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Federal Student Loan Debt Relief in the Context of COVID-19

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SUMMARY

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Federal Student Loan Debt Relief in the Context of COVID-19

Title IV of the Higher Education Act of 1965 (HEA; P.L. 89-329, as amended) authorizes the operation of three federal student loan programs: the William D. Ford Federal Direct Loan (Direct Loan) program, the Federal Family Education Loan (FFEL) program, and the Federal Perkins Loan program. While new loans are currently authorized to be made only through the Direct Loan program, previously made FFEL and Perkins Loan program loans remain outstanding and borrowers of such loans remain responsible for repaying them. As of March 31, 2022, $1.6 trillion in loans from these programs, borrowed by or on behalf of 43.0 million individuals, remained outstanding. In response to the current COVID-19 pandemic, numerous questions have arisen regarding student loan repayment flexibilities and debt relief that may be available to individuals to alleviate potential financial effects related to COVID-19.

The HEA authorizes several flexibilities that may be relevant to individuals facing financial difficulties resulting from COVID-19. These include the following:

- Loan deferment and forbearance options offer a borrower temporary relief from the obligation to make monthly payments. In certain instances, interest does not accrue during deferment periods; although interest does accrue during forbearance periods. Periods of deferment or forbearance do not count toward the 120 monthly payments required to qualify for Public Service Loan Forgiveness (PSLF), nor do they count toward the 20- or 25-year repayment periods under the income-driven repayment (IDR) plans.
- IDR plans afford borrowers the opportunity to make payments on their loans in amounts that are capped at a specified share or proportion of their discretionary income over a repayment period not to exceed 20 or 25 years, depending on the plan. At the end of the repayment period, the remaining balance of an individual's loans is forgiven.

Various congressional and administrative actions, including the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and invocation of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) by the Administration, provide additional student loan relief measures:

- The accrual of interest on Department of Education (ED) held student loans and certain non-ED-held student loans is suspended from March 13, 2020, through December 31, 2022.
- ED-held student loans and certain non-ED-held student loans are being placed in a special administrative forbearance (payment pause) for March 13, 2020, through December 31, 2022. During this time, borrowers will not be required to make payments due on their loans. This special administrative forbearance will count toward the 120 monthly payments required to qualify for PSLF, the 20- and 25-year repayment periods under the IDR plans, and the nine voluntary payments required for individuals to rehabilitate their defaulted loans.
- Debt collections activities, including involuntary collection activities such as wage garnishment and offset of certain federal benefits (e.g., Social Security benefits) are suspended on ED-held student loans and certain non-ED-held student loans for March 13, 2020, through December 31, 2022.
- Multiple rules related to the 120 monthly payments required to qualify for PSLF are waived for a limited time. In all cases, borrowers must have met PSLF employment criteria.
- ED will conduct a one-time revision to the accounts of borrowers with ED-held loans to provide credit toward the IDR plan loan forgiveness period for any months in which they were in repayment status and for specified periods of deferment or forbearance. Borrowers with loans that have accumulated time in repayment for 20 or 25 years, as applicable, will receive automatic loan forgiveness.
- ED will cancel up to (1) $10,000 per borrower whose annual income in 2020 or 2021 was less than $125,000 (for individuals) or less than $250,000 (for certain married borrowers or heads of households), and (2) an additional $10,000, for up to $20,000 total, for borrowers who meet the above income criteria and received a Pell Grant at any point.

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Introduction

Title IV of the Higher Education Act of 1965 (HEA; P.L. 89-329, as amended) authorizes the operation of three federal student loan programs: the William D. Ford Federal Direct Loan (Direct Loan) program, the Federal Family Education Loan (FFEL) program, and the Federal Perkins Loan program.[1] While new loans are currently authorized to be made only through the Direct Loan program, previously made FFEL and Perkins Loan program loans remain outstanding and borrowers of such loans remain responsible for repaying them.

As of March 31, 2022, approximately $1.6 trillion in these loans, borrowed by or on behalf of 43.0 million individuals,[2] remained outstanding.

- **Direct Loan program loans** are owned by the U.S. Department of Education (ED). As of March 31, 2022, approximately 37.1 million borrowers owed about $1.4 trillion in Direct Loan debt.[3]
- **FFEL program loans** may be held by private lenders, guaranty agencies, or ED. As of March 31, 2022, approximately 9.6 million borrowers owed about $219.3 billion in FFEL program debt. Of that, approximately $79.9 billion was held by ED, representing between 2.7 million and 5.3 million borrowers[4]; about $113.6 billion was held by private lenders, representing debt for about 4.3 million borrowers; and $25.3 billion was held by guaranty agencies, representing debt for about 1.1 million borrowers.[5]
- **Perkins Loan program loans** may be held by institutions of higher education (IHEs) that made the loans or by ED. As of September 15, 2022, ED held about $1.4 billion in Perkins Loans, representing debt owed for approximately 439,000 borrowers, and IHEs held about $2.6 billion, representing debt for approximately 910,000 borrowers.[6]

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[1] For additional information on loans made under these programs, see CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*; CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*; and CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers* (archived).

[2] This number represents an unduplicated number of federal student loan recipients. Some individuals may have borrowed from more than one federal student loan program. As such, the numbers of recipients for the various federal student loan programs presented herein sum to greater than 43.0 million. U.S. Department of Education (ED), Office of Federal Student Aid, Federal Student Aid Data Center, "Federal Student Aid Portfolio Summary," https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls, (hereinafter, ED, "Federal Student Aid Portfolio Summary").

[3] ED, "Federal Student Aid Portfolio Summary."

[4] Approximately 2.7 million borrowers have FFEL program loans placed with ED-contracted loan servicers, and approximately 2.6 million borrowers have FFEL program loans placed with the ED-contracted Default Management System. An individual may have FFEL program loans placed with both ED-contracted loan servicers and the Default Management System; thus, the unduplicated count of FFEL program borrowers with loans held by ED is unknown. ED, Office of Federal Student Aid, Federal Student Aid Data Center, "Location of Federal Family Education Loan Program Loans," https://studentaid.gov/sites/default/files/fsawg/datacenter/library/LocationofFFELPLoans.xls.

[5] An individual borrower may have FFEL program loans held by a commercial lender and a guaranty agency; thus, the unduplicated count of FFEL program borrowers with loans that are not held by ED is unknown. ED, Office of Federal Student Aid, Federal Student Aid Data Center, "Location of Federal Family Education Loan Program Loans," https://studentaid.gov/sites/default/files/fsawg/datacenter/library/LocationofFFELPLoans.xls.

[6] CRS email communication with ED, September 23, 2022. An individual borrower may have Perkins Loan program loans held by ED and an IHE; thus, the unduplicated headcount of Perkins Loan borrowers is unknown. IHEs are not

In response to the COVID-19 pandemic, numerous questions have arisen regarding student loan repayment flexibilities and debt relief that may be available to individuals to alleviate potential financial effects related to COVID-19. The HEA generally authorizes several options for qualifying individuals. Congressional and administrative action, including the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and invocation of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) by the Administration, provide additional student loan relief measures.

This report provides an overview of student loan repayment flexibilities and debt relief provisions that may be available to borrowers facing financial difficulties in light of the pandemic. It first lists some preexisting loan terms and conditions (authorized through statute and regulations) that may be available to individuals. It then discusses specific administrative and congressional actions taken to address student loan debt in the context of COVID-19. The report concludes with a brief description of additional existing authorities that could be utilized to address other aspects of student loan relief.

Preexisting Loan Terms and Conditions

Several loan terms and conditions that offer forms of repayment relief to borrowers were authorized in statute and regulations prior to the onset of the COVID-19 pandemic. These include periods of deferment and forbearance, which offer borrowers temporary relief from the obligation to make monthly payments; and the availability of income-driven repayment (IDR) plans (e.g., Income-Based Repayment, Pay As You Earn [PAYE]), which afford borrowers the opportunity to make payments in amounts that are capped at a specified share or proportion of their discretionary income, for a maximum repayment period of 20 or 25 years.

Deferment

A *deferment* is a temporary period during which a borrower's obligation to make regular monthly payments of principal or interest is suspended, and during which an interest subsidy (i.e., interest does not accrue) may be provided on certain types of loans. Where an interest subsidy is not provided, unpaid interest that has accrued on a borrower's loan during a deferment is capitalized (i.e., added to the principal) at the expiration of the deferment period. Periods of deferment typically do not count toward the 120 monthly payments required to qualify for Public Service Loan Forgiveness (PSLF),[7] and most are not included in a borrower's repayment period (e.g., periods of unemployment deferment do not count toward the maximum repayment periods of 20 or 25 years under the IDR plans). In most instances, a borrower must proactively apply for and request a deferment.

A deferment may be granted for a variety of reasons. Unemployment deferment and economic hardship deferment (described below) may be especially relevant to individuals facing financial difficulties due to COVID-19. These types of deferment are available to borrowers of loans made under the Direct Loan, FFEL, and Perkins Loan programs.

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required to report the outstanding interest balance of their Perkins Loans; thus, estimates of the outstanding balance of IHE-held Perkins Loans may be understated.

[7] Similarly, periods of deferment do not count toward the 120 monthly payments required to qualify for Temporary Expanded PSLF (TEPSLF). For additional information on PSLF, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

Unemployment Deferment

A borrower who is seeking to obtain full-time employment and is either not employed or employed less than full-time may be granted an *unemployment deferment*.[8] To be eligible, a borrower must either be receiving unemployment benefits or document that he or she has registered with a public or private employment agency (if one is available within 50 miles) and is diligently seeking to obtain full-time employment.

The deferment may be granted for an initial six-month period, and may be extended in six-month increments.[9] A borrower may receive the deferment for a maximum cumulative period of three years, which may include one or more episodes of unemployment.[10]

During an unemployment deferment, an interest subsidy is provided on Direct Subsidized Loans, the subsidized component of Direct Loan program Consolidation Loans (Direct Consolidation Loans)[11], FFEL Stafford (Subsidized) Loans, the subsidized component of FFEL Consolidation Loans, and Perkins Loans.

Economic Hardship Deferment

A borrower may qualify for a deferment during periods while he or she is experiencing an economic hardship.[12] To qualify, a borrower must be (1) receiving payments under a federal or state public assistance program (e.g., Temporary Assistance for Needy Families [TANF], Supplemental Security Income [SSI], Supplemental Nutrition Assistance Program [SNAP], state general public assistance, other means-tested benefits), or (2) working full-time and have a monthly income that does not exceed an amount equal to 150% of the poverty line applicable to the borrower's family size, as calculated on a monthly basis.[13]

The deferment may be granted for periods of up to one year at a time, and may be extended up to a cumulative maximum of three years.[14] Periods of up to three years while a borrower qualifies for an economic hardship deferment may be counted as part of the repayment period for each of the IDR plans.

During an economic hardship deferment, an interest subsidy is provided on Direct Subsidized Loans, the subsidized component of Direct Consolidation Loans, FFEL Stafford Loans, the subsidized component of FFEL Consolidation Loans, and Perkins Loans.

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[8] 34 C.F.R. §§674.34(d), 682.210(h) and (s)(5), 685.204(f); ED, Office of Federal Student Aid, "Unemployment Deferment Request," OMB No. 1845-0011, https://studentaid.gov/sites/default/files/UnemploymentDeferment.pdf.

[9] For Perkins Loan program loans, IHEs must reaffirm continued deferment eligibility on at least an annual basis; 34 C.F.R. §674.38(d).

[10] After a period of unemployment deferment, a Perkins Loan borrower is entitled to a post-deferment grace period of six consecutive months; 34 C.F.R. §674.34(k).

[11] Consolidation Loans allow individuals who have at least one loan borrowed through the Direct Loan program or the FFEL program to refinance their eligible federal student loan debt by borrowing a new loan and using the proceeds to pay off their existing federal student loan obligations.

[12] 34 C.F.R. §§674.34(e), 682.210(s)(6), 685.204(g); ED, Office of Federal Student Aid, "Economic Hardship Deferment Request," OMB No. 1845-0011, https://studentaid.gov/sites/default/files/EconomicHardshipDeferment.pdf.

[13] A borrower may also qualify for an economic hardship deferment if he or she is serving as a volunteer in the Peace Corps.

[14] After a period of economic hardship deferment, a Perkins Loan borrower is entitled to a post-deferment grace period of six consecutive months; 34 C.F.R. §674.34(k).

Forbearance

Forbearance constitutes permission for a borrower to temporarily cease making monthly payments, to make payments in reduced amounts, or to make payments over an extended period of time. During periods of forbearance, no interest subsidies are provided (i.e., interest continues to accrue) and borrowers ultimately remain responsible for paying all of the interest that accrues on their loans. Borrowers may pay the interest as it accrues during forbearance. At the end of the forbearance period, any unpaid accrued interest is capitalized into the principal balance of Direct Loan program and FFEL program loans; it is not capitalized[15] (but remains due) for Perkins Loan program loans.[16] Periods of forbearance typically do not count toward the 120 monthly payments required to qualify for PSLF,[17] and typically are not included in a borrower's repayment period (e.g., periods of student loan debt burden forbearance do not count toward the maximum repayment periods of 20 or 25 years under the IDR plans). Generally, borrowers must apply for forbearance.

General forbearance and student loan debt burden forbearance (described below) may be especially relevant to individuals facing financial difficulties due to COVID-19. These types of forbearance are available to borrowers of loans made under the Direct Loan, FFEL, and Perkins Loan programs.

General Forbearance

A borrower may request a general forbearance (sometimes referred to as a discretionary forbearance) on the basis of experiencing a temporary hardship due to financial difficulties, a change in employment, medical expenses, or other reasons.[18]

General forbearance may be granted for an initial period of up to 12 months, renewed upon the borrower's request, and limited to a maximum of 36 months.[19] At the end of the forbearance period, any unpaid interest that accrued on Direct Loan and FFEL program loans during the period is capitalized.[20]

Student Loan Debt Burden Forbearance

A borrower may receive a forbearance on the basis of having a federal student loan debt burden that equals or exceeds 20% of his or her total monthly taxable income.[21] To qualify, a borrower

[15] On certain occasions, any interest that has accrued but not been paid by the borrower may be added to the outstanding principal balance of the borrower's loan; this is known as interest capitalization. When interest capitalizes, it becomes part of the outstanding principal balance and interest begins to accrue on that new, larger loan amount.

[16] 34 C.F.R. §§674.33(d), 382.211(a)(4), 385.205(a).

[17] Similarly, periods of forbearance do not count toward the 120 monthly payments required to qualify for TEPSLF. For additional information on PSLF, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

[18] 34 C.F.R. §§674.33(d)(5)(ii), 682.211(a)(2)(i), 685.205(a)(1); ED, "General Forbearance Request," OMB No. 1845-0031, https://studentaid.gov/sites/default/files/GeneralForbearance.pdf.

[19] General forbearance is available to FFEL and Direct Loan program borrowers for up to 36 months. General forbearance, alone or in combination with any other type of forbearance, is available to Perkins Loan borrowers for a cumulative period of 36 months. ED, "General Forbearance Request," OMB No. 1845-0031, https://studentaid.gov/sites/default/files/GeneralForbearance.pdf; ED, Office of Federal Student Aid, "Student Loan Forbearance," https://studentaid.gov/manage-loans/lower-payments/get-temporary-relief/forbearance (accessed September 9, 2022).

[20] In general, interest does not capitalize on Perkins Loans following periods of forbearance.

[21] 34 C.F.R. §674.33(d)(5)(i), 682.211(h)(2)(i)(B), 685.205(a)(6); ED, Mandatory Forbearance Request, "Student Loan

must demonstrate that his or her required monthly payments on HEA Title IV federal student loans (e.g., loans made under the Direct Loan, FFEL, or Perkins Loan programs) equal or exceed that amount.

Student loan debt burden forbearance may be granted for an initial period of up to 12 months, may be renewed upon the borrower's request, and is limited to a maximum of 36 months.[22]

Income-Driven Repayment Plans

IDR plans[23] afford borrowers the opportunity to make payments in amounts that are capped at a specified share or proportion of their *discretionary income*.[24] After making the equivalent of 240 or 300 monthly payments[25] (equivalent to 20 or 25 years), depending on the plan, a borrower's remaining loan balance is forgiven. Under these plans, it is possible for a borrower's monthly payment to equal $0.

There are several IDR plans currently available to borrowers: the Income-Contingent Repayment (ICR) plan, the Income-Based Repayment (IBR) plans (one version of which is available to individuals who qualify as a new borrower on or after July 1, 2014; and another which is available to individuals who do not qualify as a new borrower as of that date), the Pay As You Earn (PAYE) repayment plan, and the Revised Pay As You Earn (REPAYE) repayment plan. In general, Direct Loan borrowers (other than Parent PLUS Loan[26] borrowers) are eligible for any of these plans.[27] FFEL program borrowers (other than Parent PLUS loan borrowers) are only eligible for the IBR plans.[28] Perkins Loan borrowers are not eligible for any IDR plan.

Individuals must apply to repay their loans according to an IDR plan.[29] In addition, they must annually provide documentation of their income and family size, which is used to determine their discretionary income, to remain eligible for IDR repayment.[30] Borrowers may update their

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Debt Burden," OMB No. 1845-0018, https://studentaid.gov/sites/default/files/StudentLoanDebtBurdenForbearance.pdf.

[22] General forbearance is available to FFEL and Direct Loan program borrowers for up to 36 months. General forbearance, alone or in combination with any other type of forbearance, is available to Perkins Loan borrowers for a cumulative period of 36 months. 34 C.F.R. §§674.33(d)(5)(i), 682.211(h)(2)(i)(B), 685.205(a)(6).

[23] For additional information on the IDR plans, see ED, Office of Federal Student Aid, "Income-Driven Repayment Plans, https://studentaid.gov/manage-loans/repayment/plans/income-driven (accessed September 9, 2022) and CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*.

[24] *Discretionary income* is defined as the portion of a borrower's adjusted gross income that is in excess of a specified multiple of the federal poverty guidelines applicable to the borrower's family size.

[25] A borrower's payments need not be separate to count toward their IDR repayment period. For example, if a borrower's monthly loan payment is equal to $50 per month, the borrower did not make payments for three months, and then subsequently made a lump-sum payment in the amount of $150, the borrower would be credited with having made three monthly payments toward their IDR repayment period. Alternatively, if the same borrower made a $25 payment each month, they would not be credited with having made a monthly payment until the full $50 is received. CRS email communication with ED, September 22, 2022.

[26] A parent of a dependent undergraduate student may borrow Parent PLUS on behalf of the student to help finance the cost of the student's postsecondary education.

[27] 34 C.F.R. §685.208.

[28] 34 C.F.R. §682.215.

[29] ED, "Income-Driven Repayment (IDR) Plan Request," OMB No. 1845-0102, https://studentaid.gov/app/images/idrPreview.pdf.

[30] On December 19, 2019, the Fostering Undergraduate Talent by Unlocking Resources for Education Act (the FUTURE Act; P.L. 116-91) was enacted. Among other provisions, P.L. 116-91 authorizes the Internal Revenue Service to share relevant tax return information with ED for the purpose of determining a Direct Loan borrower's eligibility for

income and family size at any time if either changes. Upon submission of such information, a borrower's monthly payment amount will be recalculated accordingly.

Administrative and Congressional Actions Taken in Response to COVID-19

ED and Congress have taken steps to provide additional forms of relief to federal student loan borrowers in response to COVID-19. These include cancelling Direct Loans for payment periods during which qualifying individuals withdrew from their course of study due to COVID-19, temporarily suspending interest accrual on qualifying loans, expanding the instances under which a forbearance may be available to borrowers of qualifying loans, temporarily ceasing collections on qualifying defaulted loans, temporarily waiving or making adjustments to program rules for certain loan repayment and forgiveness programs, and effectuating a new loan cancellation policy for most federal student loan borrowers. In some instances, the Administration has invoked the HEROES Act to effectuate some of the relief detailed in this report (see text box).

The HEROES Act

The Higher Education Relief Opportunities for Students Act of 2003 (the HEROES Act), as amended, authorizes the Secretary of Education to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs," under HEA, Title IV, "as the Secretary deems necessary in connection with a war or other military operation or national emergency" to ensure that, among other things, affected individuals "are not placed in a worse position financially" in relation to that assistance. Affected individuals include:

1. persons on active duty or qualifying National Guard duty during a war, military operation, or national emergency;
2. persons who reside or are employed in an area that is declared a disaster area in connection with a national emergency; and
3. persons who suffered direct economic hardship as a direct result of a war or other military operation or national emergency.

ED has indicated that some of the administrative actions described in this report were taken under its HEROES Act authority, including numerous extensions of the suspension of interest accrual and debt collections and special administrative forbearance (payment pause) for qualifying federal student loans. ED has also invoked the HEROES Act in announcing its policy to cancel up to $10,000 or $20,000, as applicable, in federal student loan debt per qualifying borrower.[31]

Returning Direct Loans

Under the HEA, a Direct Loan borrower may be required to return or repay all or part of the Direct Loans borrowed if the student does not complete a payment or enrollment period at an IHE for which the loan was received. Required procedures for such returns or repayments vary depending on whether a student did not begin attendance at an IHE or whether he or she withdrew.

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and repayment obligations under IDR plans. As of the publication date of this report, it appears these procedures have not yet been operationalized.

[31] See, for example, Department of Education, "Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program)," 87 *Federal Register* 61512, October 12, 2022 (hereinafter ED, *Waivers and Flexibilities Update*).

Failure to Begin Attendance

If a student does not begin attendance at an IHE in a payment period[32] or period of enrollment,[33] Title IV funds (including Direct Loan funds) must be returned to ED by the IHE and/or the student according the regulatory provisions.[34] For Direct Loan amounts required to be returned by the student, the IHE must immediately notify ED (or its loan servicers) when it becomes aware that the student will not begin or has not begun attendance. Loan servicers then issue a final demand letter to the borrower. The demand letter requires the borrower to repay any loan principal and accrued interest within 30 days from the date the letter is mailed.[35] If the borrower fails to comply with the demand letter, he or she is considered in default on the loan.

ED has waived the requirement that IHEs notify loan servicers if a student will not or has not begun attendance. By waiving this requirement, loan servicers would not issue demand letters, and borrowers would be able to repay any loans according to the terms of the promissory note, including receiving a six-month grace period prior to the start of repayment. This waiver expires at the end of the IHE's "payment period that begins after the date on which the Federally-declared national emergency related to COVID-19 is rescinded."[36]

Withdrawal

HEA Section 484B specifies that when a Title IV aid recipient withdraws from an IHE before the end of the payment or enrollment period for which funds were disbursed, Title IV funds (including any Direct Loans received) must be returned to ED by the IHE and/or aid recipient according to statutorily prescribed rules (this is often referred to as Return of Title IV Aid). If an aid recipient is required to return any portion of a Direct Loan, he or she repays it in accordance with the terms of the loan.[37]

The CARES Act authorizes several waivers with respect to Return of Title IV Aid procedures. Specific to Direct Loan borrowers, the act requires ED to cancel a borrower's obligation to repay the entire portion of a Direct Loan associated with a payment period during which the student withdraws from an IHE as a result of a *qualifying emergency*.[38]

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[32] A payment period is the period for which a Title IV student aid disbursement must be made. Payment periods differ by IHE and may also differ by educational programs within IHEs, based on a variety of criteria including whether an educational program is measured in clock- or credit-hours and the type of term (e.g., semester, trimester, quarter) the educational program uses. For additional information, see 34 C.F.R. §668.4.

[33] A period of enrollment, often called a *loan period*, is the period for which a Direct Loan is intended. A period of enrollment "must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter)." 34 C.F.R. §685.201(b).

[34] 34 C.F.R. §668.21.

[35] 34 C.F.R. §685.211(e)(2).

[36] ED, "Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, William D. Ford Federal Direct Loan Program, and Federal-Work Study Programs)," 85 *Federal Register* 79860, December 11, 2020 (hereinafter ED, *Waivers and Flexibilities*).

[37] 34 C.F.R. §668.22(h)(3)(i).

[38] The CARES Act defines a qualifying emergency as (1) "a public health emergency related to the coronavirus declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act"; (2) an event related to the coronavirus for which the President declared a major disaster or an emergency under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act"; or (3) "a national emergency related to the coronavirus declared by the President under section 201 of the National Emergencies Act."

Entering Repayment

In general, borrowers of Direct Loan, FFEL, and Perkins Loan program loans are required to make payments on the loans during a repayment period. The repayment period for Direct Subsidized Loans, Direct Unsubsidized Loans, FFEL Stafford Loans, FFEL Unsubsidized Loans, and Perkins Loans begins after a grace period.[39] The grace period begins after the borrower ceases to be enrolled in an eligible postsecondary program on at least a half-time basis (enrollment on at least a half-time basis is often referred to as *in-school status* for federal student loan purposes). The repayment period for Direct PLUS Loans (to graduate students and to parents of dependent undergraduate students), Direct Consolidation Loans, FFEL PLUS Loans, and FFEL Consolidation Loans is required to begin when the loan is fully disbursed. However, borrowers of these loans, along with borrowers of Direct Subsidized Loans, Direct Unsubsidized Loans, FFEL Stafford Loans, FFEL Unsubsidized Loans, and Perkins Loans, may qualify for a deferment on the basis of their *in-school status* (or the in-school status of the student on whose behalf a PLUS Loan was made to a parent borrower), during which time they are not required to make payments on their loans but during which interest may accrue.[40] A borrower qualifies for such an in-school deferment if he or she, or the student on whose behalf a PLUS Loan is made, is enrolled on at least a half-time basis.

ED has announced some flexibilities for borrowers of Direct Loan and FFEL program loans whose loan status was *in-school* on the date the student's "attendance at the institution was interrupted due to COVID-19 national emergency."[41] The loan status of such borrowers will continue to be reported as *in-school* until the IHE determines that the student has withdrawn from it.[42] ED has permitted IHEs to defer reporting a student's withdrawn status if the IHE has a reasonable expectation that it will reopen at the start of a payment period that begins no later than 90 days following its COVID-19-related closure and that the student will resume attendance when the IHE reopens.[43] This flexibility is available through the end of an IHE's payment period that includes December 31, 2020, or the end of the IHE's payment period "that includes the end date for the Federally-declared emergency related to COVID-19," whichever is later.[44]

ED guidance does not address Perkins Loans.

[39] 34 C.F.R. §§674.31, 682.209, 685.207. For Direct Loan program and FFEL program loans, the grace period typically lasts six months. For Perkins Loan program loans, the grace period typically lasts nine months.

[40] 34 C.F.R. §§674.33, 682.210, 685.204(b).

[41] ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19. ED guidance does not specify which circumstances (e.g., an IHE's temporary closure or a student's withdrawal) constitutes an interruption due to COVID-19.

[42] ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19.

[43] ED, Office of Postsecondary Education, Electronic Announcement, "Guidance for interruptions of study related to Coronavirus (COVID-19)," March 5, 2020 (updated June 16, 2020), https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-03-05/guidance-interruptions-study-related-coronavirus-covid-19-updated-june-16-2020.

[44] ED, Office of Postsecondary Education, Electronic Announcement, "Updated deadlines for flexibilities related to Coronavirus (COVID-19)," August 21, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-08-21/updated-deadlines-flexibilities-related-coronavirus-covid-19.

Interest Accrual

Interest is charged on loans made under the Direct Loan, FFEL, and Perkins Loan programs. Typically, under a limited set of circumstances the federal government subsidizes some or all of the interest that would otherwise accrue on certain Direct Subsidized Loans, FFEL Stafford Loans, and Perkins Loans.[45]

For March 13, 2020, through December 31, 2022,[46] the accrual of interest on ED-held student loans (e.g., all Direct Loan program loans, and FFEL and Perkins Loan program loans held by ED), specified[47] defaulted FFEL program loans held by guaranty agencies (GAs)—some of which have been transferred to ED (see text box below)[48]—and specified previously defaulted FFEL program loans[49] is suspended.[50] This means borrowers of these loan types will not be responsible for paying interest on such loans for this period. (In practice, the cessation of interest accrual means that the interest rates for qualifying student loans have been effectively set to 0% during this time period.) This will permit borrowers to enter into a period of deferment or forbearance without concern for whether interest would accrue and capitalize. Borrowers who continue making payments on their loans during this time of interest suspension will not have decreased monthly payments. They will have the full amount of the payments applied toward interest and

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[45] Periods of interest subsidy include, but are not limited to, in-school periods while a borrower is enrolled in an eligible program on at least a half-time basis, during a grace period following enrollment on at least a half-time basis, and during periods of authorized deferment.

[46] ED, *Waivers and Flexibilities Update*, p. 61514.

[47] Defaulted FFEL program loans held by GAs that are eligible for this relief are those loans on which a default claim was paid prior to March 13, 2020, that are not subject to an active bankruptcy filing, and that were still in default as of May 12, 2021. Also included are those loans on which a default claim was paid on or after March 13, 2020, and those paid on or prior to the end of the current student loan payment pause that are not subject to an active bankruptcy filing and that were still in default as of May 12, 2021. In general, a GA pays a default claim (i.e., reimburses the FFEL program loan holder for most or all of the losses associated with a default) if a borrower defaults on their FFEL program loan. 34 C.F.R. §682.404(a).

[48] The cessation of interest accrual ("0% interest policy") for defaulted GA-held FFEL program loans was put into place via administrative action on March 30, 2021. In doing so, ED announced that the policy would apply retroactively to March 13, 2020, but only for the period that a GA held the loan. ED, "Department of Education Announces Expansion of COVID-19 Emergency Flexibilities to Additional Federal Student Loans in Default," press release, March 30, 2021, https://www.ed.gov/news/press-releases/department-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default; and ED, Office of Postsecondary Education, Dear Colleague Letter GEN-21-03, "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021), May 12, 2021, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021.

[49] These loans are those that were in default during the COVID-19 pandemic (regardless of when a default claim was paid) and for which the default was resolved through rehabilitation or consolidation prior to May 12, 2021. Upon rehabilitation or consolidation, the loans may have been purchased by third-party lenders or transferred to ED. For any such loans purchased by a third-party lender, it appears that the loans would be ineligible for the 0% interest policy after the purchase, as they would be FFEL program loans not held by ED. For any such loans transferred to ED, it appears that they would be eligible for the 0% interest policy after the transfer, as they would be FFEL program loans held by ED.

[50] The cessation of interest accrual ("0% interest policy") for ED-held loans was originally put into place via administrative action by ED on March 20, 2020. (ED, "Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency," press release, March 20, 2020.) Since then, it has been extended numerous times via legislative and administrative action. For a timeline of the history of these actions, see CRS In Focus, CRS In Focus IF12136, *Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic*, by Alexandra Hegji. ED invoked the HEROES Act to initially effectuate and to subsequently extend this policy. ED, *Waivers and Flexibilities*, p. 79857 and ED, *Waivers and Flexibilities Update*, pp. 61513-61514.

fees (for defaulted loans only) that accrued prior to March 13, 2020, and then to loan principal.[51] Borrowers who are eligible for this benefit need not apply for it; ED and GAs (in the case of those currently or previously defaulted FFEL program loans specified above) will automatically adjust their accounts to reflect the interest suspension.

In addition, ED has authorized FFEL program lenders and institutions that hold Perkins Loans to provide the interest suspension benefit to non-ED-held loans on a voluntary basis for the duration of the COVID-19 national emergency.[52] Borrowers who are ineligible for the interest suspension benefit because their FFEL program lender or Perkins Loan program IHE is not providing it may take advantage of the interest suspension period by consolidating such loans into a Direct Consolidation Loan, which is eligible for the interest suspension benefit.[53]

This interest suspension, coupled with the various options for temporary cessation of payments (e.g., forbearance, deferment) discussed throughout this report, means that qualifying borrowers may temporarily cease making payments on their loans without interest accruing or being subject to capitalization[54] when they begin to make payments again at a later point in time.

Assignment of Certain Defaulted FFEL Program Loans to ED

When an FFEL borrower defaults, the loan holder files a default claim (or insurance claim) with a GA. Upon payment of the claim, which serves as payment for the holder's losses stemming from borrower default, the holder assigns the defaulted loan to the GA, which in turn files a claim with ED for a reinsurance payment. GAs are responsible for handling initial collections work on defaulted loans and for administering other aspects of the FFEL program. In certain instances, ED may require GAs to assign defaulted loans to it. Upon assignment, ED becomes the holder of the defaulted FFEL program loan and becomes responsible for servicing and collecting on it (via contracted loan servicers).

In addition to extending several of the COVID-19 pandemic student loan relief provisions (cessation of interest accrual and debt collections) to defaulted GA-held FFEL program loans, ED is also requiring that GAs assign a subset of such loans to it. Specifically, GAs are required to assign to ED defaulted FFEL program loans on which the GA pays a default claim to a FFEL program lender on or after March 13, 2020, and on or prior to the end date of

[51] ED, Office of Federal Study Aid, COVID-19 Loan Payment Pause and 0% Interest, https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest (accessed October 3, 2022) (hereinafter ED, *COVID-19 Loan Payment Pause and 0% Interest*).

[52] ED, *Waivers and Flexibilities*, p. 79862, and ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19. At least some IHEs have suspended payments on their Perkins Loans in response to COVID-19. See, for example, Danielle Douglas-Gabriel, "University of California offers Perkins Loan borrowers relief. Will other colleges follow?" *The Washington Post*, April 20, 2020.

[53] ED, *COVID-19 Loan Payment Pause and 0% Interest* (accessed October 3, 2022). When a borrower consolidates a loan(s) into a Direct Consolidation Loan, its proceeds are used to pay off the borrower's previous loans. The resulting Direct Consolidation Loan is an entirely new loan with potentially different terms and conditions than the underlying loans; thus, benefits uniquely associated with the underlying loans (e.g., Perkins Loan cancellation benefits) may no longer be available upon consolidation. In addition, progress made towards loan forgiveness under the various IDR plans on the underlying loans typically will not count toward loan forgiveness under an IDR plan on the resulting Direct Consolidation Loan.

[54] ED has indicated that any balance of unpaid interest on a borrower's loan before March 13, 2020, will not be capitalized when the COVID-19 payment suspension (discussed later in this report) ends and through June 30, 2023, unless the borrower consolidates their loan. This policy differs from ED's previous policy under which a balance of unpaid interest on a borrower's loan before March 13, 2020, was capitalized in a larger set of instances. ED indicates that it has asked loan servicers to undo any interest capitalization that has an effective date after March 13, 2020. For additional information, see ED, *COVID-19 Loan Payment Pause and 0% Interest* (accessed October 3, 2022).

the current student loan payment pause for ED-held loans and that are not subject to an active bankruptcy filing. Thus, ED will become the owner of these loans and will become responsible for servicing and collecting on such loans. In addition, these loans will be returned to good standing (i.e., active repayment status).

Sources: 20 U.S.C. §1078(c)(8); 34 C.F.R. §682.409; and U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter GEN-21-03, "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021), May 12, 2021, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021. For additional information on FFEL program administration and GAs, see CRS Report R46409, *Proposals to Extend CARES Act Provisions to Federal Student Loans Not Held by the Department of Education: Frequently Asked Questions*.

Payment Pause

In addition to the preexisting deferment and forbearance options available to borrowers, ED (invoking the HEROES Act) and Congress have taken further steps to enable borrowers to temporarily cease making payments on their qualifying loans.

Monthly payments on ED-held student loans (e.g., all Direct Loan program loans, and FFEL and Perkins Loan program loans held by ED) and defaulted GA-held FFEL program loans that are transferred to ED under specified conditions (see text box)[55] are suspended for March 13, 2020, through December 31, 2022. (In practice, ED is placing all such loans in administrative forbearance.[56]) During this time, borrowers will not be required to make payments due on their loans.[57] Borrowers who are eligible for this benefit need not apply for it; ED is to automatically suspend payments. This special administrative forbearance is frequently called the "payment pause."

In implementing these provisions, ED has indicated that borrowers may opt out of the payment pause by contacting their loan servicer. In addition, any payments made on a borrower's account

[55] On March 30, 2021, ED announced that FFEL program loans that defaulted on or after March 13, 2020, would be returned to good standing. Because such loans have been returned to good standing and are now held by ED, the COVID-19 monthly payment suspension that applies to ED-held loans now applies to these loans; thus, such borrowers are not required to make monthly payments on their loans. ED "Department of Education Announces Expansion of COVID-19 Emergency Flexibilities to Additional Federal Student Loans in Default," press release, March 30, 2021, https://www.ed.gov/news/press-releases/department-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default; ED, *COVID-19 Loan Payment Pause and 0% Interest* (accessed September 9, 2022).

[56] An administrative forbearance is a type of forbearance that ED grants without required documentation from a borrower. Among other qualifying circumstances, ED may grant an administrative forbearance due to a local or national emergency. 34 C.F.R. §§674.33(d)(5), 682.211(i)(2)(i), 685.205(b)(8).

[57] On March 20, 2020, ED invoked the HEROES Act and directed all federal student loan servicers to grant a 60-day administrative forbearance (beginning March 13, 2020) to any borrower of an ED-held student loan who requested one. In addition, ED authorized loan servicers to automatically place into a 60-day administrative forbearance any borrower of an ED-held loan who is more than 31 days delinquent on his or her loans as of March 13, 2020, or who becomes 31 days delinquent thereafter. (ED, "Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency," press release, March 20, 2020; and ED, *Waivers and Flexibilities*, p. 79857) Subsequently, the CARES Act was enacted, which required that ED automatically suspend all payments on Direct Loans and ED-held FFEL program loans through September 30, 2020. While the CARES Act did not provide for a suspension of payments on ED-held Perkins Loan program loans, ED has applied a similar suspension to such loans. (ED, *Waivers and Flexibilities*, p. 79857) Subsequently, invoking the HEROES Act, the Administration extended the payment pause on numerous occasions. (ED, *Waivers and Flexibilities*, p. 79857 and ED, *Waivers and Flexibilities Update*, pp. 61513-61514.) For a timeline of the history of these actions, see CRS In Focus, CRS In Focus IF12136, *Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic*, by Alexandra Hegji. For additional information, see ED, *COVID-19 Loan Payment Pause and 0% Interest*.

between March 13, 2020, and December 31, 2022, can be refunded to the borrower. Generally, a borrower must contact his or her loan servicer to request a refund.[58]

ED has also authorized FFEL program lenders and institutions that hold Perkins Loans to provide a special administrative forbearance to borrowers on a voluntary basis for the duration of the COVID-19 national emergency.[59] Borrowers who are ineligible for this benefit because their FFEL program lender or Perkins Loan program IHE is not providing it may take advantage of the benefit by consolidating such loans into a Direct Consolidation Loan.[60] ED has waived the three-year (36 month) cumulative forbearance limit for Perkins Loan borrowers, regardless of whether the loans are held by ED or an IHE.[61]

Generally, periods of deferment and forbearance do not count toward the 120 monthly payments required to qualify for PSLF, and are not included in a borrower's repayment period[62] (e.g., periods of unemployment deferment do not count toward the maximum repayment periods of 20 or 25 years under the IDR plans). However, for Direct Loan borrowers (the only borrowers eligible for PSLF), suspended payments that would have been made during the payment pause will count toward the 120 monthly payments required to qualify for PSLF if the borrower works full-time in qualifying employment during the pause.[63]

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[58] ED, *COVID-19 Loan Payment Pause and 0% Interest* (accessed September 9, 2022). It appears that borrowers of non-ED-held FFEL program loans who made voluntary payments during the payment pause period, subsequently defaulted on their loans during the payment pause period, and had their loans returned to good standing by the Administration would qualify for a refund of their voluntary payments, even though at the time the payment(s) was made, their loans did not qualify for the COVID-19 payment suspension.

[59] ED, *Waivers and Flexibilities*, p. 79862, and ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19. Some commercial FFEL program loan holders have voluntarily provided borrowers with additional forbearance options in response to the COVID-19 pandemic. See, for example, Marie Albiges, "Virginia offers temporary relief on some private loans during coronavirus," *The Virginian-Pilot*, April 30, 2020. Some IHEs have suspended payments on their Perkins Loans in response to COVID-19. See, for example, Danielle Douglas-Gabriel, "University of California offers Perkins Loan borrowers relief. Will other colleges follow?", *The Washington Post*, April 20, 2020.

[60] When a borrower consolidates a loan(s) into a Direct Consolidation Loan, its proceeds are used to pay off the borrower's previous loans. The resulting Direct Consolidation Loan is an entirely new loan with potentially different terms and conditions than the underlying loans; thus, benefits uniquely associated with the underlying loans (e.g., Perkins Loan cancellation benefits) may no longer be available upon consolidation. In addition, progress made towards loan forgiveness under the various IDR plans on the underlying loans typically will not count toward loan forgiveness under an IDR plan on the resulting Direct Consolidation Loan.

[61] ED, Office of Postsecondary Education, Electronic Announcement CB-22-03, "Waiver of the Three-year Cumulative Limit on Forbearances for Federal Perkins Loan borrowers," January 22, 2022, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-01-13/waiver-three-year-cumulative-limit-forbearances-federal-perkins-loan-borrowers.

[62] Similarly, periods of deferment and forbearance do not count toward the 120 monthly payments required to qualify for TEPSLF. For additional information on PSLF, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

[63] Similarly, paused payments that would have been made during the special administrative forbearance will count toward the 120 monthly payments required to qualify for TEPSLF. ED, *Waivers and Flexibilities*, p. 79863; ED, *Waivers and Flexibilities Update*, pp. 61513; ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19; and ED, Office of Federal Study Aid, "6 Things to Know About Public Service Loan Forgiveness During COVID-19," https://studentaid.gov/articles/6-things-to-know-about-pslf-during-coronavirus/ (accessed October 3, 2022).

For borrowers whose loans qualify for the payment pause, the suspended payments will also count toward the 20- and 25-year repayment periods under the IDR plans. Suspended payments will also count toward the nine voluntary payments within 10 consecutive months required for individuals to rehabilitate[64] their defaulted loans, but only if those suspended payments occurred after a borrower entered into a rehabilitation agreement with ED.[65] ED has stated that for defaulted GA-held FFEL program loan borrowers who have entered into a rehabilitation agreement, "months following entry into the agreement in which payments are not required, made, or made and then refunded per a borrower request will be automatically counted as a payment toward the required nine payments within 10 months."[66] It is unclear whether paused payments on non-ED-held FFEL program loans whose lender has authorized a special administrative forbearance would count toward the 20- and 25-year repayment periods under applicable IDR plans. Perkins Loans, regardless of whether they are held by ED or an IHE, are ineligible for IDR plans.

ED has authorized institutions that hold Perkins Loans to grant a forbearance to borrowers who are in repayment and are unable to make payments due to COVID-19. Under this forbearance, interest would continue to accrue. The initial forbearance period may not exceed three months, but it may be extended upon a borrower providing supporting documentation. Borrowers must request the forbearance from the IHE. This period of forbearance is excluded from the three-year cumulative forbearance limit for Perkins Loan borrowers.[67] These flexibilities are available through the end of the IHE's payment period[68] "that includes the end date for the Federally-declared emergency related to COVID-19."[69]

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[64] Loan rehabilitation is the process by which a borrower may bring a loan out of default by adhering to specified repayment requirements. 34 C.F.R. §§674.39, 682.405, 685.211(f).

[65] If a borrower was not in a rehabilitation agreement prior to the start of the paused payments, he or she may enter into one and any suspended payments following entry into the rehabilitation agreement will count toward rehabilitation. ED, Office of Federal Student Aid, "COVID-19 Relief: Loans in Default," https://studentaid.gov/announcements-events/covid-19/default (accessed October 3, 2022).

[66] ED, Office of Postsecondary Education, Dear Colleague Letter GEN-21-03, "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)," May 12, 2021, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021. See the "Collection on Defaulted Loans" section for additional information on refunds of payments made on defaulted GA-held FFEL Program loans.

[67] ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19; and ED, Office of Postsecondary Education, Electronic Announcement CB-22-03, "Waiver of the Three-year Cumulative Limit on Forbearances for Federal Perkins Loan Borrowers," January 13, 2022, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-01-13/waiver-three-year-cumulative-limit-forbearances-federal-perkins-loan-borrowers.

[68] A payment period is the period for which a Title IV student aid disbursement must be made. Payment periods differ by IHE and may also differ by educational programs within IHEs, based on a variety of criteria including whether an educational program is measured in clock- or credit-hours and the type of term (e.g., semester, trimester, quarter) the educational program uses. For additional information, see 34 C.F.R. Section 668.4.

[69] ED, Office of Postsecondary Education, Electronic Announcement, "Updated deadlines for flexibilities related to Coronavirus (COVID-19)," August 21, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-08-21/updated-deadlines-flexibilities-related-coronavirus-covid-19. See also, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19, and ED, Office of Postsecondary Education, Electronic Announcement CB-22-03, "Waiver of the Three-year Cumulative Limit on Forbearances for Federal Perkins Loan Borrowers," January 13, 2022, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-01-13/waiver-three-year-cumulative-limit-forbearances-federal-perkins-loan-borrowers.

Income-Driven Repayment Plan Account Adjustment

Under the various IDR plans, borrowers may have any remaining outstanding balance of their FFEL program[70] and Direct Loan program loans forgiven after making the equivalent of 240 or 300 monthly payments (20 or 25 years' worth of payments, depending on the plan) according to one of more of the IDR plans or certain other qualifying plans. Typically, periods of deferment or forbearance do not count toward the 20- or 25-year repayment periods under the IDR plans; although, periods of economic hardship deferment and the above-described COVID-19 related payment pause do count toward the 20- or 25-year repayment period.[71] Payments made on any loans prior to consolidation do not count toward the 20- or 25-year repayment period.

On April 19, 2022, ED announced a one-time adjustment to borrower loan accounts to revise the number of IDR-qualifying payments.[72] Through the account adjustment, borrowers may receive IDR payment credit for the following[73]:

- any months in which a borrower's loan was in repayment status, "regardless of the payments made,[74] loan type,[75] or repayment plan";
- 12 months or more of consecutive forbearance;
- 36 or more months of cumulative forbearance;
- months spent in any type of deferment, excluding in-school deferment, prior to 2013; and
- months in repayment prior to consolidation.

ED intends to automatically implement the account adjustments (i.e., borrowers need not apply) for Direct Loan program loans and ED-held FFEL program loans. Borrowers with non-ED-held FFEL program loans must consolidate their loans into the Direct Loan program before ED completes the account adjustment, which "is estimated to be no sooner than" January 1, 2023.[76]

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[70] Only the Income-Based Repayment plans are available to FFEL program borrowers.

[71] See, e.g., 34 C.F.R. §§685.209(b)(3)(iii)(B)(9) & 685.221(f)(1)(vii).

[72] ED stated that account adjustment was to "address historical failures in the administration of the federal student loan program and support student loan borrowers through the pandemic." Department of Education, "Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs," press release, April 19, 2022, https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.

[73] ED, Office of Federal Student Aid, "Income-Driven Repayment and Public Service Loan Forgiveness Account Adjustment," https://studentaid.gov/announcements-events/idr-account-adjustment (Accessed September 19, 2022) (hereinafter, ED, *IDR and PSLF Account Adjustment*).

[74] ED has indicated this includes periods during which a loan with in repayment status, as indicated in the National Student Loan Data System, and includes periods when a payment is due and not made, up through 270 days of delinquency, or the point in time when a default claim is paid on an FFEL program loan by a guaranty agency. Repayment status excludes grace periods and periods of deferment, forbearance, or default. CRS email communication with ED, September 22, 2022.

[75] ED has indicated that borrowers who consolidate into the Direct Loan program will have all time in repayment on their underlying Direct Loan program, FFEL program, and Perkins Loan program loans counted as time in repayment on their new Direct Consolidation Loan for purposes of the IDR account adjustment. ED has stated time in repayment on HEAL program loans and other student loans made under the Public Health Service Act prior to consolidation would not be counted as time in repayment on the new Direct Consolidation Loan for purposes of the IDR account adjustment. CRS email communication with ED, September 22, 2022, and October 5, 2022.

[76] ED, *IDR and PSLF Account Adjustment* and Department of Education, "Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs," press release, April 19, 2022, https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-

In addition, ED intends to automatically forgive the loans of borrowers who have accumulated at least 20 or 25 years in repayment, even if they are not currently enrolled in an IDR plan.[77] To receive forgiveness, borrower will need to meet one of the following requirements, all of which include the terms of the above-described account adjustment[78]:

- Borrowers enrolled in the PAYE repayment plan must have been in repayment for 20 years (240 months).
- Borrowers with only undergraduate student loan debt and who are not enrolled in the PAYE repayment plan must have been in repayment for 20 years (240 months).
- Borrowers with both undergraduate and graduate student loan debt, or graduate student loan debt only, and who are not enrolled in the PAYE repayment plan must have been in repayment for 25 years (300 months).
- Parent PLUS Loans and Consolidation Loans used to repay Parent PLUS Loans must have been in repayment for 25 years (300 months).[79]

Borrowers whose monthly payments exceed 20 or 25 years following the account adjustment, are to receive a refund for those monthly payments in excess of 20 or 25 years.[80]

Income-Driven Repayment Plan Recertification

As previously described, borrowers enrolled in an IDR plan must annually provide documentation of their income and family size to remain eligible for IDR repayment (referred to as recertification).[81] Typically, an individual certifies their income by providing documentation of their taxable income, which may include providing ED with a paystub or federal income tax return information data from the Internal Revenue Service; borrowers self-certify their family size. ED has waived the requirement that a borrower annually recertify their income and family size through at least July 2023.[82] Borrowers may voluntarily recertify their income during the

loan-programs.

[77] ED has indicated that eligible borrowers will begin to see forgiveness benefits applied to their loans in the fall of 2022, and that eligible borrowers will begin to see receive IDR payment credits applied to their loan accounts in 2023. CRS email communication with ED, September 22, 2022.

[78] CRS email communication with ED, September 22, 2022.

[79] CRS email communication with ED, October 5, 2022.

[80] ED, *IDR and PSLF Account Adjustment*.

[81] If a borrower fails to recertify their income under an IDR plan, the consequences vary depending on the plan. In general, a borrower's monthly repayment will be recalculated in a manner that is not based on their income. Under some of the IDR plans, a borrower's failure to recertify income annually will also result in any unpaid interest being capitalized. Under all of the IDR plans, if a borrower fails to recertify their family size, they will remain in their chosen IDR plan, but a family size of one will be assumed for them. If a borrower's actual family size is larger than one, but a loan servicer assumed a family size of one due to the borrower's failure to recertify, his or her monthly payments may increase under some IDR plans or he or she may lose eligibility to make payments based on income. ED, Office of Federal Student Aid, "What will happen if I don't recertify my income and family size by the annual deadline?", https://studentaid.gov/manage-loans/repayment/plans/income-driven#fail-to-recertify (accessed October 3, 2022).

[82] As of September 19, 2022, ED had indicated that if a borrower's recertification date is before July 2023, it will be "pushed out by one year." ED, Office of Federal Student Aid, "COVID-19 Relief: Income-Driven Repayment (IDR) Plans," https://studentaid.gov/announcements-events/covid-19/income-driven-repayment#when-to-recertify (accessed October 3, 2022).

payment pause. Finally, through June 30, 2023, ED is permitting borrowers to self-report their income, without providing tax documentation, when applying for or recertifying their IDR plan.[83]

Loan Default and Collections

Defaulting on a federal student loan can result in a number of adverse consequences for a borrower. Upon default, the borrower's obligation to repay the loan is accelerated (i.e., the entire unpaid balance of principal and interest becomes due in full).[84] In addition, the borrower loses eligibility for certain borrower benefits (e.g., deferment, loan forgiveness), as well as eligibility to receive additional Title IV federal student aid. A defaulted borrower's student loan account may be transferred to ED's Default Resolution Group (DRG)[85]in the case of ED-held loans, or a GA in the case of non-ED-held FFEL program loans, that will contact the borrower and offer him or her options for voluntary debt resolution, such as loan rehabilitation, consolidation out of default, or entry into a voluntary repayment agreement. If such voluntary debt resolution attempts do not succeed, involuntary collections practices may be utilized, which include administrative wage garnishment; offset of federal income tax returns, Social Security benefits, and certain other federal benefits; and civil litigation.[86]

Collections of Defaulted Loans

For March 13, 2020, through December 31, 2022, ED will halt administrative wage garnishment and civil litigation, and the DRG and GAs will not engage in proactive collections activities (i.e., will not make collection calls and send letters or billing statements to defaulted borrowers) for all ED-held student loans (i.e., all Direct Loan program loans, and FFEL and Perkins Loan program loans held by ED) and defaulted GA-held FFEL program loans,[87] respectively.[88] Offset of federal

[83] ED, Office of Federal Student Aid, "COVID-19 Relief: Income-Driven Repayment (IDR) Plans," https://studentaid.gov/announcements-events/covid-19/income-driven-repayment#when-to-recertify (accessed October 3, 2022).

[84] 34 C.F.R. §§674.31(b)(5), 6823411(f), 685.211(d).

[85] Previously, ED contracted with several private collection agencies (PCAs) to perform loan collections activities when a borrower defaulted on their ED-held loan. On November 8, 2021, ED announced it had cancelled its contracts with the PCAs and recalled all borrower accounts. ED's Default Resolution Group is now responsible for assisting borrowers of defaulted ED-held loans. ED, Office of Federal Student Aid, "COVID-19 Relief: Loans in Default," https://studentaid.gov/announcements-events/covid-19/default (accessed September 19, 2022).

[86] For additional information, see 34 C.F.R. Parts 30, 31, 34; and CRS Report R44845, *Administration of the William D. Ford Federal Direct Loan Program*.

[87] The policy to pause collections activities on defaulted GA-held FFEL program loans was put into place via administrative action on March 30, 2021. In doing so, ED announced that the policy would apply retroactively to March 13, 2020. ED "Department of Education Announces Expansion of COVID-19 Emergency Flexibilities to Additional Federal Student Loans in Default," press release, March 30, 2021, https://www.ed.gov/news/press-releases/department-education-announces-expansion-covid-19-emergency-flexibilities-additional-federal-student-loans-default; and ED, Office of Postsecondary Education, Dear Colleague Letter GEN-21-03, "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021), May 12, 2021, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021.

[88] The policy to halt debt collection practices for ED-held loans was originally put into place via administrative action by ED on March 25, 2020. (ED, "Secretary DeVos Directs FSA to Stop Wage Garnishment, Collections Actions for Student Loan Borrowers, Will Refund More Than $1.8 Billion to Students, Families," press release, March 25, 2020.) It is unclear under what authority ED initially effectuated this policy. Subsequently, the CARES Act was enacted, which required that ED automatically suspend debt collection practices on Direct Loans and ED-held FFEL program loans through September 30, 2020. While the CARES Act did not provide for a cessation of debt collection on ED-held Perkins Loan program loans, ED has applied a similar suspension to such loans. (ED, *Waivers and Flexibilities*, p.

income tax refunds and Social Security benefits will be halted "for at least six months after the COVID-19 payment pause ends."[89] However, borrowers may contact the DRG and GAs to continue repayment arrangements they had made prior to implementation of this policy, to enter into a loan rehabilitation arrangement or to consolidate their loans out of default.[90]

Borrowers of ED-held loans and defaulted GA-held loans whose federal tax refund or Social Security benefits were withheld on or after March 13, 2020, or whose wages were garnished on or after March 13, 2020, and through December 31, 2022, may have any offset portion returned to them. Borrowers of defaulted GA-held FFEL program loans who made voluntary payments on or after March 13, 2020, and through December 31, 2022, may request a refund for those payments.[91]

In addition, ED has authorized institutions to stop collections activities on defaulted Perkins Loans that they hold upon notification from a borrower, a member of the borrower's family, or another reliable source that the borrower has been affected by COVID-19.[92] This flexibility is available through the end of an IHE's payment period that includes December 31, 2020, or the end of the IHE's payment period "that includes the end date for the Federally-declared emergency related to COVID-19," whichever is later.[93]

Satisfactory Repayment Arrangements, Loan Rehabilitation, and Consolidation Out of Default

To regain Title IV student aid eligibility, a defaulted federal student loan borrower must make six on-time, voluntary monthly payments on a defaulted loan.[94] In addition, loan rehabilitation offers defaulted borrowers an opportunity to have their loan(s) reinstated as active and to have other borrower benefits and privileges restored. To rehabilitate a loan, Direct Loan, FFEL, or Perkins Loan program, borrowers must make nine on-time payments according to generally applicable procedures.[95] Alternatively, a borrower may use the proceeds of a new Direct Consolidation Loan to pay off one or more defaulted Direct Loan, FFEL, and Perkins Loan program loans. To become eligible to do so, a borrower must make three consecutive, on-time, full monthly payments on a defaulted loan.[96]

79857) Subsequently, invoking the HEROES Act, ED extended the policy on numerous occasions. ED, *Waivers and Flexibilities*, p. 79857 and ED, *Waivers and Flexibilities Update,* pp. 61513-61514. For a timeline of the history of these actions, see CRS In Focus, CRS In Focus IF12136, *Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic*, by Alexandra Hegji.

[89] ED, Office of Federal Student Aid, "COVID-19 Relief: Loans in Default," https://studentaid.gov/announcements-events/covid-19/default (accessed October 3, 2022).

[90] ED, Office of Federal Student Aid, "COVID-19 Relief: Loans in Default," https://studentaid.gov/announcements-events/covid-19/default (accessed October 3 2022).

[91] ED, Office of Federal Student Aid, "COVID-19 Relief: Loans in Default," https://studentaid.gov/announcements-events/covid-19/default (accessed October 3 2022).

[92] ED, Office of Postsecondary Education, Electronic Announcement, "UPDATED Guidance for interruptions of study related to Coronavirus (COVID-19)," April 3, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-04-03/updated-guidance-interruptions-study-related-coronavirus-covid-19.

[93] ED, Office of Postsecondary Education, Electronic Announcement, "Updated deadlines for flexibilities related to Coronavirus (COVID-19)", August 21, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-08-21/updated-deadlines-flexibilities-related-coronavirus-covid-19.

[94] 34 C.F.R. §§674.9(k), 682.200(b), 685.102(b).

[95] 34. C.F.R. §§674.39, 682.405, 685.211(f).

[96] 34 C.F.R. §685.102(b).

ED has stated that if a borrower of a defaulted Direct Loan, FFEL, or Perkins Loan program loan fails to make any of the consecutive monthly payments required to re-establish eligibility for Title IV federal student aid, to rehabilitate such defaulted loans, or to consolidate such defaulted loans out of default, the borrower shall not be considered to have missed any of those payments. This is a temporary flexibility that is available in response to the COVID-19 pandemic; however, ED guidance is inconsistent as to the duration of this policy.[97]

The Fresh Start Initiative

On April 6, 2022, ED announced a new policy to "eliminate the negative effects of default for borrowers who defaulted on their federal student loans prior to the pandemic payment pause."[98] Under this "Fresh Start" initiative, qualifying borrowers of defaulted Direct Loan and FFEL program loans, as well as borrowers of ED-held defaulted Perkins Loans, will have several Title IV student aid benefits temporarily restored that are otherwise unavailable when a borrower is in default on their loan.[99] Such borrowers will also have the opportunity to get out of default and retain those benefits in the long term.[100] Many of the benefits available to borrowers under the initiative are to be available until one year after the end of the student loan payment pause (referred to as the "Fresh Start period").

Specifically, ED has restored qualifying defaulted borrowers' eligibility for Title IV federal student aid; thus, they may now apply for and receive Title IV aid to help finance their postsecondary education. ED has also stated it (1) will extend the cessation of collections for qualifying defaulted borrowers for the duration of the Fresh Start period and (2) as of July 10, 2022, has stopped reporting borrowers' default status to the Credit Alert Verification Reporting System (CAIVRS)—a database of individuals who have defaulted on federal debts and used to prescreen and verify applicant eligibility for various federal direct and guaranteed loans.[101] "Later this year," ED is to begin reporting a qualifying borrower's defaulted loans as "current" to consumer reporting agencies, rather than as "in collections."[102]

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[97] Some guidance states that this policy is effective through the end of an IHE's payment period that includes December 31, 2020, or the end of the IHE's payment period "that includes the end date for the Federally-declared emergency related to COVID-19." ED, Office of Postsecondary Education, Electronic Announcement, "Updated deadlines for flexibilities related to Coronavirus (COVID-19)," August 21, 2020, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-08-21/updated-deadlines-flexibilities-related-coronavirus-covid-19. Other guidance states this policy (at least for Perkins Loans) "remains in effect," but does not specify an end date. ED, *Waivers and Flexibilities*, p. 79862 and ED, *Waivers and Flexibilities Update*, p. 61513.

[98] ED, Office of Postsecondary Education, Dear Colleague Letter GEN-22-13, "Federal Student Aid Eligibility for Borrowers with Defaulted Loans," August 17, 2022, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-08-17/federal-student-aid-eligibility-borrowers-defaulted-loans (hereinafter, ED, GEN-22-13).

[99] Borrowers with non-ED-held FFEL program loans that defaulted during the student loan payment pause are ineligible for the Fresh Start initiative, as their loans were restored to active repayment status as a result of the expansion of COVID-19 student loan relief to defaulted FFEL borrowers announced March 30, 2021.

[100] ED. Office of Federal Student Aid, "A Fresh Start for Federal Student Loan Borrowers in Default," https://studentaid.gov/announcements-events/default-fresh-start (accessed October 3,, 2022) (hereinafter ED, *Fresh Start*). For additional information, see ED, GEN-22-13.

[101] For additional information, see Department of Housing and Urban Development, "CAIVRS-Credit Alert Verification Reporting System," https://www.hud.gov/program_offices/housing/sfh/caivrs (accessed October 3, 2022).

[102] ED, *Fresh Start* (accessed October 3, 2022). ED is to also take a number of additional steps related to reporting a borrower's loan status to consumer reporting agencies. For additional information, see Department of Education, Fact Sheet, "A Fresh Start for Borrowers with Student Loans in Default," August 16, 2022, https://fsapartners.ed.gov/sites/default/files/2022-08/FreshStartFactSheet.pdf.

Qualifying defaulted borrowers who accept Title IV student aid under the Fresh Start initiative or who ask to have their loans placed in repayment status after receiving notification from ED that their loans are being reported to consumer reporting agencies as current rather than in collections will be permitted to keep the above-listed benefits. In addition, other benefits not available to defaulted loan borrowers, such as eligibility for IDR plans or loan forgiveness programs, will be restored to borrowers.[103] These borrowers' loans will be transferred from ED's DRG to a loan servicer, their defaulted loans will be returned to in repayment status, and ED will ask consumer reporting agencies to remove the record of default from the borrower's credit report. Qualifying defaulted borrowers who do not take either action during the Fresh Start period will again be subject to collections after the end of the Fresh Start period and will have their loans reported as in collections to consumer reporting agencies.[104]

While typically a defaulted loan may only be rehabilitated once, ED has stated that borrowers who could take advantage of Fresh Start but who instead choose to rehabilitate their defaulted loans during the Fresh Start period will not have that rehabilitation count as their one opportunity to rehabilitate their loan.[105] Therefore, if the borrower defaults on the same loan again at a later time, they may be able to rehabilitate the loan.

Reporting to Consumer Reporting Agencies

Information about a borrower's federal student loans is reported to nationwide consumer reporting agencies on a regular basis. Information reported includes items such as loan amount and repayment status (e.g., whether a borrower is current on making payments).[106]

ED has announced that it would ensure that any payment that has been suspended under the payment pause described above shall be reported to a consumer reporting agency as if it were a regularly scheduled payment made by the borrower.[107] In addition, GAs that hold defaulted FFEL program loans for which a default claim was paid on or after March 13, 2020, and prior to the end of the student loan payment pause for ED-held loans are to request that consumer reporting agencies delete the record of default from the borrower's credit report.[108]

Loan Cancellation, Forgiveness, and Discharge

The Title IV federal student loan programs offer borrowers the opportunity to have their obligation to repay their loans discharged in a variety of circumstances. In response to the

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[103] ED, *Fresh Start* (accessed October 3, 2022).

[104] ED, *Fresh Start* (accessed October 3, 2022), Department of Education, Fact Sheet, "A Fresh Start for Borrowers with Student Loans in Default," August 16, 2022.

[105] Department of Education, Fact Sheet, "A Fresh Start for Borrowers with Student Loans in Default," August 16, 2022.

[106] See, for example, ED, "Master Promissory Note: Direct Subsidized Loans and Direct Unsubsidized Loans, William D. Ford Federal Direct Loan Program," OMB No. 1845-0007, https://fsapartners.ed.gov/sites/default/files/attachments/2020-04/SubUnsubMPN.pdf.

[107] ED, "Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, William D. Ford Federal Direct Loan Program, and Federal-Work Study Programs," 86 *Federal Register* 5008, January 19, 2021 and ED, *Waivers and Flexibilities Update*, p. 61513.

[108] ED, Office of Postsecondary Education, Dear Colleague Letter GEN-21-03, "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021), May 12, 2021, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-05-12/expansion-collections-pause-defaulted-ffel-program-loans-managed-guaranty-agencies-updated-may-24-2021.

COVID-19 pandemic, a variety of flexibilities related to these pre-existing opportunities have been made available. These include waivers of certain Public Service Loan Forgiveness and Teacher Loan Forgiveness program requirements and flexibilities with respect to Borrower Defense to Repayment and Total and Permanent Disability Discharge. In addition, in August 2022, ED announced a newly established student loan cancellation policy (referred to by ED as "one-time student loan debt relief") that is to be available to the majority of Title IV student loan borrowers.

One-Time Student Loan Debt Relief

On August 24, 2022, ED invoked the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act)[109] and announced a new student loan cancellation policy that is to make available to millions of federal student loan borrowers up to $20,000 of loan cancellation benefits per borrower.[110] Specifically, the Biden Administration intends to cancel the following[111]:

- up to $10,000 in student loans for borrowers whose annual income in 2020 or 2021 was less than $125,000 (for individuals or married borrowers who file their federal income taxes separately), or $250,000 (for married couples filing jointly or heads of households); borrowers enrolled in postsecondary education as dependent students between July 1, 2021, and June 30, 2022, will be eligible for cancellation based on parental income; and
- an additional $10,000, for a total of up to $20,000, in student loans for borrowers who meet the above criteria and received at least one Pell Grant in any amount at any point.

These benefits are to be available for ED-held loans (including FFEL and Perkins Loan program loans) and defaulted FFEL program loans that are held by a GA. Loans must have been disbursed on or before June 30, 2022, except that for Consolidation Loans only the underlying loans that were repaid by the Consolidation Loan must have been disbursed on or before June 30, 2022. Additionally, Direct Consolidation Loans comprising any FFEL or Perkins Loan program loans not held by ED are eligible for debt relief, so long as the borrower applied for consolidation before September 29, 2022.[112]

Qualifying borrowers may receive the one-time student loan debt relief benefit in one of two ways. First, ED estimates that nearly 8 million borrowers are eligible to receive the benefit

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[109] The provisions were originally enacted by the Higher Education Relief Opportunities for Students Act of 2001 (2001 HEROES Act; P.L. 107-122; 20 U.S.C. 1070 note) with an expiration date of September 30, 2003. The Higher Education Relief Opportunities for Students Act of 2003 (2003 HEROES Act; P.L. 108-76; 20 U.S.C. 1070 note), provided for waiver authority and regulatory flexibility from FY2003-FY2005; it was extended by P.L. 109-78 to September 30, 2007, and finally made permanent by P.L. 110-93 (20 U.S.C. 1098aa et seq.). For additional information on these waiver authorities, see archived CRS Report R42881, *Education-Related Regulatory Flexibilities, Waivers, and Federal Assistance in Response to Disasters and National Emergencies*.

[110] For an examination of the asserted HEROES Act authority for this newly announced policy, see CRS Legal Sidebar LSB10818, *Statutory Basis for Biden Administration Student Loan Forgiveness*, by Edward C. Liu and Sean M. Stiff. For additional information on the new student loan cancellation policy, see CRS Insight IN11997, *The Biden Administration's Newly Announced Student Loan Debt Cancellation Policy*, by Alexandra Hegji.

[111] Department of Education, Office of Federal Student Aid, "One-Time Student Loan Debt Relief," https://studentaid.gov/debt-relief-announcement/one-time-cancellation (accessed October 3, 2022) (hereinafter ED, *One-Time Student Loan Debt Relief*).

[112] ED, *One-Time Student Loan Debt Relief* (accessed October 3, 2022).

automatically, based on relevant income data already available to ED.[113] Such borrowers need not take any action and are to be informed by ED of the debt relief they are to receive; however, borrowers may opt out of receiving the automatic debt relief. For borrowers for whom ED does not have relevant income data, ED has indicated that an online application will be available in October, and a paper version will be available at a future date. Borrowers applying for the benefit would not be required to provide any supporting documentation. Borrowers must submit the application by December 31, 2023.[114]

Borrowers who (1) "successfully apply for and receive" this loan cancellation benefit[115] and (2) who made voluntary payments on their qualifying loans during the COVID-19 payment pause that brought their outstanding loan balance below the maximum amount of debt relief for which they are eligible but who did not repay their loan in full are to automatically receive a refund of those voluntary payments. Refund amounts are to equal the difference between the maximum amount of loan cancellation for which the borrower is eligible and the borrower's outstanding loan balance at the time of cancellation.[116]

Public Service Loan Forgiveness

The PSLF program provides Direct Loan borrowers who, on or after October 1, 2007, are employed full-time in certain public service jobs for 10 years while concurrently making 120 qualifying monthly payments on their loans with the opportunity to have any remaining balance of the principal and interest on their Direct Loans forgiven.[117] Qualifying payments are separate monthly payments (i.e., not greater than the required monthly payment) that are on-time (within 15 days of the scheduled due date), in full, scheduled (i.e., made when required, not during periods of deferment or forbearance), and made under a qualifying repayment plan (in most cases, an income-driven repayment plan). Payments made on any loans prior to consolidation do not count toward the required 120 payments. Periods of service performed to receive benefits under the Teacher Loan Forgiveness program[118] may not also be counted toward PSLF qualifying employment. A borrower must be employed full-time in qualifying public service at the time he or she applies for and receives forgiveness.

In October 2021, in response to the COVID-19 emergency, ED announced a series of limited-time waivers of numerous PSLF program rules[119] to enable borrowers to receive credit for past periods of repayment that would not otherwise qualify for PSLF.[120] In general, "any prior period

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113 Department of Education, "Biden-Harris Administration Announces Final Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation to Smooth Transition to Repayment," press release, August 24, 2022, https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment.

114 ED, *One-Time Student Loan Debt Relief* (accessed October 3, 2022).

115 ED, *One-Time Student Loan Debt Relief* (accessed October 3, 2022).

116 ED, *One-Time Student Loan Debt Relief* (accessed October 3, 2022).

117 For additional information, see CRS Report R45389, *The Public Service Loan Forgiveness Program: Selected Issues*.

118 For additional information on the Teacher Loan Forgiveness program, see CRS Report R43571, *Federal Student Loan Forgiveness and Loan Repayment Programs*.

119 These waivers also apply to TEPSLF. ED, Office of Federal Student Aid, "PSLF Waiver Offers Way to Get Closer to Loan Forgiveness," https://studentaid.gov/announcements-events/pslf-limited-waiver (accessed October 3, 2022) (hereinafter ED, *PSLF Waivers*).

120 ED, "U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness," press release, October 6, 2021,

of repayment will count as a qualifying payment, regardless of loan program, repayment plan, or whether the payment was made in full or on time," as well as certain periods of nonpayment, so long as the borrower met the requisite public service employment requirements during those periods of repayment. Through October 31, 2022, borrowers may receive PSLF payment credit for the following:[121]

- Periods of repayment[122] on Direct Loan program, FFEL program, Perkins Loan program, and other older HEA authorized program loans (e.g., National Defense Student Loans).[123] Borrowers must submit an application to consolidate their loan(s) into a Direct Loan program loan by October 31, 2022, to receive payment credit.
- Periods of repayment, even if payments were made according to a nonqualifying repayment plan, made late, or made for less than the amount due;
- Periods of repayment on loans before consolidation, even if payments were made according to a nonqualifying repayment plan, made late, or made for less than the amount due;
- Periods of deferment before 2013;
- Periods of economic hardship deferment on or after January 1, 2013;
- Periods of forbearance of 12 consecutive months or greater;
- Periods of forbearance of 36 cumulative months or greater;
- Periods of military service deferment or active military state duty or military mobilization forbearance;
- Periods of COVID-19 pandemic-related deferment or forbearance between March 20, 2020, and April 30, 2022, for borrowers with FFEL program loans held by private lenders and Perkins Loan program loans held by IHEs.[124]

In addition, through October 31, 2022, ED is waiving the requirement that a borrower be employed full-time in qualifying public service at the time of application for and forgiveness under PSLF. ED has waived the prohibition against periods of service performed to receive benefits under the Teacher Loan Forgiveness program also counting toward periods of PSLF qualifying employment.[125]

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https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness.

[121] ED, *PSLF Waivers* (accessed October 3, 2022).

[122] ED has indicated that a "period of repayment" is a calendar month during which a borrower is "in repayment" status (i.e., not in default, deferment, or forbearance) on their loan. ED *PSLF Waivers* (accessed October 3, 2022).

[123] According to ED, borrowers of Health Education Assistance Loans (HEAL; previously made under the Public Health Service Act) may also receive PSLF payment credit, but only if they first consolidate those loans with Direct Loan program, FFEL program, Perkins Loan program, or older HEA program loans. It appears that such borrowers would only receive payment credits on the HEAL program loan for repayment and employment periods associated with payment periods of their HEA loans. For example, if a borrower, while employed in a PSLF qualifying job, was in repayment status for 100 payment periods on their HEAL program loan and 60 payment periods on a Direct Loan program Unsubsidized Loan and then consolidated those two loans into a Direct Consolidation Loan before October 31, 2022, it appears that the borrower would receive credit for 60 payment periods on the new Direct Consolidation Loan. CRS email communication with ED, January 6, 2022.

[124] CRS email communication with ED, January 7, 2022.

[125] ED, *PSLF Waivers* (accessed October 3, 2022).

For borrowers with Direct Consolidation Loans (regardless of whether the loan repaid Direct Loan program, FFEL program, Perkins Loan program, or other older HEA program loans), if the underlying loans had differing numbers of qualifying payments, ED is to credit the entire Direct Consolidation Loan with the largest number of qualifying payment periods of the loans that were consolidated. For example, if a borrower had 50 qualifying payment periods on one FFEL program Subsidized Stafford Loan and 100 qualifying payment periods on a second FFEL program Subsidized Stafford Loan and consolidated those two loans into a Direct Consolidation Loan, the borrower would receive credit for 100 PSLF qualifying payments on the new Direct Consolidation Loan.[126]

Borrowers who have Direct Loan program loans and have previously submitted a *Public Service Loan Forgiveness (PSLF) & Temporary Expanded PSLF (TEPSLF) Certification & Application* (PSLF form)[127] are to automatically receive credit for prior repayment periods during which their employment was determined to be PSLF qualifying. Such borrowers may need to submit additional PSLF forms to document periods of employment they had not previously documented with ED to receive credit for associated payment periods.[128] In doing so, ED has indicated that a borrowers' use the PSLF Help Tool[129] to create a PSLF form by October 31, 2022, (even if the form has not been signed by a borrower's qualifying employer and submitted to ED by that date) would be sufficient to ensure that borrowers remain eligible to receive PSLF credit for prior payment periods. Borrowers may also submit a manual PSLF form (i.e., a PSLF form not generated by the PSLF Help Tool); however, the form must be completed and signed by a borrower's employer by October 31, 2022, to receive credit for prior payment periods. If the

[126] Parent PLUS Loans on their own, or consolidated with no other type of loan, are ineligible to receive additional months of qualifying payments under the PSLF waivers. However, if a borrower consolidates (or had previously consolidated) a Parent PLUS Loan with other types of loans (e.g., a FFEL program Subsidized Stafford Loan), he or she can receive credit for PSLF qualifying payments on the consolidation loan based on his or her "repayment activity for the non-Parent PLUS Loan." For example, if a borrower, while employed in a PSLF-qualifying job, was in repayment status for 36 payment periods on a FFEL program Parent PLUS Loan and 60 payment periods on a FFEL program Subsidized Stafford Loan and then consolidated those two loans into a Direct Consolidation Loan before October 31, 2022, the borrower would receive credit for 60 PSLF-qualifying payments on the new Direct Consolidation Loan. See ED, *PSLF Waivers* (accessed October 3, 2022).

[127] Borrowers submit a PSLF form to ED to document their employment in qualifying public service and to apply for PSLF and TEPSLF benefits. ED, "Public Service Loan Forgiveness (PSLF), & Temporary Expanded PSLF (TEPSLF) Certification and Application," OMB No. 1845-0110, https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf..

[128] Prior to summer 2022, FedLoan Servicing was the sole loan servicer tasked with administering the PSLF program and to whom borrowers submitted the PSLF form. In 2021, FedLoan Servicing announced it would stop servicing federal student loans. As such, ED selected MOHELA to administer the PSLF program. In summer 2022, ED began transitioning the PSLF program, participating borrowers, and their loans from FedLoan Servicing to MOHELA. As of August 22, 2022, about 50% of borrower accounts had been transferred from FedLoan Servicing to MOHELA, and ED anticipated that the transfer would be completed by the end of September 2022. As such, the loan servicer to whom a borrower must submit a PSLF form may depend on where their loan account is in the transfer process. For additional information about the transfer process, see ED, Office of Federal Student Aid, Electronic Announcement LOANS-22-06, "Public Service Loan Forgiveness Program Transitioning from FedLoan Servicing to MOHELA (Updated Aug. 22, 2022)," June 3, 2022, https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-06-03/public-service-loan-forgiveness-program-transitioning-fedloan-servicing-mohela-updated-aug-22-2022.

[129] The PSLF Help Tool may be used by borrowers to search a database of PSLF qualifying employers, learn which actions they may need to take to be eligible for PSLF or TEPSLF, and generate the PSLF form. For additional information, see ED, Office of Federal Student Aid, "Complete the Public Service Loan Forgiveness (PSLF) Form with the PSLF Help Tool," https://studentaid.gov/pslf/#!/pslf/launch.

manual PSLF form meets these requirements, it need not be submitted by the borrower by October 31, 2022, for the borrower to receive credit for prior payment periods.[130]

Borrowers who have Direct Loans but have not previously submitted a PSLF form must complete one of the actions described above relating to completion of the PSLF form by October 31, 2022, to receive PSLF payment credits.[131]

Borrowers with one or more FFEL program, Perkins Loan program, or older HEA loan program loans must submit an application for a Direct Consolidation Loan[132] and ultimately submit a PSLF form to document all periods of qualifying public service employment for which they wish to receive PSLF payment credit. These borrowers must (1) submit their consolidation application by October 31, 2022, and (2) complete one of the actions described above relating to the completion of the PSLF form.[133]

Borrowers who, with the application of the PSLF payment credits, have made more than 120 payments on an existing Direct Loan are to automatically receive a refund for the payments made in excess of those 120 payments. Borrowers cannot receive refunds for payments in excess of 120 payments on loans underlying a Direct Consolidation Loan, including Direct Loans that were themselves consolidated into a Direct Consolidation Loan.[134] Borrowers who previously received PSLF program benefits cannot receive a refund for payments that did not count as PSLF-qualifying previously but that would now count under the limited PSLF waiver.[135]

Teacher Loan Forgiveness

The Teacher Loan Forgiveness[136] program provides loan forgiveness benefits to borrowers of qualifying Direct Loan and FFEL program loans.[137] To qualify for benefits, a borrower must serve as a full-time teacher for at least five consecutive complete academic years in a qualifying school or public education service agency that serves children from low-income families.

The CARES Act specifies that ED shall waive the requirement that years of qualifying teaching service be consecutive if an individual's service was temporarily interrupted due to a qualifying emergency, and after such temporary disruption, the borrower resumes teaching and ultimately

[130] CRS email communication with ED, September 21, 2022, and ED, *PSLF Waivers* (accessed October 3, 2022).

[131] ED, *PSLF Waivers* (accessed October 3, 2022).

[132] In general, a set of loans may be consolidated only once. However, the HEA specifies that a Direct Consolidation Loan may be used to repay a previously obtained Direct Consolidation or FFEL Consolidation Loan for the purposes of applying for PSLF. HEA § 428C(a)(3)(B)(i)(V)(bb).

[133] CRS email communication with ED, September 21, 2022, and ED, *PSLF Waivers* (accessed October 3, 2022).

[134] For example, if a borrower, while employed in a PSLF qualifying job, was in repayment status for 150 payments periods on their FFEL program loan and then consolidated the FFEL program loan into a Direct Consolidation Loan before October 31, 2022, the borrower would not receive a refund for the 30 payments made in excess of 120 payments.

[135] ED, *PSLF Waivers* (accessed September 20, 2022).

[136] HEA §§428J, 460.

[137] For purposes of the Teacher Loan Forgiveness program, qualifying loans include Direct Loan program and FFEL program Subsidized Loans, Unsubsidized Loans, and Consolidation Loans (to the extent they are used to repay a Subsidized or Unsubsidized Loan). Borrowers must have had no outstanding balance on any federal student loan made through a program authorized under HEA Title IV on October 1, 1998, or as of the date the borrower first borrowed such loan after October 1, 1998.

completes a total of five years of qualifying service. Qualifying service may include service performed before, during, and after the qualifying emergency.[138]

Borrower Defense to Repayment

In certain circumstances, borrowers may seek discharge of their Title IV student loans by asserting as a borrower defense to repayment (BDR) certain acts or omission of an IHE, if the cause of action directly relates to the loan or educational services for which the loan was provided. Although statutory language specifies BDR as an available discharge option only for Direct Loan borrowers,[139] FFEL and Perkins Loan program borrowers may consolidate their loans into a Direct Loan program Consolidation Loan to pursue BDR discharge.[140] Three different standards for evaluating BDR discharge may be applied to eligible student loans. The applicable BDR standards to be used largely depend on when the Direct Loan was made. For Direct Consolidation Loans made on or after July 1, 2020, the standard applicable to loans made on or after July 1, 2020, applies.

ED has stated that FFEL and Perkins Loan program borrowers who submitted a BDR application prior to July 1, 2020, and who would need to consolidate those loans into a Direct Consolidation Loan to receive BDR relief, will have their BDR eligibility evaluated by the standards for Direct Consolidation Loans disbursed between July 1, 2017, and July 1, 2020.[141]

Total and Permanent Disability Discharge

Borrowers may have their liability to make further payments on their Direct Loan program loans, FFEL program loans, and Perkins Loan program loans discharged upon being determined to have a total and permanent disability (TPD).[142] Borrowers may be determined to have a total and permanent disability if they are

1. certified by a physician as unable to engage in any substantial gainful activity due to a physical or mental impairment that can be expected to result in death, has lasted continuously for at least 60 months, or can be expected to last continuously for 60 months;
2. documented by the Social Security Administration (SSA) as receiving Social Security Disability Insurance or Supplemental Security Income benefits and that their next scheduled disability review will be within five to seven years from the date of their most recent SSA disability determination; or

[138] CARES Act §3519.

[139] HEA §455(h). For additional information on BDR, see CRS Report R44737, *The Closure of Institutions of Higher Education: Student Options, Borrower Relief, and Other Implications*.

[140] 34 C.F.R. §685.212(k)(2).

[141] ED, *Waivers and Flexibilities*, p. 79863. Some view the BDR standards for loans disbursed between July 1, 2017, and July 1, 2020, to be more beneficial to borrowers than the standards that apply to loans made on or after July 1, 2020. See, for example, Letter from AFL-CIO, AFSCME, and Allied Progress, et al. to Senator Dick Durbin and Representative Susie Lee, December 9, 2019, https://ticas.org/wp-content/uploads/2019/12/Coalition-Letter-on-BD-CRA_.pdf.

[142] HEA §§437(a), 455(a)(1), and 464(c)(1)(F)(ii); 34 C.F.R. §§674.61, 682.402, and 685.213.

3. documented by the Department of Veterans Affairs as having a service connected disability (or disabilities) that is 100% disabling or they are totally disabled based on an individual unemployability rating.[143]

A TPD discharge approved based on the first or second criterion above is granted on a conditional basis for a three-year period that begins on the date of discharge. During the three-year period, borrowers are subject to having their loans reinstated under a variety of circumstances, including failing to annually submit to ED documentation of their annual earnings from employment.[144]

On March 29, 2021, ED announced that borrowers who had a TPD discharge approved on the basis of the first or second criterion above will not be required to submit earnings documentation during the COVID-19 emergency. This policy is retroactive to March 13, 2020. Borrowers whose loans were reinstated because they did not submit earnings documentation between March 13, 2020, and the end of the COVID-19 emergency will have their loan discharge restored and their three-year monitoring period will resume based on their original discharge date.[145] On August 19, 2021, ED subsequently announced that it would indefinitely extend, "beyond the national emergency," the March 29, 2021, policy of not requiring borrowers to submit earnings documentation.[146]

Additional Flexibilities

In addition to the above-described administrative and congressional actions that have been taken in response to COVID-19, further flexibility and authority is provided through the HEROES Act. As detailed in the text box titled "The HEROES Act," the Secretary of Education is authorized to waive or modify statutory and regulatory requirements that apply to the HEA Title IV student aid programs in an effort to assist affected individuals; however, it may only be used in connection with a way or other military action or national emergency.[147] There are three categories of affected individuals:

1. persons on active duty or qualifying National Guard duty during a war, military operation, or national emergency;

[143] For additional information on TPD discharge, see CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*.

[144] A borrower's loans may be reinstated if the borrower has annual earnings from employment in excess of 100% of the federal poverty guidelines for a family of two. To show compliance with this requirement, borrowers must annually submit to ED documentation of their annual earnings from employment. 34 C.F.R. §§674.61, 682.402, and 685.213.

[145] ED, "Education Department Announces Relief for Student Loan Borrowers with Total and Permanent Disabilities During the COVID-19 Emergency," press release, March 29, 2021, https://www.ed.gov/news/press-releases/education-department-announces-relief-student-loan-borrowers-total-and-permanent-disabilities-during-covid-19-emergency; and ED, Office of Federal Student Aid, "COVID-19 Relief: Total and Permanent Disability Discharge," https://studentaid.gov/announcements-events/covid-19/disability-discharge (accessed February 4, 2022). ED has also indicated that if an individual's TEACH Grant service obligation was reinstated because they failed to submit annual earnings documentation on or after March 13, 2020, it will return the individual's TEACH Grant service obligation to its discharge status.

[146] Department of Education, "Over 323,000 Federal Student Loan Borrowers to Receive $5.8 Billion in Automatic Total and Permanent Disability Discharges," press release, August 19, 2021, https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges.

2. persons who reside or are employed in an area that is declared a disaster area in connection with a national emergency; and
3. persons who suffered direct economic hardship as a direct result of a war or other military operation or national emergency.

ED has indicated that some of the administrative actions described throughout this report were taken under the authority of the HEROES Act. However, other examples of relief that may be available to student loan borrowers under the HEROES Act and that were articulated by ED prior to the COVID-19 pandemic[148] include the following:

- For borrowers of loans made under the Direct Loan, FFEL, and Perkins Loan programs who are in the 1st or 2nd categories of affected individuals, the initial grace period excludes any period, not to exceed three years, during which a borrower is an affected individual.
- Borrowers of loans made under the Direct Loan, FFEL, and Perkins Loan programs who were in an "in-school" status but left school because they became a 1st or 2nd category affected individual may retain their in-school status for up to three years. During this period, the Secretary will pay any interest that accrues on a FFEL Stafford Loan.
- Borrowers of loans made under the Direct Loan, FFEL, and Perkins Loan programs who were in an "in-school" deferment or a graduate fellowship deferment but left school because they became a 1st or 2nd category affected individual may retain their deferment for a period of up to three years during which they are affected. During this period, the Secretary will pay any interest that accrues on a FFEL Stafford Loan.
- For borrowers of Perkins Loans who are in the 1st or 2nd categories of affected individuals, any forbearance granted on the basis of their status as an affected individual is excluded from the usual three-year limit on forbearance. Also, for these categories of affected individuals, borrowers of Perkins Loans may be granted forbearance based on an oral request and without written documentation for a one-year period and an additional three-month transition period.
- Borrowers of FFEL program loans who are in the 1st or 2nd categories of affected individuals may be granted forbearance based on an oral request and without written documentation for a one-year period and an additional three-month transition period.
- For borrowers that may qualify for Teacher Loan Forgiveness (Direct Loan and FFEL program borrowers) or Perkins Loan Cancellation (Perkins Loan program borrowers) on the basis of continuous or uninterrupted qualifying service, such service will not be considered interrupted by any period during which they are in the 1st or 2nd categories of affected individuals or during a three-month transition period.

[148] For information on these waivers and modifications issued, see ED, "Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and the Federal Direct Loan Program)," 82 *Federal Register* 45465-45471, September 29, 2017. These waivers and modifications will expired on September 30, 2022; it is unclear whether they continue to remain in effect for the COVID-19 national emergency.

- For borrowers who defaulted on Direct Loan, FFEL, or Perkins Loan program loans and are seeking to rehabilitate their loans by making nine on-time payments according to generally applicable procedures,[149] any payments missed during periods when they are in the 1st or 2nd categories of affected individuals or during a three-month transition period shall not be considered an interruption in the series of payments required for loan rehabilitation.
- For borrowers who defaulted on Direct Loan, FFEL, or Perkins Loan program loans and are seeking to reestablish eligibility for Title IV federal student aid by making six consecutive on-time payments, any payments missed during periods when they are in the 1st or 2nd categories of affected individuals or during a three-month transition period shall not be considered an interruption in the series of payments required for purposes of reestablishing Title IV eligibility.
- For borrowers who defaulted on Direct Loan or FFEL program loans and are seeking to consolidate loans out of default, any payments missed during the period when they are in the 1st or 2nd category of affected individuals or during a three-month transition period shall not be considered an interruption in the series of payments required for purposes of reestablishing Title IV aid eligibility.
- Borrowers who are repaying their Direct Loan or FFEL program loans according to an IDR plan and because of their status as 1st or 2nd category affected individuals are unable to provide information normally required annually to document their income and family size may maintain their current payment amount for a period of up to three years, including a three-month transition period. This flexibility is made in lieu of having their payment amount adjusted to be based on a standard 10-year repayment plan or an alternative repayment plan, as applicable.

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[149] 34 C.F.R. §§674.39, 682.405, 685.211(f).

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