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Major Changes - Higher Education Technical Amendments of 1991

United States Department of Education
Washington, D.C. 20202
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SUMMARY: Description of Statutory Changes Made by the Higher Education Technical Amendments of 1991 (Public Law 102-26)

Dear Colleague:

The Higher Education Technical Amendments of 1991 (Pub. L. 102-26) was signed by the President on April 9, 1991. Enclosed with this letter is a summary of the major changes made by this law that affect the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (the Act), except for those changes made to the ability-to-benefit provisions in section 484(d) of the Act. A separate Dear Colleague letter discusses the ability-to-benefit changes made by Pub. L. 102-26. The sections of the Act that are affected by the other changes made by Pub. L. 102-26, and the effective date of each change are also indicated in this letter.

This letter is intended to address aspects of this statute on which the public requires immediate guidance. As with each new piece of student financial assistance legislation, we expect that questions will arise concerning various provisions of these amendments during the course of their implementation. We will contact you via future "Dear Colleague" letters to provide additional guidance on this statute.

If you have further questions, please contact the Regional Office or the guarantee agency serving your State.

Sincerely,

Michael J. Farrell
Deputy Assistant Secretary for
Student Financial Assistance

Enclosure

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I. PROVISIONS OF PUB. L. 102-26 AFFECTING TITLE IV APPLICANTS AND RECIPIENTS INVOLVED IN OPERATION DESERT SHIELD OR OPERATION DESERT STORM

A. Provisions Affecting All Title IV Programs

1. Definitions in Pub. L. 102-26 Related to the Operation Desert Shield or Operation Desert Storm Provisions

For all Title IV programs, the Act defines individuals "serving on active duty in connection with Operation Desert Shield or Operation Desert Storm" as --

a. any Reservist of an Armed Force called to active duty under section 672(a), 672(g), 673, 673b, 674, or 688 of title 10, United States Code, for service in connection with Operation Desert Shield or Operation Desert Storm, regardless of the location at which such active duty service is performed; and

b. for purposes of the waiver of administrative requirements only (discussed in I.B.1. below), any other member of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm, who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

The term "active duty" has the meaning given such term in section 101(22) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

2. Tuition Refunds or Credits

Pub. L. 102-26 states the sense of Congress that all postsecondary institutions should provide a full refund to any member or Reservist of an Armed Force on active duty service in connection with Operation Desert Shield or Operation Desert Storm for that portion of a period of instruction such individual was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such service. For these purposes, Pub. L. 102-26 defined a full refund to include a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

As required by Pub. L. 102-26, the Secretary will encourage institutions to provide such refunds or credits. The Secretary is required to report to the appropriate committees of Congress on the actions taken in accordance with this requirement, as well as information he receives regarding any institutions that are not providing such refunds or credits. Any information regarding institutions that are not providing appropriate refunds or credits should be directed to the Department's Regional Office that serves the State in which the institution is located.

3. Need Analysis

For reservists eligible for the Operation Desert Shield or Operation Desert Storm benefits, 1991 expected year income rather than 1990 income must be used in determining need for the 1991-92 award year. This benefit is available to the following applicants:

- o An independent applicant who is a reservist called to active duty in connection with Operation Desert Shield or Operation Desert Storm;
- o An independent applicant who is the spouse of a reservist called to active duty in connection with Operation Desert Shield or Operation Desert Storm; and
- o A dependent applicant who is a dependent of a reservist called to active duty in connection with Operation Desert Shield or Operation Desert Storm.

These eligible applicants must use the Special Condition option of the Federal Correction Application in order to receive this benefit.

B. Provisions Affecting Title IV Borrowers

1. Military Service in Connection With Operation Desert Shield or Operation Desert Storm

The purpose of Pub. L. 102-26 is that all Guaranteed Student Loan (GSL), Perkins Loan, National Direct Student Loan (Direct Loan), and National Defense Student Loan (Defense Loan) borrowers serving on active duty in connection with Operation Desert Shield or Operation Desert Storm be assisted by having the administrative requirements related to their loans minimized to the extent possible, without impairing the integrity of these programs, to ease the burden on such borrowers and prevent inadvertent defaults. The guidance previously provided in Dear Colleague Letter GEN-91-11 reduced many of these administrative restrictions and burdens. We intend to publish a notice in the Federal Register in the near future (as required by Pub. L. 102-26), explaining the additional waivers and modifications of statutory and regulatory requirements which the Secretary determines are necessary to assist Title IV applicants and recipients affected by Operation Desert Shield or Operation Desert Storm.

2. Stafford Loan Provisions Affecting Reservists

Reservists called to active duty in connection with Operation Desert Shield or Operation Desert Storm are eligible for the following benefits on their Stafford loans under Pub. L. 102-26:

a. military deferment is authorized for the duration of service in connection with Operation Desert Shield or Operation Desert Storm, even if the length of the deferment exceeds the maximum deferment authorized in sections 428(b)(1)(M)(ii) or 427(a)(2)(C)(ii) of the Act;

b. a six-month post-deferment grace period is authorized following a period of military deferment received for service in connection with Operation Desert Shield or Operation Desert Storm; and

c. for a borrower who completes the period of military deferment described above and who later becomes eligible for a deferment under sections 428(b)(1)(M)(i) or 427(a)(2)(C)(i) of the Act ("in-school deferment"), a six-month post-deferment grace period following the period of in-school deferment. This post-deferment grace period is available once to each eligible borrower.

These benefits are available for the period from April 9, 1991 to September 30, 1997.

3. Perkins, Direct, and Defense Loan Military Deferment Affecting Reservists

Those reservists called to active duty in connection with Operation Desert Shield or Operation Desert Storm are eligible for an extended military deferment on repayment of their Perkins, Direct, or Defense loans. A military deferment is authorized for the duration of service in connection with Operation Desert Shield or Operation Desert Storm, even if the total length of the deferment exceeds the 3-year maximum deferment authorized in section 464(c)(2)(A)(ii) of the Act. This benefit is available during the period from April 9, 1991 to September 30, 1997.

C. Provisions Affecting the Pell Grant Program

For those individuals who were either unable to complete periods of instruction for which they received Pell Grants or did not receive academic credit for those periods because they were called up to active duty, the Secretary will not consider those periods in determining the length of Pell Grant eligibility under section 411(c) of the Act. The Secretary takes this action under the authority granted by section 4(b) of Pub. L. 102-26, to ensure that the future Pell Grant eligibility of those individuals who served on active duty in connection with Operation Desert Shield and Operation Desert Storm is not reduced because they were called up for active duty.

II. PROVISIONS OF PUB. L.102-26 NOT RELATED TO OPERATION DESERT SHIELD OR OPERATION DESERT STORM

A. Simplified Needs Test for Puerto Rico Residents

Pub. L. 102-26 amended §479(a) of the Act to allow filers of the Commonwealth of Puerto Rico income tax form or individuals who are not required to file a return pursuant to the Puerto Rican tax code, to be eligible for the simplified needs test (SNT). Before this change, only filers of the U.S. income tax forms 1040EZ and 1040A, and individuals who were not required to file Federal income

tax forms pursuant to the Internal Revenue Code of 1986 were considered to be eligible for the SNT. The other condition of the SNT, that a family have an adjusted gross income of $15,000 or less, was not changed.

Since current Federal financial aid applications do not have a place to report Puerto Rico tax filing status, to be considered for the SNT in 1991-92, eligible applicants should report their tax filing status, or their parent's tax filing status, as "1040A or 1040EZ" or "will not file," as appropriate. Applicants with Puerto Rico as their State of legal residence who applied for Federal aid prior to the amendment in the law and were not considered for the SNT in 1990-91 or 1991-92, can now be considered for the SNT by submitting a corrected SAR for the appropriate cycle(s). These applicants should change their tax filing status, or their parent's tax filing status, to "1040 or 1040EZ" or "will not file," as appropriate. The Central Processing System (CPS) will generate corrected SARs which these students must submit to their financial aid officer before the appropriate deadline date.

We will make the necessary changes to the 1992-93 processing system to enable all eligible applicants (including those with Puerto Rico as their State of legal residence) to be considered for the SNT in 1992-93.

B. Elimination of Statute of Limitations for Student Loan Collections and the Collection of Grant and Work Assistance Overpayments

Section 3 of Pub. L. 102-26 eliminates any statute of limitations that has applied to enforcement actions to collect GSL and Perkins/National Direct Student loans, or overpayments of grant or work assistance under Title IV of the Act. The amendment provides that a lawsuit may be commenced, a judgment enforced, or a garnishment or offset action taken by the Federal government, guarantee agencies, and institutions, to collect defaulted loans or overpayments regardless of any Federal or State statutes of limitation that might otherwise have applied to these collection actions.

Prior to this amendment, the limitation period for suits to collect defaulted loans and overpayments was six years. See §484A(a)(4) of the Act. The new law amends section 484A to expressly abrogate this prior limitation on lawsuits involving claims to collect these debts.

The 10-year limitation period for tax refund offsets, 26 C.F.R. §301.6402-6T(b)(2), is also now inapplicable to these debts. The effect of the amendment is that so long as the debt is otherwise enforceable, collection may be made by offset regardless of when the debt was assigned to the Department or when it first became delinquent. Hence, the effect of the decision of the United States Court of Appeals for the Fifth Circuit in Grider v. Cavazos, 911 F.2d 1158 (5th Cir. 1990), is confined to the two plaintiffs in that case.

This provision clearly eliminates any Federal or State law limiting the period during which a judgment based on a Federal student aid debt may be enforced. A more difficult question arises with respect to a limitation on the effect of a judgment lien. The effect of the amendment will depend on whether the judgment law of a particular State provides that the judgment merges into the judgment lien. If State law does not provide that the judgment merges into the judgment lien, then the expiration of the judgment lien merely means that the lien must be revived. Procedures for this vary from State to State. If State law provides that the judgment merges into the lien, then where the lien expired prior to enactment of the amendment (April 9, 1991) the judgment has also expired and cannot be revived. However, if the lien was effective on April 9, 1991, then the new law preserves the judgment until it is satisfied or otherwise discharged.

Section 3(c) of Pub. L. 102-26 expressly states that this new authority applies to pending cases and outstanding debts. The amendment therefore empowers the Federal government to collect debts time-barred under limitations provisions that previously applied. Although this resuscitative effect may appear to be an unusual action, the courts have clearly recognized that Congress has the power to revive a time-barred claim held by the Federal government.

While the amendment generally revives the government's right to enforce debts that would have been time-barred under previously applicable statutes of limitation, this resuscitative effect does not apply where there is a judgment dismissing a claim because the statute of limitations had expired. The claim on the debt merges into the judgment; the effect is to render the debt unenforceable. This effect is final. Subsequent changes in the law, such as the elimination of the statute of limitations, cannot revive the claim where it has been merged into a judgement of dismissal.

The amendment currently expires on November 15, 1992. However, the Department hopes that the provision will be extended before that deadline.

C. Certification of GSL Programs Loan Applications

Section 428(a)(2)(F) of the Act has been amended to permit an institution to refuse to certify an otherwise eligible borrower's GSL programs loan application, or to certify a loan for an amount that is less than what the student would be otherwise eligible for, if the reason for such action is documented and provided to the student in writing. This includes the authority to refuse to certify a loan application based on the institution's belief that the student is unwilling to repay the intended loan. This provision is effective for loan applications certified on or after April 9, 1991.

In making the choice permitted by the new law, the institution's determinations must be made on a case-by-case basis, and documentation supporting an individual determination must be retained in the student's file.

The Secretary expects that this authority, which has been long-sought by institutions in order to prevent unnecessary borrowing and defaults, will be used judiciously. We are not providing lists of "acceptable" and "unacceptable" uses of this authority because to do so would undermine the basic concept of professional judgment. The Secretary believes that the institution is in the best position to make these decisions. In using this authority, the institution assumes responsibility for explaining to the student (in writing), the reasons for withholding certification or reducing the loan amount. The authority granted by Pub. L. 102-26 to institutions does not authorize the institution to discriminate against the borrower on the basis of factors, the consideration of which, are already prohibited by law.