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SUMMARY

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September 17, 2021

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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. As of March 31, 2021, $1.6 trillion in loans from these programs, borrowed by or on behalf of 42.9 million individuals, remained outstanding. In response to the current Coronavirus Disease 2019 (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 plans.
- Income-driven repayment (IDR) plans afford borrowers the opportunity to make payments 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.

Recent administrative and congressional actions, including the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), 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 January 31, 2022.
- ED-held student loans and certain non-ED-held student loans are being placed in a special administrative forbearance for March 13, 2020, through January 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., federal income tax return benefits, Social Security benefits) are suspended on ED-held student loans and certain non-ED-held student loans for March 13, 2020, through January 31, 2022.

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# Introduction

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, 2021, approximately $1.6 trillion in these loans, borrowed by or on behalf of 42.9 million individuals, remained outstanding.[2]

- **Direct Loan program loans** are owned by the U.S. Department of Education (ED). As of March 31, 2021, approximately 36.3 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, 2021, approximately 10.6 million borrowers owed about $238.8 billion in FFEL program debt. Of that, approximately $85.0 billion was held by ED, representing between 2.9 million and 5.7 million borrowers[4]; about $129 billion was held by private lenders, representing debt for about 5.0 million borrowers; and $25.5 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. During award year 2018-2019 (July 1, 2018-June 30, 2019), approximately 2.0 million borrowers owed about $5.7 billion in Perkins Loans. Of that, ED held nearly $1 billion representing debt

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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 42.9 million. U.S. Department of Education, 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 2.9 million borrowers have FFEL program loans placed with ED-contracted loan servicers, and approximately 2.7 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. U.S. Department of Education, 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. U.S. Department of Education, 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.

owed for approximately 375,000 borrowers, and IHEs held about $4.7 billion, representing debt for approximately 1.6 million borrowers.[6]

In response to the current Coronavirus Disease 2019 (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. Recent administrative and congressional action, including the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), 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 resulting from 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 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

[6] CRS communication with U.S. Department of Education, Office of Legislative and Congressional Affairs, May 22, 2020.

[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*.

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.

### 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 Consolidation Loans, 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.[11] 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.[12]

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.[13] 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.

8 34 C.F.R. §§674.34(d), 682.210(h) and (s)(5), 685.204(f); U.S. Department of Education, Office of Federal Student Aid, "Unemployment Deferment Request," OMB No. 1845-0011, https://studentloans.gov/myDirectLoan/downloadForm.action?searchType=library&shortName=unemploy&localeCode=en-us&_ga=2.212772371.684834368.1556119313-753213604.1539381477.

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 34 C.F.R. §§674.34(e), 682.210(s)(6), 685.204(g); U.S. Department of Education, Office of Federal Student Aid, "Economic Hardship Deferment Request," OMB No. 1845-0011, https://studentloans.gov/myDirectLoan/downloadForm.action?searchType=library&shortName=ecohardshp&localeCode=en-us&_ga=2.9995570.684834368.1556119313-753213604.1539381477.

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

13 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).

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.

## 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 (but remains due) for Perkins Loan program loans.[14] Periods of forbearance do not count toward the 120 monthly payments required to qualify for PSLF,[15] and 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.[16]

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.[17] At the end of the forbearance period, any unpaid interest that accrued on Direct Loan and FFEL program loans during the period is capitalized.

### 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.[18] To qualify, a borrower

[14] 34 C.F.R. §§674.33(d), 382.211(a)(4), 385.205(a).

[15] 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*.

[16] 34 C.F.R. §§674.33(d)(f)(ii), 682.211(a)(2)(i), 685.205(a)(1); U.S. Department of Education, "General Forbearance Request," OMB No. 1845-0031, https://studentloans.gov/myDirectLoan/downloadForm.action?searchType=library&shortName=general&localeCode=en-us&_ga=2.218639505.986094327.1560875974-753213604.1539381477.

[17] U.S. Department of Education, "General Forbearance Request," OMB No. 1845-0031, https://studentloans.gov/myDirectLoan/downloadForm.action?searchType=library&shortName=general&localeCode=en-us&_ga=2.218639505.986094327.1560875974-753213604.1539381477; U.S. Department of Education, Office of Federal Student Aid, "Student Loan Forbearance," https://studentaid.gov/manage-loans/lower-payments/get-temporary-relief/forbearance (accessed August 12, 2021).

[18] 34 C.F.R. §674.33(d)(5)(i), 682.211(h)(2)(i)(B), 685.205(a)(6); U.S. Department of Education, Mandatory

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.

## Income-Driven Repayment Plans

IDR plans[19] afford borrowers the opportunity to make payments in amounts that are capped at a specified share or proportion of their *discretionary income*[20] over a repayment period not to exceed 20 to 25 years, depending on the plan. At the end of the repayment period, the remaining balance of an individual's loans 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 borrowers) are eligible for any of these plans.[21] FFEL program borrowers (other than Parent PLUS loan borrowers) are only eligible for the IBR plans.[22] Perkins Loan borrowers are not eligible for any IDR plan.

Individuals must apply to repay their loans according to an IDR plan.[23] In addition, they must annually provide documentation of their income and family size to remain eligible for IDR repayment.[24] Borrowers may update their 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.

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Forbearance Request, "Student Loan Debt Burden," OMB No. 1845-0018, https://studentloans.gov/myDirectLoan/downloadForm.action?searchType=library&shortName=student&localeCode=en-us&_ga=2.148341183.986094327.1560875974-753213604.1539381477.

[19] For additional information on the IDR plans, see U.S. Department of Education, Office of Federal Student Aid, "Income-Driven Repayment Plans, https://studentaid.gov/manage-loans/repayment/plans/income-driven (accessed August 12, 2021) and CRS Report R45931, *Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*.

[20] 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.

[21] 34 C.F.R. §685.208.

[22] 34 C.F.R. §682.215.

[23] U.S. Department of Education, "Income-Driven Repayment (IDR) Plan Request," OMB No. 1845-0102, https://studentaid.gov/app/images/idrPreview.pdf.

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

# 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, and temporarily ceasing collections on qualifying defaulted loans.

## 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.

### Failure to Begin Attendance

If a student does not begin attendance at an IHE in a payment period[25] or period of enrollment,[26] Title IV funds (including Direct Loan funds) must be returned to ED by the IHE and/or the student according the regulatory provisions.[27] 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.[28] 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."[29]

[25] 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.

[26] 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).

[27] 34 C.F.R. §668.21.

[28] 34 C.F.R. §685.211(e)(2).

[29] Department of Education, "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*).

### 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.[30]

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*.[31]

## 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.[32] 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.[33] 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."[34] The loan status of such borrowers will continue to be reported as *in-school* until the IHE determines that the student has withdrawn from

[30] 34 C.F.R. §668.22(h)(3)(i).

[31] 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."

[32] 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.

[33] 34 C.F.R. §§674.33, 682.210, 685.204(b).

[34] U.S. Department of Education, 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.

it.[35] 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.[36] 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."[37]

ED guidance does not address Perkins Loans.

## 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.[38]

For March 13, 2020, through January 31, 2022, 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[39] defaulted FFEL program loans held by guaranty agencies (GAs)—some of which have been transferred to ED (see text box below)[40]—and specified previously defaulted FFEL program

[35] U.S. Department of Education, 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.

[36] U.S. Department of Education, Office of Postsecondary Education, Electronic Announcement, "Guidance for interruptions of study related to Coronavirus (COVID-19)," March 5, 2020 (updated March 20, 2020), https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-03-05/guidance-interruptions-study-related-coronavirus-covid-19-updated-june-16-2020.

[37] U.S. Department of Education, 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.

[38] 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.

[39] 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).

[40] 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. U.S. Department of Education, "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 U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, "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.

loans[41] is suspended.[42] 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 fees (for defaulted loans only) that accrued prior to March 13, 2020, and then to loan principal.[43] 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.[44] 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.[45]

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

[41] 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.

[42] 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. Since then, it has been extended numerous times via administrative and legislative action. Most recently, on August 6, 2021, ED announced a "final extension" of the 0% interest rate policy to last through January 31, 2022. Department of Education, "Biden Administration Extends Student Loan Pause Until January 31, 2022," press release, August 6, 2021, https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022; and Department of Education, Office of Federal Study Aid, Coronavirus Info for Students, Borrowers, and Parents, https://studentaid.gov/announcements-events/coronavirus (accessed August 12, 2021) (hereinafter ED, *Coronavirus Info*). For additional information on the history of these actions, see ED, *Waivers and Flexibilities*, p. 79862.

[43] ED, *Coronavirus Info* (accessed August 12, 2021).

[44] ED, *Waivers and Flexibilities*, p. 79862, and Department of Education, 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.

[45] ED, *Coronavirus Info* (accessed August 12, 2021). 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 will not count toward loan forgiveness under an IDR plan on the resulting Direct Consolidation Loan.

may temporarily cease making payments on their loans without interest accruing or being subject to capitalization[46] 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 recently 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 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, "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*.

## Cessation of Payments

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

For March 13, 2020, through January 31, 2022, 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)[47] will have their monthly payments suspended. (In practice, ED is placing all such loans in administrative forbearance.)[48] During this time, borrowers will not be required to make payments

[46] ED has indicated that any interest outstanding on a borrower's loan before March 13, 2020, may be capitalized, depending on the status of their loan prior to March 13, 2020. For additional information, see ED, *Coronavirus Info* (accessed August 12, 2021).

[47] 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. U.S. Department of Education "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, *Coronavirus Info* (accessed August 12, 2021).

[48] 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).

due on their loans.[49] Borrowers who are eligible for this benefit need not apply for it; ED will automatically suspend payments.

In implementing these provisions, ED has indicated that borrowers may opt out of this special administrative forbearance by contacting their loan servicer. In addition, any payments made on a borrower's account between March 13, 2020, and January 31, 2022, can be refunded to the borrower. A borrower must contact his or her loan servicer to request a refund.[50]

ED has also authorized FFEL program lenders and institutions that hold Perkins Loans to provide the special administrative forbearance to borrowers on a voluntary basis for the duration of the COVID-19 national emergency.[51] 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.[52]

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[53] (e.g.,

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[49] On March 20, 2020, ED announced it had 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. U.S. Department of Education, "Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency," press release, March 20, 2020, https://www.ed.gov/news/press-releases/delivering-president-trumps-promise-secretary-devos-suspends-federal-student-loan-payments-waives-interest-during-national-emergency. 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, the Administration extended the payment suspension on numerous occasions. Most recently, on August 6, 2021, ED announced a "final extension" of the payment suspension to last through January 31, 2022. Department of Education, "Biden Administration Extends Student Loan Pause Until January 31, 2022," press release, August 6, 2021, https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022. For additional information on the history of these actions, see ED, *Waivers and Flexibilities*, p. 79862.

[50] ED, *Coronavirus Info* (accessed August 12, 2021). It appears that borrowers of non-ED-held FFEL program loans who made voluntary payments during the payment suspension period, subsequently defaulted on their loans during the payment suspension 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.

[51] ED, *Waivers and Flexibilities*, p. 79862, and Department of Education, 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.

[52] 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 will not count toward loan forgiveness under an IDR plan on the resulting Direct Consolidation Loan.

[53] 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*.

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 special administrative forbearance will count toward the 120 monthly payments required to qualify for PSLF if the borrower works full-time in qualifying employment during the suspension.[54]

For borrowers whose loans qualify for the payment suspension, 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[55] their defaulted loans, but only if those suspended payments occurred after a borrower entered into a rehabilitation agreement with ED.[56] 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."[57] It is unclear whether suspended payments on non ED-held FFEL program loans whose lender has authorized this 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.

In addition, 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 counts toward the three-year maximum limit on the number of years of forbearance that may be granted to a Perkins Loan borrower.[58] 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."[59]

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[54] Similarly, suspended 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; Department of Education, 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, *Coronavirus Info* (accessed August 12, 2021).

[55] 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).

[56] 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, *Coronavirus Info* (accessed August 13, 2021).

[57] U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, "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.

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

[59] U.S. Department of Education, Office of Postsecondary Education, Electronic Announcement, "Updated deadlines for flexibilities related to Coronavirus (COVID-19)," August 21, 2020, https://fsapartners.ed.gov/knowledge-center/

## Income-Driven Repayment 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).[60] ED has waived this requirement for "one calendar year from the date on which a borrower would have been required to provide recertification documentation in 2020."[61] Subsequently, on August 6, 2021, ED announced that the payment suspension would be extended through January 31, 2022. It is unclear whether a borrower's IDR recertification date may be extended further due to the extension of the payment suspension. ED has indicated that loan servicers are to notify borrowers of their new recertification date. Borrowers may voluntarily recertify their income during the payment suspension.[62]

## 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).[63] 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 may have his or her student loan account transferred to an ED-contracted private collection agency (PCA) in the case of ED-held loans, or a GA in the case of defaulted 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 collection 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.[64]

### Collection of Defaulted Loans

For March 13, 2020, through January 31, 2022, ED will halt the above-described involuntary debt collection practices, and ED-contracted PCAs and GAs will not engage in proactive collection activities (i.e., will not make collection calls and send letters or billing statements to defaulted borrowers) for all ED-held student loans (e.g., all Direct Loan program loans, and FFEL and

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library/electronic-announcements/2020-08-21/updated-deadlines-flexibilities-related-coronavirus-covid-19.

[60] 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 borrowers 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. U.S. Department of Education, Office of Federal Student Aid, "What happens 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 September 17, 2021).

[61] ED, *Waivers and Flexibilities*, pp. 79862-79863.

[62] ED, *Coronavirus Info* (accessed August 12, 2021).

[63] 34 C.F.R. §§674.31(b)(5), 6823411(f), 685.211(d).

[64] 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*.

Perkins Loan program loans held by ED) and defaulted GA-held FFEL program loans,[65] respectively.[66] However, borrowers may contact PCAs 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.[67]

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, and through January 31, 2022, will have any offset portion returned to them. Borrowers whose wages were garnished on or after March 13, 2020, and January 31, 2022, will have their wages refunded. Finally, borrowers of defaulted GA-held FFEL program loans who made voluntary payments on or after March 13, 2020, and through January 31, 2022, may request a refund for those payments.[68]

In addition, ED has authorized institutions to stop collection 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.[69] 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."[70]

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[65] The policy to pause collection 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. U.S. Department of Education "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 U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, "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.

[66] This policy was originally put into place via administrative action by ED on March 25, 2020. U.S. Department of Education, "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, https://www.ed.gov/news/press-releases/secretary-devos-directs-fsa-stop-wage-garnishment-collections-actions-student-loan-borrowers-will-refund-more-18-billion-students-families. Since then, it has been extended numerous times via administrative and legislative action. Most recently, on August 6, 2021, ED announced a "final extension" of the collection suspension to last through January 31, 2022. Department of Education, "Biden Administration Extends Student Loan Pause Until January 31, 2022," press release, August 6, 2021, https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022; and ED, *Coronavirus Info* (accessed August 13, 2021). For additional information on the history of these actions, see ED, *Waivers and Flexibilities*, p. 79856.

[67] ED, *Coronavirus Info* (accessed August 13, 2021).

[68] ED, *Coronavirus Info* (accessed August 13, 2021).

[69] U.S. Department of Education, 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.

[70] U.S. Department of Education, 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.

### 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.[71] 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.[72] 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.[73]

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.[74]

## 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).[75]

ED has announced that through at least January 31, 2021, it would ensure that any payment that has been suspended under the special administrative forbearance described above shall be reported to a consumer reporting agency as if it were a regularly scheduled payment made by the borrower.[76] 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

[71] 34 C.F.R. §§674.9(k), 682.200(b), 685.102(b).

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

[73] 34 C.F.R. §685.102(b).

[74] ED guidance is inconsistent as to the duration of this policy. 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." U.S. Department of Education, 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 is effective (at least for Perkins Loans) through December 30, 2020. ED, *Waivers and Flexibilities*, p. 79862. It is unclear whether the administrative action to extend other forms of COVID-19 student loan relief through January 31, 2022, also applies to these flexibilities.

[75] See, for example, U.S. Department of Education, "Master Promissory Note: Direct Subsidized Loans and Direct Unsubsidized Loans, William D. Ford Federal Direct Loan Program," OMB No. 1845-0007, https://studentaid.gov/app/subUnsubHTMLPreview.action.

[76] U.S. Department of Education, "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. ED guidance does not indicate how the newly extended suspended loan payments (payments suspended through January 31, 2022) will be reported to consumer reporting agencies.

ED-held loans are to request that consumer reporting agencies delete the record of default from the borrower's credit report.[77]

## Teacher Loan Forgiveness

The Teacher Loan Forgiveness[78] program provides loan forgiveness benefits to borrowers of qualifying Direct Loan and FFEL program loans.[79] 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 completes a total of five years of qualifying service. Qualifying service may include service performed before, during, and after the qualifying emergency.[80]

## 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,[81] FFEL and Perkins Loan program borrowers may consolidate their loans into a Direct Loan program Consolidation Loan to pursue BDR discharge.[82] 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.[83]

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[77] U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, "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.

[78] HEA §§428J, 460.

[79] 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.

[80] CARES Act §3519.

[81] 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*.

[82] 34 C.F.R. §685.212(k)(2).

[83] 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

### Total and Permanent Disability Discharge

Borrowers of Direct Loan program loans, FFEL program loans, and Perkins Loan program loans are discharged upon being determined to have a total and permanent disability (TPD).[84] 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
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.[85]

When borrowers are determined to be totally and permanently disabled, their obligation to make any further payments on their loans is discharged. 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.[86]

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.[87]

## 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 Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act).[88] The HEROES Act can

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Representative Susie Lee, December 9, 2019, https://ticas.org/wp-content/uploads/2019/12/Coalition-Letter-on-BD-CRA_.pdf.

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

[85] 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*.

[86] 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.

[87] U.S. Department of Education, "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, *Coronavirus Info* (accessed August 13, 2021).

[88] The provisions were originally enacted by the Higher Education Relief Opportunities for Students Act of 2001 (2001

only be implemented, however, in connection with a war or other military action or a national emergency declared by the President.[89] The HEROES Act provides the Secretary with authority to waive or modify statutory and regulatory requirements that apply to the HEA Title IV student aid programs in an effort to help affected individuals. There are three categories of affected individuals:

1. those who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency;
2. those who reside or are employed in an area that is declared a disaster area by any federal, state, or local official in connection with a national emergency; and
3. those 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 above were taken under the authority of the HEROES Act. However, other examples of support that may be available to student loan borrowers under the HEROES Act and that were articulated by ED prior to the COVID-19 pandemic[90] 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

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 CRS Report R42881, *Education-Related Regulatory Flexibilities, Waivers, and Federal Assistance in Response to Disasters and National Emergencies*.

[89] On March 13, 2020, President Trump declared a national emergency concerning COVID-19; "Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak," March 18, 2020, 85 *Federal Register* 15337.

[90] For information on the current waivers and modifications issued, see Department of Education, "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 currently available waivers and modifications will expire on September 30, 2022.

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.
- 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,[91] 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.

[91] 34 C.F.R. §§674.39, 682.405, 685.211(f).

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