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**FEDERAL UPDATES**

**Final Rules Highlights**

Final rules for the federal student aid programs were published in the November 1, 2002, edition of the *Federal Register*. These regulatory changes emanate from negotiated rulemaking sessions that took place at the Department of Education (ED) in early 2002. The goal of these negotiations was to reduce administrative burden and to provide schools, lenders, and guarantors with greater flexibility to serve their customers, students, and borrowers. This article highlights some of the resulting changes.

**Effective Date**

All of the final regulations are effective July 1, 2003, except for the amendment to the GEAR UP provision which is effective December 2, 2002.

**Early Implementation**

All of the provisions in the final rules may be implemented prior to the July 1, 2003, effective date at the discretion of entities that administer them.

**School Issues**

*Change of Ownership*

The definition of “family member” is expanded to include grandchildren, a spouse’s children and grandchildren, and family members as a result of remarriage. The new regulations also expand the conditions under which transfers of ownership and control to family members are not considered a change of ownership for institutional eligibility purposes.

As a result of this change, proprietary institutions will find it easier to transfer ownership between family members without interrupting institutional eligibility for Title IV programs.

### *Branch Campuses*

Clarification is provided that the two-year rule only applies to branch campuses of proprietary institutions of higher education and postsecondary vocational institutions that seek certification as a main campus or as a free-standing institution. It is no longer applicable to branch campuses of higher education as defined in 34 CFR 600.4.

### *Definition of Academic Year – 12-Hour Rule*

The 12-hour rule is eliminated for nonstandard and nonterm educational programs that measure progress in credit hours. The one-day rule is adopted as the single regulatory standard for all types of educational programs. The one-day rule holds that a week of instructional time is a week in which there is at least one day of regularly scheduled instruction or examinations, or, after the last day of classes, at least one day of study in preparation for final examinations.

Application of the one-day rule for all types of educational programs increases flexibility and accommodates innovation in educational formats. Additionally, it ensures equal treatment for Title IV funding for all students regardless of the type of program in which they are enrolled.

### *Payment Periods for Clock-Hour and Nonterm Credit-Hour Programs*

The final regulations amend the definition of a payment period to require a student to complete the requisite number (usually half) of weeks in an academic year or program, in addition to the previously required number of clock or credit hours. Additionally, they clarify the treatment of a student who withdraws from a clock-hour program or a credit-hour nonterm program during a payment period, but then returns to school.

- If the student returns to the same program at the same school within 180 days of the original withdrawal, the student is considered to be in the same payment period that he or she was in at the time of the withdrawal.
- A student who withdraws from a program during a payment period and then returns to that program after 180 days, or who transfers, within any time frame, into another program either at the same or another school would start a new payment period.

### *Notices and Authorizations*

Schools are no longer required to confirm the receipt of an electronically sent notice that Title IV loan funds were credited to the student's account.

### *Incentive Compensation*

The final regulations provide a non-comprehensive list of activities and payment arrangements that a school may carry out without violating the incentive payment restrictions provision.

### *Late Disbursements*

The final rules make several changes to late disbursement regulations. Some of the changes include:

- Increasing the time frame within which a school may make a late disbursement from 90 to 120 days. For those cases in which the student is not at fault, ED may approve a school's request to make a late disbursement after 120 days.
- Requiring that ED must have processed a SAR or ISIR with an official EFC in order for the school to make a late disbursement. However, FFELP loans still must be certified before the last day of at least half-time attendance. (Previous regulations required the school to have received a SAR or ISIR with an official EFC.)
- Requiring the school to provide the student, or the student's parent for a PLUS loan, the opportunity to receive a late disbursement, if the student successfully completed the

payment period or period of enrollment. (This aligns the late disbursement provisions with the post-withdrawal disbursement provisions under return of Title IV funds regulations.)

#### *Ability-to-Benefit Test Scores*

The final rules eliminate the 12-month limitation on the applicability of a student's passing Ability-to-Benefit (ATB) test score for Title IV aid eligibility. Also, a school may obtain a student's passing ATB test score only from the test publisher or an assessment center, not from another school.

#### *GEAR UP*

The final rules eliminate the requirement that an institution award student financial assistance in an established order for students who are eligible for a GEAR UP scholarship. Schools may now treat GEAR UP in relation to other gift aid as they see fit. However, Title IV grant assistance must be awarded without regard to a student's eligibility for a GEAR UP scholarship.

States and partnerships administering GEAR UP must still include as a part of their participation plan an assurance that GEAR UP funds will supplement and not supplant other funds expended by the states and partnerships for existing programs. However, this requirement is no longer applicable to individual student aid packages.

### **Return of Title IV Funds**

#### *Institutions Required to Take Attendance*

For the purposes of determining a student's withdrawal date, a school is considered to be one that is "required to take attendance" when an outside entity specifically requires that the school take attendance for some or all of its students.

Prior to the implementation of these regulations, ED maintained that if it determined that the only way a school could comply with a requirement of an outside entity was to take attendance, the school was considered to be "required to take attendance" even if the outside entity stated that it did not require the school to take attendance.

The new regulation transfers the determination of the requirement to take attendance to the outside entity and is less restrictive in its interpretation of "required to take attendance."

#### *Leaves of Absence*

The definition of an approved leave of absence now allows multiple leaves of absence at the discretion of the school, as long as the total number of days for all leaves does not exceed 180 days within a 12-month period.

A school's leave of absence policy must require a student's written request to include a reason for the requested leave. Additionally, for a clock-hour program or a nonterm credit-hour program, when the student returns after a leave of absence, the student need not resume the exact coursework that he or she began prior to the leave.

The new guidance provides schools more flexibility to accommodate the unforeseen circumstances that may hinder a student's attendance.

#### *Timely Return of Funds*

The final regulations specify that a school returns funds when it:

- Deposits or transfers the funds into the bank account it maintains for Federal funds,
- Initiates an electronic funds transfer (EFT),
- Initiates an electronic transaction that instructs a FFELP lender to adjust a borrower's loan for the amount of the "returned funds," or

- Issues a check.

However, if a check is used to return unearned funds, the final regulations also require that the school must issue the check no later than 30 days after it determines that the student withdrew, and the check must be endorsed by the bank used by a FFELP lender or the Department no later than 45 days after that date.

Additionally, the new regulations provide several other changes:

- In cases in which there are exceptional circumstances beyond a school's control or when the school believes that an auditor or reviewer made an error, the school may request that ED reconsider a finding that the school failed to return unearned funds in a timely manner.
- The regulations establish time frames for submitting a letter of credit depending on whether the finding triggering the letter of credit was made in a compliance audit, in a program review conducted by ED or the guaranty agency, or in an audit conducted by ED's Office of the Inspector General (OIG).
- A school is not required to submit a letter of credit of less than \$5,000. However, to meet the statutory reserve requirement, the school must demonstrate that it has available, at all times, cash reserves of at least \$5,000 to make required returns.

### *Overpayments*

A student remains eligible to receive additional Title IV aid if the amount of a Perkins loan or Title IV grant overpayment is less than \$25 and is neither a remaining balance nor a result of applying the overaward threshold for campus-based programs. A student is not liable for a Perkins loan, Federal Supplemental Educational Opportunity Grant (FSEOG), or Pell Grant overpayment that is less than \$25 and is not a remaining balance and, for a Perkins loan or FSEOG overpayment, is not the result of applying the \$300 campus-based overaward threshold. A student is also not liable for an overpayment if the institution is liable for it.

A school, when attempting to collect a Federal Pell Grant overpayment, must provide written notice of the overpayment to the student. If a student objects to an overpayment determination on the grounds that the determination is erroneous, the school must ascertain whether the objection is warranted.

## **FFELP Issues**

### *Rehabilitation of Defaulted Loans*

Loans for which a judgment has been obtained against the borrower are no longer eligible for rehabilitation.

Borrowers may regain eligibility for Title IV aid by repaying the debt in full or by making satisfactory repayment arrangements with the holder of the debt that include at least six consecutive monthly payments. However, borrowers may regain Title IV eligibility under these provisions only once.

### *Retention of Promissory Notes*

Electronically signed promissory notes must be stored electronically and be retrievable in a coherent format.

### *Initial and Exit Counseling*

The final rules clarify that, for initial counseling under the FFEL and Direct Loan Programs and for exit counseling under the FFEL, Direct Loan, and Perkins Loan Programs, a school is not required to actually provide the counseling itself. However, the school must ensure that the counseling is provided and includes all of the required information, and must ensure that

someone familiar with Title IV aid is available to answer students' questions following the counseling.

These changes provide consistency in counseling requirements among FFEL, Direct Loan, and Perkins Loan Programs.

#### *Determining Loan Limits*

The final rules clarify that students who complete a stand-alone program as a prerequisite for beginning a second stand-alone program at the same school may not use the length of the first program to qualify for higher loan amounts in the second program. Specifically, if both programs are a year in length, a student's maximum loan eligibility in the second program would be the same as a first-year student, not as a second-year student.

This clarification of the rules does not affect current provisions allowing a borrower who has received an associate or bachelor's degree and who enrolls in a new program for which such a degree is required to borrow under the higher annual loan limits for borrowers at the junior grade level or beyond. The rules also do not restrict a school from determining a borrower's grade level based on hours earned at another school that are applicable towards the borrower's academic program.

#### *Unemployment Deferment*

Under the final rules, a borrower may qualify for an extension to an unemployment deferment by providing a written certification or approved equivalent that he or she has made at least six diligent attempts during the preceding six-month period to secure full-time employment, but without providing the details of those employer contacts.

Borrowers also may certify that they have registered with a local employment agency without providing the details of the registration. Finally, the rules specify that the 50-mile radius for the required registration with an employment agency is based on the borrower's current address.

Loan holders wishing to implement these provisions before July 1, 2003, should note that until ED approves a revised unemployment deferment form, loan holders are required to provide alternative methods for borrowers to certify their eligibility for the deferment.

#### *Economic Hardship Deferment*

ED now allows lenders to base economic hardship deferment eligibility determinations on a borrower's actual repayment schedule rather than a 10-year repayment schedule, if the actual schedule is for less than 10 years.

#### *Forbearance Simplification*

To the extent allowed by law, ED has eliminated the requirement that a borrower or endorser agree in writing to the terms of a forbearance. However, lenders are required to disclose forbearance terms in writing within 30 days to borrowers who verbally request forbearances. Additionally, the frequency of lender notices to borrowers changed from quarterly to once every six months.

#### *Administrative Forbearance*

Lenders now have expanded authority to grant administrative forbearances for local and national emergencies or a military mobilization.

#### *Consolidation Loan Benefits*

The final rules permit a partial discharge for the portion of a Consolidation loan that paid off a PLUS loan that was taken out for a student who subsequently dies. Joint Consolidation loans are

also eligible for partial discharges in situations in which one of the borrowers dies or becomes totally and permanently disabled.

In the preamble to the final rules, ED clarifies that a total and permanent disability discharge of a portion of a joint Consolidation loan does not eliminate joint and several liability for either of the borrowers for the remaining balance of the loan.

#### *Eligible Lender – Trust Loans*

The definition of eligible lender now specifies that loans held in trust by a trustee lender are not part of the trustee lender's consumer credit loan function.

#### *First Payment Due Date*

The new regulations allow up to 60 days for the due date of a borrower's first payment on a Stafford loan or for the resumption of payments after forbearance or deferment on a Stafford loan.

This change aligns the Stafford loan payment due date with other FFELP loans.

#### *Anticipated Graduation Date*

The new regulations clarify that a lender is not required to change a borrower's anticipated graduation date or separation date when the date the school provides is in the same month and year as previously provided and the lender has already disclosed repayment terms to the borrower.

#### *Borrower Repayment Terms (Written Notice)*

A borrower who has been granted a repayment term of less than five years is no longer required to submit a written notice to extend the repayment term to five years or more.

#### *Copies of Promissory Notes*

Lenders are no longer required to certify that a promissory note is a "true and exact" copy if the lender provides a copy of the note (instead of the original) to a guarantor with its claim submission.

#### *Disability Claims*

Guarantors now have an extended time frame of 90 days for the review and payment of disability claims.

### **More Information**

The above information summarizes some of the changes to Title IV regulations published by ED. TG implementation information will appear in subsequent editions of *Shoptalk Online*.

TG strongly encourages all customers to read the final rules containing these regulatory changes. The final rules are available on TG's corporate web site on the 2002 Final Regulations page, located at [http://www.tgslc.org/tgslc/resources/final\\_regs\\_02.htm](http://www.tgslc.org/tgslc/resources/final_regs_02.htm).

For questions about the 2002 final rules, contact TG Customer Assistance at (800) 845-6267 or send an e-mail message to [cust.assist@tgslc.org](mailto:cust.assist@tgslc.org).

## Former FSA Chief Operating Officer Passes Away

Greg Woods, former Chief Operating Officer (COO) of ED's office of Federal Student Aid (FSA), died on November 21, 2002, following a battle with cancer. Mr. Woods served as FSA's COO from October 1998 until September 2002.

Mr. Woods was the first COO appointed to FSA when the office was designated as the federal government's first performance-based organization (PBO) in the Higher Education Amendments of 1998. The PBO's mission, as outlined in the legislation, is to improve service, reduce costs, and modernize and integrate the information and delivery systems. Mr. Woods was the leader of FSA's modernization efforts and has been credited with making significant strides in improving technological issues related to student-aid delivery.

Mr. Woods helped restructure FSA into customer "channels" representing students, schools, and financial partners. During Woods' tenure, FSA achieved progress in computer system integration, as mandated by the PBO legislation.

When Mr. Woods announced his resignation from FSA in May 2002, Secretary of Education Rod Paige said in a written statement, "Greg has been a passionate champion for students and access to postsecondary education. He has forged a new partnership with the higher-education and financial communities to improve the delivery of federal student aid."

Milt Wright, President and CEO of TG, said, "Mr. Woods was a very effective change agent in modernizing the student loan delivery systems. We will miss him."

## LEGISLATIVE REPORT

The November 25 issue of the *Legislative Report* provides updates on the final days of the 107<sup>th</sup> Congress, the education agenda of Senator John Edwards, and bills filed for consideration by the 78th Texas legislature. Read the details at [www.tgslc.org/tgslc/publications/lege\\_report/index.htm](http://www.tgslc.org/tgslc/publications/lege_report/index.htm).

## THIS, THAT, AND THE OTHER...

TG offices will be closed this week on Thursday, November 28, and Friday, November 29, for the Thanksgiving holiday.

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