

DEPARTMENT OF EDUCATION**Office of Postsecondary Education**

AGENCY: Department of Education.

ACTION: Notice of the results of the first meeting of the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee for the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins) Program regulations and notice of cancellation of all future scheduled meetings; Notice of Interpretation.

SUMMARY: This notice reports the results of the April meeting of the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee and cancels all future scheduled meetings. Further, this notice explains the Department of Education's (Department's) interpretation of certain Direct Loan Program regulations relating to borrower defenses, which became effective July 1, 1995. Finally, this notice contains information about administrative procedures the Department will implement regarding borrower defenses.

FOR FURTHER INFORMATION CONTACT: Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB-3, 600 Independence Avenue, SW., Washington, DC 20202-5400. Telephone: (202) 708-9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 18, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) for the Direct Loan Program. (59 FR 42646) That NPRM included a proposed rule that described certain defenses a Direct Loan borrower could raise against repayment of the loan. (§ 685.206(c), 59 FR 42663-42664, August 18, 1994) The preamble to the proposed rule stated that the Secretary intended that the rule would be effective for the 1995-1996 academic year only and that the Secretary would work with interested parties to develop regulations for borrower defenses that would apply to both the Direct Loan and the FFEL Programs. The new rule would be effective beginning with the 1996-1997 academic year. (59 FR 42649, August 18, 1994)

After considering public comments received on the proposed rule, the

Secretary decided to issue a final rule for the Direct Loan Program including the rule on borrower defenses that was included in the NPRM. In publishing the final rule for the Direct Loan Program, the Secretary noted that some of the commenters on the NPRM supported the Secretary's announcement that he intended to work with interested parties to develop regulations for borrower defenses that would apply to both the Direct Loan and the FFEL Programs. (59 FR 61664 and 61671, December 1, 1994) These commenters urged the Secretary to structure the discussions under the negotiated rulemaking process and identified particular representatives for the process.

In keeping with his commitment, on April 25, 1995, the Secretary convened the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee). The Department retained the services of a professional mediator to serve as a neutral convener and facilitator for the negotiated rulemaking. The Committee represented all affected parties, including representatives of institutions of higher education, higher education organizations, student loan lenders, guaranty agencies, loan servicers, legal aid organizations, students, and the Department. Establishment of the Committee was consistent with the Notice of Intent published by the Department on February 28, 1995. (60 FR 11004)

The ultimate goal of the negotiated rulemaking was to reach consensus among all committee members through discussion and negotiation among all interested and affected parties, including the Department.

The issues the Department presented for negotiation included a determination of which acts or omissions of an institution of higher education a borrower could assert as defenses to a demand for repayment of a loan made under the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, under the FFEL Program, for the lender and the guaranty agency.

The Committee consisted of the following organizations (some organizations with similar interests participated as a coalition): American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Career College Association

Coalition of Higher Education Assistance Organizations
Coalition of private non-profit multi-State guaranty agencies
Consumer Bankers Association
Education Finance Council
Federation of Associations of Schools of Health Professions
Hispanic Association of Colleges and Universities
Legal Services Team
National Association of College and University Business Officers
National Association of Graduate-Professional Students
National Association of Independent Colleges and Universities
National Association of State Universities and Land Grant Colleges
National Association of Student Financial Aid Administrators
National Association for Equal Opportunity in Higher Education
National Council of Higher Education Loan Programs
Student Loan Marketing Association
United Negro College Fund
U.S. Department of Education
United States Student Association

Committee Recommendation

The Committee was originally scheduled to meet for three sessions during the months of April, May, and June, 1995. However, during the first session, the Department was informed that the non-Federal negotiators had all agreed to recommend to the Department that no changes be made to existing regulations. The non-Federal negotiators thanked the Department for initiating the negotiated rulemaking process that many of them had requested to address the borrower defenses issues. However, they indicated that, after further consideration, they had concluded that they would not recommend further regulatory action on this issue at this time. In particular, the non-Federal negotiators recommended that the Department not pursue an attempt to draft consistent regulatory provisions governing borrower defenses in the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, under the FFEL Program, for the lender and the guaranty agency. Rather, the non-Federal negotiators on the Committee told the Department that they were satisfied that the current regulations adequately address the issue of borrower defenses and that no further regulatory action is needed.

The Secretary has considered carefully the recommendation of the non-Federal negotiators on the Committee and has decided not to make any regulatory changes on the issue of