the current HRD form.)

Per the October 23, 2008 Final Rule, the regulatory changes to the economic hardship deferment apply to ‘deferment requests received by the lender on or after July 1, 2009, for deferment periods that begin on or after that date’. In the Preamble to that Final Rule (pg. 63235), the Department clarified that lenders are permitted to grant an economic hardship deferment based on the 20/220 or working less than full-time criteria for a borrower who requests the deferment **after** July 1, 2009, **ONLY** in those instances where the deferment period begins **prior to** July 1, 2009, and the deferment period does not exceed 12 months from the date on which the period began (the pre-July 1, 2009 date.)

However, no additional periods of economic hardship deferment may be granted based on the soon-to-be eliminated criteria at the conclusion of that deferment period, or for any deferment request received by the lender on or after July 1, 2009, if the deferment period begins on or after the July 1, 2009 date.

The questions and answers below are provided to assist schools and lenders in understanding and implementing these changes to the economic hardship deferment regulations.

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**Q1.** If a borrower applies for HRD **after** June 30, 2009, but indicates that the deferment is based on either the 20/220 or working less than full-time criteria and the qualifying condition began **prior to** July 1, 2009, can the borrower still be granted the deferment?

**A1.** Yes. As noted above, a lender is permitted to grant economic hardship deferment based on the 20/220 or working less than full time criteria if a borrower applies after July 1, 2009, provided the borrower is eligible for the deferment and the qualifying condition begins prior to July 1, 2009. However, in order to qualify for deferment, a borrower’s loans must be in repayment. See question #2 below that addresses borrowers who have loans that are in ‘grace’ or ‘post-enrollment deferment’ at the time of the HRD request.

**Q2.** A borrower requests and is eligible for an economic hardship deferment based on the 20/220 criterion on loans that are already in repayment. The deferment period begins prior to July 1, 2009. However, the borrower also has Stafford loans that are in grace. Can the economic hardship deferment be applied to the loans that are in grace once the grace period expires, thereby allowing all of the borrower’s loans to be deferred? The deferment for all loans would expire on the same date – 12 months after the loans in repayment entered the deferment period.

For example, a borrower has both Grad PLUS and Stafford loans. He graduates on May 16, 2009 and opts out of the post-enrollment deferment available for his Grad PLUS loans. Therefore, his Grad PLUS

loans automatically move from an in-school deferment to repayment status beginning on May 17, 2009. However, his Stafford loans are eligible for grace through November 15, 2009. The borrower applies and is eligible for an economic hardship deferment based on the 20/220 criteria beginning May 17, 2009. The lender would grant the economic hardship deferment on the Grad PLUS loans from May 17, 2009 through May 16, 2010. Can the lender then apply the deferment to the borrower's Stafford loans from November 16, 2009 through May 16, 2010?

**A2.** No. This question was pursued with the Department, and it was confirmed that an economic hardship deferment may not be granted to a borrower based on either the 20/220 or the working less than full-time criteria on loans that have not entered repayment prior to July 1, 2009. One of the underlying requirements for obtaining a deferment is that the loan must be in repayment status, which means any applicable grace period must expire first. In this example, the Stafford loans do not enter repayment (grace does not expire) until November 15, 2009, which is after the trigger date of 'deferment requests received by the lender on or after July 1, 2009 for deferment periods that begin on or after that date' for the new economic hardship criteria. Therefore, even though the borrower's Grad PLUS loans could be deferred based on an 20/220 criterion, the borrower may not be granted an economic hardship deferment based on the 20/220 or working less than full-time criteria on his or her Stafford loans because any deferment period granted on the Stafford loans cannot commence until after July 1, 2009.

**Q3.** Borrowers may no longer choose to enter repayment while still in school to consolidate loans early. However, some senior medical students whose separation date is mid-May may be interested in consolidating their more recent Stafford loans with Grad PLUS and/or existing Consolidation loans in order to apply for the economic hardship deferment under the 20/220 criterion prior to July 1, 2009.

Assuming the borrowers' Federal Consolidation Loan applications could be processed prior to July 1, 2009, and the borrowers have done their 'due diligence' to determine if consolidation really makes sense, there appears to be nothing that says they cannot consolidate their loans as soon as they are out of school. The borrowers could end up losing most of their grace periods, but might be willing to do so if they would be eligible for an economic hardship deferment based on the 20/220 criterion prior to its elimination on July 1, 2009. Is this allowed?

**A3.** It is true that borrowers may not 'waive' any portion of the 'in-school' period for the purpose of consolidating. However, borrowers continue to have the option of consolidating eligible loans that may be in grace, thereby forfeiting all or a portion of the grace period on those loans (refer to Item 20 on the current Federal Consolidation Loan Application and Promissory Note). In this example, the borrowers may consolidate the Stafford loans immediately following graduation. If the Consolidation loan is disbursed prior to July 1, 2009, the borrowers can apply for economic hardship deferment on the Consolidation loans based on the 20/220 criteria, provided the deferment condition also begins prior to July 1, 2009.

**Q4.** A borrower is currently on an economic hardship deferment that is scheduled to end after July 1, 2009, based on the 20/220 criterion. Can that borrower re-apply before July 1, 2009, based on the same 20/220 criterion, thereby extending the amount of time he is in deferment? If the borrower is required to re-apply post July 1, 2009, he may not qualify for an economic hardship deferment based on the new criteria.

**A4.** Yes, the borrower can re-apply for the economic hardship deferment, provided the borrower continues to qualify for the deferment and also requests that the existing economic hardship deferment end early, ensuring that the newly-granted economic hardship deferment period begins prior to July 1, 2009.

**Q5.** If a borrower's economic hardship deferment begins prior to July 1, 2009 (for example, January 1, 2009), what months count toward any future loan forgiveness period should the borrower later request income-based repayment (IBR)? Does the borrower first have to be on an IBR plan in order for the economic hardship deferment months to count toward the forgiveness period?

**A5.** Any months of economic hardship deferment that occur on or after July 1, 2009 count toward the 25 years of repayment for purposes of loan forgiveness should a borrower request and qualify for IBR on or after July 1, 2009. It does not matter what type of repayment plan the borrower was on while receiving the economic hardship deferment, provided the deferment months occur after July 1, 2009 and the borrower later requests and qualifies for IBR.

**Q6.** Prior to July 1, 2009, if a borrower was living outside of the United States, the lender would use the borrower's last state of legal residence for the applicable poverty levels in determining eligibility for the economic hardship deferment. If that last state of legal residence was Alaska or Hawaii, the poverty levels applicable to these states would be used. Effective July 1, 2009, for borrowers not residing in a State that is listed in the HHS poverty guidelines notice (District of Columbia, Alaska, Hawaii and the 48 Contiguous States are the only States listed in the HHS notice), the lender must use the poverty guidelines applicable to the 48 contiguous States and D.C. Therefore, we believe that if a borrower who does not reside in a State submits an economic hardship deferment request for a deferment period prior to July 1, 2009, that is based on the 20/220 or working less than full-time criteria, the lender should follow the "old" rule and base the poverty level on the last State of legal residence. However, if a borrower who does not reside in a State that is listed in the HHS poverty guidelines notice submits an economic hardship deferment based on the revised HRD criteria that are effective on or after July 1, 2009, the poverty level should be based on the guidelines applicable to the 48 contiguous States and D.C. Borrowers residing in the other States, such as Puerto Rico, U.S. Territories and Freely Associated States, would also use the guidelines applicable to the 48 contiguous States and D.C. Is this correct?

**A6.** Yes. As stated above in the "Background," on page 63235 of the preamble the Department clarified that an economic hardship deferment requested on or after July 1, 2009, for a deferment period that starts before that date could be granted to a borrower for up to a 12-month period based on the 20/220 criteria. Consistent with that interpretation of the regulatory effective date, the use of poverty guidelines that existed prior to July 1, 2009 may be applied to any deferment granted with a start date prior to July 1, 2009. Therefore, for a borrower who does not reside in a State that is listed in the HHS poverty guidelines, the poverty level applicable to the borrower's last state of legal residence is used. If the borrower's last state of legal residence was Alaska or Hawaii, the poverty guideline applicable to these states is used.