

Common Manual Policy Proposal Batch 217 Transmittal

April 18, 2019

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1322	Mandatory Administrative Forbearance for Borrower Defense Claim	<p>11.23.E Borrower Defense Claim Figure 11-2 Forbearance Eligibility Chart</p> <p>Requires that a lender grant a mandatory administrative forbearance when notified by the Department that a borrower has made a borrower defense claim related to a FFELP loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief from repayment.</p>	Federal	For mandatory administrative forbearances granted on or after October 16, 2018, unless the lender opted to implement earlier.

Batch 217 (Approved)

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: March 1, 2019

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	No changes	04/18/2019

SUBJECT: Mandatory Administrative Forbearance for Borrower Defense Claim

AFFECTED SECTIONS: 11.23.E Borrower Defense Claim
Figure 11-2 Forbearance Eligibility Chart

POLICY INFORMATION: 1322/Batch 217 (originally distributed in Batch 210)

EFFECTIVE DATE/TRIGGER EVENT: For mandatory administrative forbearances granted on or after October 16, 2018, unless the lender opted to implement earlier.

BASIS:
Final Rule published in November 1, 2016 *Federal Register* (81 FR 75926); §682.211(i)(7); Dear Colleague Letter (DCL) GEN-17-01, issued January 18, 2017; *Federal Register* published February 14, 2018 (83 6458); California Association of Private Postsecondary Schools v. DeVos, ___F.Supp.3d at___(2018 WL 5017749, at *16).

CURRENT POLICY:
There is no current policy on this issue.

REVISED POLICY:
Revised policy requires a lender to grant a mandatory administrative forbearance when notified by the Department that a borrower has made a borrower defense claim related to a FFELP loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief from repayment.

REASON FOR CHANGE:
This change conforms common policy to final regulations published in the November 1, 2016 *Federal Register* (81 FR 75926). This regulatory package was delayed by the Department numerous times, most recently on February 14, 2018 (83 FR 6458). On October 16, 2018, a federal judge denied a request for a preliminary injunction against implementation of the regulatory package, essentially making the regulations effective immediately.

PROPOSED LANGUAGE - COMMON MANUAL:
Add Subsection 11.23.E, page 42, column 1, paragraph 5, as follows:

11.23.E

Borrower Defense Claim

A lender must grant a mandatory administrative forbearance to a borrower upon receipt of the Department's notification that the borrower has made a borrower defense claim related to a FFELP loan that the borrower intends to consolidate into the Direct Loan Program, for purposes of seeking relief under the Direct Loan Borrower Defense regulations. The lender must grant forbearance in yearly increments or for a period designated by the Department until the FFELP loan is either consolidated or the lender is notified by the Department to discontinue the forbearance.
[\$682.211(i)(7); §685.212(k)]

Revise Figure 11-2 (see attached document).

PROPOSED LANGUAGE - COMMON BULLETIN:
The *Common Manual* is being revised to include regulatory changes. New forbearance regulations require the lender to grant a mandatory administrative forbearance upon receipt of the Department's notification that the borrower has made a borrower defense claim related to a FFELP loan that the borrower intends to consolidate into the Direct Loan Program for purposes of seeking relief under the

Direct Loan Borrower Defense regulations. The lender must grant forbearance in yearly increments or for a period designated by the Department until the FFELP loan is either consolidated or the lender is notified by the Department to discontinue the forbearance.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: A borrower who makes a borrower defense claim related to a FFELP loan will receive forbearance on their FFELP loan(s) upon the Department's notification to the lender.

School: None.

Lender/Servicer: The lender/servicer must grant the forbearance as instructed by the Department.

Guarantor: None.

U.S. Department of Education: ED has established a mechanism in which to notify lenders/servicers of borrowers who should be granted the mandatory administrative forbearance.

To be completed by the Policy Development and Maintenance Contractor (PDMC)

POLICY CHANGE PROPOSED BY:

Policy Development and Maintenance Contractor

DATE SUBMITTED TO CM POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:

December 15, 2016

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 11, 2019

PROPOSAL DISTRIBUTED TO:

CM Governing Board Chair
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:

FLDOE, MDHE, NASFAA, NCHER, OCAP, PPSV, TG, UHEAA, USA Funds

Responses to Comments (from Batch 210)

Most commenters supported this proposal as written. We thank all commenters for their thorough review.

COMMENT: One commenter supported the proposal as written, but noted a typographical error in the proposal language. It said "an FFELP loan" instead of "a FFELP loan".

Response:

The PDMC agrees.

Change:

The error was corrected in the proposal language and also elsewhere in the proposal document.

COMMENT: One commenter suggested that Dear Colleague Letter GEN-17-01 be added to the Basis for this proposal.

Response:

The PDMC agrees.

Change:

Dear Colleague Letter GEN-17-01 was added in the Basis.

COMMENT: One commenter recommended that this policy proposal be held until the current 60-day freeze on new regulations expires, just in case the administrative review stemming from that freeze causes the

regulation itself to change or its implementation to be delayed.

Response:

Per the Governing Board decision on February 16, 2017, the proposal will be presented for approval and then held for incorporation into the Integrated *Common Manual* (ICM) until after the expiration of the 60-day hold that was imposed by the Trump Administration on January 20, 2017.

Change:

None.

Note: The Policy Development and Maintenance Coordinator recalled and then reissued this proposal due to the legal uncertainty surrounding the regulatory change that drives it. Below are comments in response to the reissued proposal in Batch 217.

Comments Received from:

MDHE, NCHER, PPSVC, UHEAA, VSAC

All commenters supported this proposal as written. We appreciate the commenters' thorough review.

TYPE	LENGTH
Discretionary¹¹	
Financial difficulties due to personal problems when the borrower is unable to make regularly scheduled payments ¹	The period established in the terms of the forbearance agreement (not to exceed 12-month increments); no maximum
<hr/> Reduced-Payment Forbearance ¹	
Mandatory¹²	
Medical or Dental Internship/Residency ^{2, 3}	12-month increments (or a lesser period equal to actual period during which the borrower is eligible); no maximum
<hr/> Department of Defense Student Loan Repayment Programs ³	
<hr/> National Service ^{2, 3}	
<hr/> Active Military State Duty ^{2, 3, 9}	
Student Loan Debt Burden ^{4, 5}	12-month increments; 3 years maximum
Teacher Loan Forgiveness ^{2, 3}	Period while borrower maintains forgiveness eligibility. 12-month increments
Mandatory Administrative	
Local or National Emergency ⁷	Period specified by the Department or guarantor plus 30 days following the period
<hr/> Military Mobilization ⁸	
<hr/> Designated Disaster Area ⁷	
Repayment Accommodation	3-year maximum for variable interest rate; 5-year maximum for income-sensitive repayment
Death	Date lender receives reliable notification of death to date lender receives death certificate or other acceptable documentation, not to exceed 60 days
Teacher Loan Forgiveness ^{2, 6}	The period while the lender is awaiting a completed loan forgiveness application, not to exceed 60 days
<hr/> Date lender receives a completed loan forgiveness application to date lender receives either a denial or the loan forgiveness amount from the guarantor	
<u>Borrower Defense to Repayment</u>	<u>12-month increments or for a period designated by the Department until the FFELP loan is either consolidated or the lender is notified by the Department to discontinue the forbearance.</u>
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Administrative	
Borrower Ineligible for Deferment ⁶	Beginning date to ending date of the ineligible deferment
Delinquency before a Deferment or Forbearance ⁶	First date of overdue payment to the day before the beginning date of deferment or other forbearance type
Delinquency under Income-Based Repayment (IBR) ⁶	First date of overdue payment to the date the new calculated monthly payment amount is determined

Forgiveness under Income-Based Repayment ⁶	60 days for lender to collect and process documentation to determine a borrower's eligibility
Late Notification of Out-of-School Dates ⁶	Date borrower should have entered repayment to date first or next payment was established
Bankruptcy Filing ⁶	The earlier of the first date of overdue payment or receipt of reliable information that the borrower has filed bankruptcy to date of discharge determination or repurchase
Total and Permanent Disability	Date the Department includes in its notification to the lender that the borrower intends to apply for a TPD loan discharge application. Forbearance extends for not more than 120 days. Date the Department includes in its notification to the lender that it has received the borrower's TPD loan discharge application and extends until the Department approves or denies the application.
Spouses and Parents of Victims of September 11, 2001 ⁶	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination
Repurchase of a Non-Bankruptcy Claim ⁶	The period that the loan was held by the guarantor due to a claim purchase
Death	Date after mandatory administrative forbearance due to reliable notification of death ends to date lender receives death certificate or other acceptable documentation, not to exceed 60 days
Closed School	Period of unofficial closure notice as specified by guarantor
Closed School or False Certification ⁶	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination
False Certification—Identity Theft ⁶	Date eligibility requirements sent to individual to date request and documentation returned, not to exceed 60 days; and from date guarantor receives documentation to date of determination
Delinquency after Deferment or Mandatory Forbearance ⁶	Deferment or mandatory forbearance end date to establishment of next payment due date
Documentation Collection and Processing ⁶	Date borrower requests deferment, forbearance, change in repayment plan, or loan consolidation to date supporting documentation is processed by lender, not to exceed 60 days
Unpaid Refund Discharge	60 days from date application sent to borrower if application is not received by lender, and from date guarantor receives documentation to date of determination The period during guarantor review and ending on the date lender receives the guarantor's determination for a borrower who requests a review of a denial determination
Unpaid Refund ⁶	End date of initial 60-day mandatory administrative forbearance to receipt of completed discharge request, and during period of determination of discharge eligibility
New Out-of-School Dates after Conversion ⁶	Original repayment start date to adjusted start date
Loan Sale or Transfer ⁶	First date of delinquency to date loan is sold or transferred, if the loan is less than 60 days delinquent
Ineligible Summer Bridge Extension ⁶	Day after expiration of borrower's last in-school deferment to the 30th day after fall classes begin
Cure ⁶	Date of earliest unexcused violation to date lender receives a full payment or new signed repayment agreement

Natural Disasters, Local or National Emergency, Military Mobilization ⁶	From date borrower affected, not to exceed 3 months for each occurrence
Repayment Alignment-SLS/Stafford ⁴	First payment due date to last day of the longest applicable Stafford loan grace period
Repayment Alignment-PLUS/Stafford ¹⁰	Until end of in-school deferment or post-enrollment deferment on PLUS loan disbursed on or after July 1, 2008, or until end of grace on Stafford loan

Figure 11-2

Note: For detailed information about each forbearance situation, refer to the applicable subsection.

- ¹ Lender must document the borrower's request, the reason for the forbearance, and the terms of the forbearance agreement.
- ² For borrowers only.
- ³ A request and supporting documentation from the authorized official(s) indicating the beginning and ending dates, and a verbal or written agreement are required.
- ⁴ A request is required.
- ⁵ A request and supporting documentation of monthly income and monthly payments on Title IV education loan obligations, and a verbal or written agreement are required.
- ⁶ Lender must notify the borrower (or individual or endorser, if applicable) and document the beginning and ending dates and reason for the forbearance in borrower history record.
- ⁷ Notice from the Department or guarantor is required.
- ⁸ Documentation showing borrower is subject to a military mobilization is required.
- ⁹ For military service that begins on or after October 1, 2007, or includes that date.
- ¹⁰ Lender must notify borrower forbearance has been granted; notice must inform borrower of option to cancel forbearance and continue paying on the PLUS loan.
- ¹¹ ED issued a General Forbearance Request form, which a borrower must complete to request a discretionary forbearance.
- ¹² There are three OMB-approved forbearance request forms in this category: SERV, SLDB, and TLFF. Each is addressed in the applicable subsection of this chapter.