STATUTORY CHANGES

NEGOTIATED RULEMAKING:

Q (A): Are the issues in neg-reg, the ones that have been read, are they in consensus already and what are they?
A (A): Tentative agreement has been reached, but consensus cannot be reached until the preamble has been written. Currently, the issues have markers but there are too many to elaborate on each one.

DEPARTMENT OF EDUCATION AND GUARANTY AGENCY PARTNERSHIP:

Q (S): I genuinely believe that Greg Woods wants to create an atmosphere of mutual respect that gives us the feeling that we are indeed customers and the Department is to serve us. At the same time, I have a real problem understanding, on the one hand, how we can be customers if, at the beginning, you (ED) consider us (GA) as a threat or we pose other problems, such as, you don't trust us. In Colorado, we discuss and collaborate with schools and lenders. We operate in the perspective that we do trust and accomplish common mutual goals. How does the Department deal with the issue of giving us the feeling that you don't trust the GA and therefore you have to do certain things to keep good faith?
A (S): GAs are our partners. The customer is the student, the borrower. Greg Woods attempts to create a climate of cooperation to provide students with the best service. As changes are implemented, we begin to see results and mistrust will evaporate in the long run. The idea is to create an organization for the delivery of the FFELP to be trusted by one and all and depended on. In the long run, there will be a dependable structure based on trust. Trust is not earned overnight. There's a fair amount of cooperation. In the future, my expectation is that we'll have a more cooperative environment.

DISBURSEMENTS AND COHORT DEFAULT RATES:

Q (C): (GLOS to GAs) How will schools track and how will GAs monitor less than 10% default rate?
A (C): (GAs Response) There is an over reliance on cohort default rate as an indicator of trouble at a lender in relation to the FFELP. There are other indicators that need to be looked at to determine whether problems exist. Most reviews will not involve lenders with low default rates.

Q (C): How are GAs advising schools and lenders on who is eligible for single disbursement and waiver of the 30 day delay for first time students?
A (C): Primarily it is a program review issue. Lenders know which schools are eligible for single disbursement. GAs are not worried about schools that are under the 10% cohort default rate since generally they are not the source of compliance problems anyway.

So many schools have a variety of academic periods that the term “academic year” doesn’t have a consistent begin and end date anymore. Program reviews will reveal non-compliance of disbursement since the school is telling the lender when to disburse anyway.

Other factors affect cohort, such as financial aid office turnover and system conversion, so that the cohort rate is not always the best single indicator of a problem.

Generally, schools with high cohort default rates obtaining singly disbursed checks or negotiating the checks early is not perceived as a high priority problem.

Q (D): Does a school having a default rate of less than 10% (for the 3 years) have the option of continuing multiple and/or delayed disbursements?
A (D): Yes.

Q (D): Is a school that does not have an established default rate for the 1st year and less than 10% for the other two years eligible for the single disbursement/nondelayed loan disbursement?
A (D): No. A school has to have three consecutive years of default rates of less than 10% to be eligible.

ED Comment (N): (Pam Moran, ED) I think that for the schools that would potentially fall into the category who may, in the past, have not really paid a lot of attention to their draft rates because they really didn’t mean anything, are now going to be very focused on their draft rates. Those schools will definitely want to focus more on their draft rates because, if there’s any possibility that their rate is, like, 10.2 and they can bring it down to the acceptable level that would exclude them from delayed delivery or multiple disbursement, they’re certainly going to look at that data and they’re going to expect the guaranty agencies to respond to requests for changes in the data. Another issue that the school negotiators have put on the table is whether or not there’s going to be an appeal process for schools in this category. Now, when I say that to guaranty agency staff, they’re going to sit up and go “oh no.” So, anyway you need to communicate to your negotiated rulemaking representatives and there are many from the lending community: Consumer Bankers Association, Student Loan Servicing Association, NCHELP, Education Finance Council. There is a cohort of guaranty agency directors that is separately represented at the table. This is an issue that the school representatives' negotiators have put on the table: whether or not there will be a formal appeal process not related to termination of the school but related to reducing their rates downward so that they can qualify on special provisions. Under the law, …the Secretary is required to provide the schools with draft cohort default rate data. And corrections can be made to that data. I think the priority is given to the schools that are potentially subject to termination because of their cohort rate. And then, the second phase of the process is for the Department to actually issue, after the schools have had an opportunity to review their draft data, basically, final cohort rates.

ED Comment (N): (Pam Eliadis, ED) And the thing is with a draft rate it's up to the guaranty agencies …schools challenge to those rates is up to the GAs and if there are any changes to be made and the GA does agree to make them you have to get the data into NSLDS before the final rates are run….

ED Comment (N): (Pam Moran, ED)…. Only the guaranty agency can agree that there is an error and submit that corrected data to NSLDS so that it will be correct when the so-called final rates are run, and those rates are the ones that are used to actually terminate a school from eligibility in FFEL or Direct Loans and now because of the '98 Amendments, also from Pell. An increased burden is riding on the schools that are subject to termination and then there's also this new piece where certain schools that may not have taken particular note of their draft data in the past may be close enough that they are going to want to scrutinize their data so that they can fall into eligibility for these other beneficial provisions.

ED Comment (N): (Pam Moran, ED) The lenders and guaranty agencies would like to say that we could rely upon the certification provided by the school. The Department's position might be, and we think that the lender may just have some responsibility, to at least initially identify who is eligible or not eligible because the agencies do have access to the data and lenders can certainly have access to the data through the PEPS system for who would qualify. As to whose primary responsibility is it going to be clearly, probably, the school's in the certification process but are the lenders and guaranty agencies going to have some kind of oversight responsibility? That's an issue that is up for discussion.

ED Comment (N): (Pam Moran, ED) . . . If you look at 428(b)(1)(n) which directs how funds are going to be disbursed for study abroad folks already in the foreign institutions, the borrower has already had the ability to tell a lender "I want the loans sent directly to me." So, now, for study abroad students and students attending eligible foreign institutions for study abroad particularly with this exemption also in place, you have a situation with the borrower having the capability of saying, "I want the loan singly disbursed. I want the loan disbursed directly to me because I'm going to be studying abroad" and the school is covered by this exemption and there will also be the fully disbursed loan . . . The eligible foreign institutions were already exempt from the multiple disbursement requirements. That's not new. What's new is adding the separate provision that references study abroad at a school whose home institution hasn't had this 5 percent rate. But, in 428(b)(1)(n), both foreign institutions and study abroad programs are mentioned in terms of having the money sent directly to the borrower. So, I'm just trying to point out the fact that we need to consider these things in conjunction with one another. But, the new change is only for study abroad programs where the home institution is at this level of cohort default rate and, before, you would have to have multiply disbursed that loan. Now, you would not have to. And, nor would, technically, it says that they are exempt from the provisions of the section which would include also the delayed delivery because I don’t think that you have any study abroad students who are first time undergraduate students. So, I don’t think you’d have to worry about that.

Q (B): What about the foreign schools that don't go through a home institution? How do you track the cohort default rate for a regular foreign school? Can you track those? Is it an issue?
A (B): No, that’s not an issue for this purpose. For one thing, we haven't tracked those. We're just starting to do that now. That hasn't been an issue in the past. This law does not apply to them.

REPAYMENT PLANS:

Q (C): How often may a lender change a repayment plan?
A (C): Statute states once a year.

Q (C): Can a lender change repayment plans more frequently than yearly if requested by the borrower?
A (C): GLOS’ interpretation is that, if a borrower can be helped by a change in a repayment plan, perhaps under the statute, repayment plans can be offered more frequently, but only implemented with the borrower’s consent. This question is being discussed in negotiated rulemaking – Committee #2. The Final Regulations will answer this question.

Q (C): Does the lender have to track each individual borrower and contact the borrower annually about changing repayment plans?
A (C): A lender is not obligated by statute to notify a borrower each year of the option to change repayment plans. The lender is obligated to offer repayment plan options at the beginning of repayment and anytime the borrower indicates a need for help. This question is being discussed in negotiated rulemaking – Committee #2. The Final Regulations will answer this question.

Q (B): What are the disclosure requirements for a change in repayment plan? Do you have to redisclose to the borrower prior to that borrower's anniversary saying you may now on your anniversary date change your repayment plan?
A (B): (George Harris, ED) From what I understand, the Department is looking for ways to make sure that the students always know what they have available to them, are always aware of their options. And the more you tell people, presumably, that's a better thing. What the student groups and the schools have told us is they don't think it's advisable to let the borrower know something in l998 and then presume they are going to remember it

five years later in the year 2003 unless you remind them periodically. So it may not be good enough to just simply tell them once in the disclosure at the beginning of repayment that they can change their repayment plan once a year and then expect that they will remember that forever and carry a piece of paper around with them so they will know it. So there may be some regulation that will come out that will require lenders to inform the borrower that they have this option at least once a year. An analogous situation is in the group that I'm on. There is a requirement that if a lender submits what used to be known as preclaim assistance, we now call that default aversion request. If a lender submits a default aversion request to a guarantee agency, there is a requirement that the guarantee agency notify the school so that the school is aware that one of their former students has become 60 days delinquent. We, of course, let schools request this notification on a blanket basis. So a school says anytime any of my students become the subject of a default aversion request, please notify me. That way they don't have to do it 357 times for 357…. So the school can do it as a blanket certificate. In our group the school representative said we want to be notified once a year that we have this option to request a blanket certificate. The school says we don't want to forget that we have this option and we don't want to have somebody decide to go to another school and take that information with them and then the new financial aid officer doesn't know that they have this option. So we want the guarantee agency to be required on an annual basis to notify us that we have an option to request a blanket certificate of this notification. So we agreed to that. So now if we agreed to do that for schools, then shouldn't we agree to do the same thing for borrowers, who are supposedly our primary customer. And that's why I think that there may be an answer that "yes" lenders do have to make sure that once a year they let people know that they have this option.
ED Comment (B): We might even be able to do something like that on the 1099 notification. Reporting interest…once a year. So there are a lot of ways of notifying the borrower anyway. Maybe just borrowers that are delinquent - those might be the most likely ones… borrowers over 60 or 90 days delinquent. That might be something to think about and take back as being the most likely or might want to make a change in plans.
ED Comment (B): (George Harris, ED) Yes, that's another idea. One theory could be that somebody's been paying you every month--they're happy. Why bother. If somebody becomes delinquent, then you already have to send out letters to people who become delinquent. And in the letter that you send out, you're supposed to tell them about all the wonderful options they have that they can choose. There is a perfect opportunity to slip that little thing in: by the way you may change your payment plan once a year . . .

Q (D): If a borrower does not request a special repayment plan what happens?
A (D): The borrower will be placed on the standard plan.

Q (D): How is the annual period established to determine when a borrower can request a change in repayment plans?
A (D): This is borrower-specific (starting when the borrower starts repayment).

Q (D): How does the Department define "outstanding loans" to determine the $30,000 threshold to make a borrower eligible for the 25 year repayment plan? (The extended repayment plan is for new borrowers on/after 10/7/98.)
A (D): These are loans under Part B regulations only. They do not include Health Profession loans, non-Title IV or Perkins.

Q (A): Does the $30,000.00 loan limit include accrued interest?
A (A): No, it does not include the accrued interest owed on the loans because that is considered in the future.

ED Comment (N): (Pam Moran, ED) The current regulations which already requested the income sensitive repayment as an option encouraged the lenders to offer that to borrowers that strictly were not, that under the statute lenders did not have, were not required to offer it. Because, I think income sensitive for Stafford borrowers came into being, I think for borrowers, new borrowers on or after 7/1/93. I'm pretty sure that was the date. But, we wanted to encourage the lenders to offer income-sensitive to people who, strictly speaking, statutorily, wouldn't necessarily have to offer it. I don't know that you can do that with extended, though, because it has some other eligibility criterion attached to it. The extended repayment is 25 years. The fact that the law very clearly says it's only for new borrowers and it also is only for borrowers who have $30,000 or more in outstanding loans. So, I don't think that there's any ability to offer that plan to other borrowers.

GRACE PERIOD FOR MILITARY:

ED Comment (N): (Pam Moran, ED): …with anyone that's been around since the Desert Storm/Desert Shield days, if you go back that far, the Secretary was given specific statutory authority back then to waive regs and statute as necessary to assist borrowers, especially reservists, who were called up into the Desert Storm/Desert Shield situation, had little or no notice, and had to report. And, some of those borrowers were in school at the time; some of them might have been in their grace period. Well, that statutory authority to the Secretary to waive statute and regulations was only applicable to the Desert Storm/Desert Shield situation. So, that expired of course. And, there have been similar call-ups for Bosnia, for I think, well, since it was only supposed be a 12 month stint if you remember and it's now turned into 3 or 4 years of consecutive 12 month stints where reservists have been called up to Bosnia and now, we may be looking at Kosovo. It's an ongoing situation and, some folks at the Pentagon became concerned that reservists…and we did not have the authority to the Secretary, to provide the same benefits that had been provided during Desert Storm/Desert Shield to reservists that were getting called up for more that a 30 day period to go to these far flung locations: Somalia, Bosnia, Herzegovina, Kosovo. So, this provision is supposed to be a provision to preserve the borrower's grace period. That was the intention: so that someone didn't have to go through their grace and into repayment and have to resort to use of deferments, especially now since hardship deferment has a three year limit on it, or forbearance. And those were, basically, what people were forced into, that they left school unexpectedly, in some cases they were in their grace periods and they had to proceed into grace and into repayment to receive any benefit on repayment. So, this provision was to preserve the person's grace period. If the borrower was called up during the in-school period, obviously, they'll return to school, they'll never enter their grace period under this provision. If they're in the grace period when they are called up, one of the issues that's on the negotiated rulemaking table is whether or not the person only gets the balance of the grace period when they come back since they were called up during their grace period, or are we going to treat them like the in-school student, or I mean like the student who went into the grace period and then they go back to school. When they finally do finish their program, they get that full grace period if they haven't used their full grace period; they get back their full grace period. So, the lender and guaranty agency representatives, and some of the student advocates around the table are endorsing the concept that if somebody's called up during the grace period, and then they come back, they should be able to get their full grace period, that they should not just get the balance because they might get called up in the last month of their grace period and only have, basically, one month when they return. . . .And, one of the other issues on the table is how to count the three-year period? Whether it should be one three-year period or, if the borrower gets called up multiple times, and has multiple loans in place, whether or not there could be a multiple three-year period. And, I think that everyone …tentatively agreed around the table that this could apply more than once. So, that you could have more than one three-year period per given borrower. We're not saying they'd be consecutive three-year periods. But, I think that there are situations - let's say someone is a reservist for an extended period of time and have had one call up and then come back to school or come back and resume their grace period and then, perhaps, go back to graduate school, get new loans, and then be recalled again. And, I think the question on the table is whether or not that scenario could happen and the intent of the law would be to preserve the reservist's grace period even if they receive this kind of call up more than once. And, I think the tentative decision is yes…it's going to be a rare instance… but it could be for more than one three-year period. The Department believes that the law is pretty clear: that the three-year period includes the time necessary when the borrower comes out of duty to resume enrollment in the next scheduled regular enrollment period which the law speaks to. There are others at the table who believe that the time it takes someone to come back from the reserves, and re-enter school if that is what their intention is, that that should not be part of the three-year period that you're counting. So, there's an issue there. There's also an issue about what status to keep these borrowers in. Some of these borrowers when they're called up may be in school. Some of them may be in their grace period. . . There is a discussion at the table as to the borrower being given time to enroll or re-enroll in the next regular scheduled term. And the reason for that was…and I think we did this with DS/DS also, we didn't want to force people to go to summer school or somebody returned from the reserves in the middle of a scheduled term, there's no way they can immediately go back to school. So, the law speaks to giving the borrower the opportunity to re-enroll in the next regularly scheduled period of enrollment. And, the question on the neg-reg table has been how long does someone have to do that? Now, I think that the Department is interpreting it that someone shouldn't be forced to go to summer school if that's not a regularly scheduled term that you would be required to attend at that particular school. So, you could, perhaps, not have to get back into school until the following fall. But, then there are some people in short term programs, let's say a cooking school that starts people every twelve months. You get called up in the middle of that. When is the next regularly scheduled period that you could resume your enrollment in that program? That's also been at the negotiation table about whether you have to really, because of the different programs that are out there and what a borrower's next regular period of enrollment might be, that you need to have a fairly extended period but perhaps with a cap on it - 6 months, 12 months. And, I think what's on the table right now is a period not to exceed 12 months but with some discussion in the preamble of NPRM that the expectation is that the borrower will actually re-enroll in the next available regularly scheduled term but that that might not be - depending on the borrower's program - a period, it could be a 6 or 8 month period. So that's also an issue under discussion. Obviously, that has complications but the language of the law does provide for giving the borrower the benefit of re-enrolling in the next regularly scheduled period of enrollment and we have defined what that is.

Q (S): What status would borrowers be? Extended grace period?
A (S): (Pat Newcombe, ED) I have no idea how to report these borrowers yet. If the student is in-school then drops out before being called to active duty, grace period does not stop. If the student is in school when called, grace period stops. Do we stop the clock? The community did not want a new category of borrowers for this exemption. There's probably not a huge number of borrowers.

Q (S): If there is no status, how do we report this to NSLDS?
A (S): (Pat Newcombe, ED) Probably start grace period over again. That's where we are right now.

Q (S): How do we use this information for cohort default rate?
A (S): (Pat Newcombe, ED) I'm not sure. If the borrower is not in repayment, it would not appear in the cohort default rate. There should be no issue.

Q (S): If in deferred status?
A (S): (Pat Newcombe, ED) Has to come up with something. Would report somehow. There are many issues. Is this a single 3-year period? More than one? Going back to school?

Q (S): This is in limbo status now. There would be different ways of handling this. How do we handle this in different states/GAs? A decision should be made since ultimately payments will be made from NSLDS.
A (S): (Pat Newcombe, ED) Two issues: The policy must be set in stone first before looking into operational issues. Hopefully this happens early enough so that the operations people could review this.

A (S): (Pam Eliadis, ED) Comments on NSLDS reporting of military call-up: I don't really know if I have a good answer to the question right now. We are adding new status codes for NSLDS so we will have a status code that will address that question. However that would probably be a good year before we see it. Situation is happening now. But still in negotiated rulemaking so there is no answer yet. Will work with Policy to come up with loan status. Right now, best way is to report as in grace (ID) status. NSLDS probably would not be able to track this right now. But GAs should probably track this internally. Will check with the office for suggestions.

Q (S): What about interest capitalization for the unsubsidized loans for the three-year period?
A (S): (Pat Newcombe, ED) I need to look at the notes to see if this was discussed.

Q (C): In the case of a borrower who is called as a reservist to active military duty prior to the Grace Period on the borrower's loan being exhausted and does not return to school after returning from active duty, is the Grace Period on the loan fully restored or does it resume from the point of interruption?
A (C): As GLOS reads the statute, the Grace Period is fully restored. This change in the statute is currently being discussed in negotiated rule making. This question is being discussed in negotiated rulemaking – Committee #2. The Final Regulations will answer this question.

<u>DEFERMENTS:</u>

Q (C): If a borrower claims no income and, therefore, has no documentation of economic hardship, how does the borrower obtain a hardship deferment?
A (C): There is a way that a borrower with no income can be given a hardship deferment. This question is being discussed in negotiated rulemaking – Committee #2. The Final Regulations will answer this question.

Q (C): Has the economic hardship provision been extended past February 28, 1999?
A (C): Reference: Economic Hardship Deferment Form. The current form can be used until OMB approves the new form.

Q (N): If a borrower is seeking the unemployment deferment, do they have to request the deferment first of all; and second of all, the documentation under the other provisions seeking full-time employment, does it matter as long they present evidence of eligibility for the unemployment compensation at the State Dept of Employment?
A (N): (Pam Moran, ED) Basically, the fact that the law speaks to them not having to provide further documentation would basically provide that borrower doesn't have to do the contact or document the contact but would otherwise be required of people who don't qualify for the unemployment benefits because I think the understanding is that if you're receiving unemployment benefits, you're already required to do a job search. So, you shouldn't have to go through the added trouble of documenting the contacts like other

borrowers who are not eligible in receiving the unemployment benefits or have run out of the benefits would have to… at least as we are initially interpreting it. Now something could come out different in the final analysis and the reg. But I think that you're going to see the borrowers relieved of that documentation requirement for that would be intense. . . . I think that at least the Department's initial interpretation is that you have to qualify and be receiving them because only then are you doing a search, which is what the contact, is intended to document. We will see if that is what the final determination is made through the NEG REG process, but I don't think that simply showing that at one point in time you were eligible is going to suffice.

Q (D): Is a copy of an unemployment check enough documentation for an unemployment deferment?
A (D): The check is acceptable but may not stand alone. You need to be able to determine the time frame of the unemployment.

Q (D): Since different states have different unemployment documentation, what is acceptable?
A (D): The Department does not want to dictate acceptable documentation.

LOAN FORGIVENESS:

ED Comment (N): (Pam Moran, ED) Costs related to the teacher forgiveness was a critical issue that I think the Congress had to deal with and you can tell from all of the conditions that are placed on this that there is a rather small set of borrowers who may ultimately qualify for this. The other thing to remember just for people who may get questions on this, this was put into 428J of the HEA and it replaced an old 428J that also included teacher forgiveness and also referenced nurses and also referenced volunteers in non-profit organizations and that was never funded so it never really became operational. That was totally wiped out and replaced with this simple Teacher Forgiveness provision. So, it's still in 428J of the law but it's, basically, been totally rewritten with all of these conditions imposed: that it's only for new borrowers, that they have to do five full years of teaching before they would ever be eligible to qualify and, I think the max they can have cancelled is $5,000 which may not be what they owe by the time you get to having concluded five years of teaching. The only other thing that's been on the neg-reg table was whether or not the five years, whether any of the five years could predate 10/1/98. And, I don't know if that's a totally dead issue. There's been a lot of discussions- I think the determination has been made tentatively that the five years of teaching, that some of the five years of teaching can predate the borrower borrowing for the first time but it certainly has to be after 10/1/98. It cannot predate 10/1/98. But, not everyone around the negotiation table is happy with that because there was a very active discussion about whether somebody could borrow for the first time- let's say somebody comes back to do their teacher certification course work which is provided under the law. They've never had a loan before but they've been out there teaching and they borrow after 10/1/98 but they've already done three years of full-time teaching. After two more years, can they come in and apply for forgiveness. That was a scenario that we discussed at the neg-reg table. The decision I think has tentatively been made and this has led to us believing that the NPRM can be put off a little bit. We really didn't think that we could acknowledge teaching service that pre-dated the date of the statutory change. So that meant that some of the teaching could perhaps predate your first loan but that it clearly has to be after 10/1/98.

ED Comment (N): (Pam Moran, ED) ….428J was where there had to be a specific and separate appropriation each year and there was no appropriation for budget year and there is no money put aside for the next budget year. . . And this is for also those dilemmas about whether you go ahead and regulate this thing because we went ahead and regulated the old 428J and it was never funded so we went through the whole trouble of negotiating and developing and proposing a final reg. never to ever see any money appropriated for the old 428J. So, you know, we're not planning to do anything with this child care provision right now but, should they ever fund it, we'll be in trouble because we won't have a reg. We'll do it. We just won't do it with this first wave of reg.

ED Comment (S): Pat Newcombe gave the following information on loan forgiveness. Regulations for the loan forgiveness for teachers and childcare providers will not be issued at this time. The negotiators have decided that the five consecutive years would follow incurring the debt. The borrower must borrow first. This (1) is the intent of the law and (2) corresponds to Perkins loan forgiveness.

Q (S): If teaching for 5 years is required, it is then possible for the teacher to pay off the loan if there is a small amount. The eligibility for the forgiveness will be forfeited. Will the teacher be reimbursed?
A (S): No.

Q (S): How would lenders get reimbursed for the Loan Forgiveness for Teachers Program?
A (S): (Pat Newcombe, ED) Regulations will be forthcoming since no one qualifies immediately. Probably may be like cancellation forms.

Q (C): (GLOS to GAs) A question has been raised in GLOS as to whether a school must qualify for and be certified for Perkins forgiveness each of the five years prior to the borrower's request for loan forgiveness or just for any one of the five years the borrower has been teaching at the school.
A (C): The topic of this question is a part of negotiated rule making.

Q (A): Is loan forgiveness for teachers being funded this year?
A (A): No, and it will probably not be funded next year either because it is an entitlement and the program is just too new.

Q (A): Will loan forgiveness for child-care providers be funded?
A (A): It was not funded this year and will probably not be funded next year either.

PLUS ELIGIBILITY:

Q (C): Reference: Verification of immigration status and SSN. How can a School or GA verify a parent's immigration status and SSN in order to establish eligibility for PLUS loans?
A (C): In the same manner that it is verified for students under Sections 484(g) & (p).

Q (D): Matches for parent borrowers for SS# and INS are the same as those for the student. What if the parent decides to borrow after the student has submitted his/her FAFSA?
A (D): They will have to reapply in order to include the parents' information, or it may possibly be handled as a correction.

ED Comment (N): (Pam Moran, ED)…. the Department will implement this in the same way as they have done for student eligibility which means, basically, doing computer matches. And, so, until we have the operational capability to do this process through computer match, because, the schools I think raised an issue that they didn't mind having the verification - they thought it was positive - they just didn't want to have to go back to the old days where they had to do manual verification of student applicants. They didn't want to handle the PLUS applicants in the same way. The Congress wrote this into the law but they make specific reference that should be, basically, handled, implemented in the same way as student applicants which is through the FAFSA and through computer matches with INS data and social security data. So, I don't think you're going to see this implemented until we've done what we have to do operationally to get it up and running. . . Unless there's further discussion and a different decision made but it seems to me that the Congress was sensitive to not wanting to impose a new additional administrative burden on the schools in order to implement this. …There's no requirement that such a match be made at this time.

ED Comment (N): (Pam Moran, ED) The question is whether or not the FAFSA that's under development will include these data items that would then allow us to do the computer matching and, I believe the answer to that is yes. I'm not on the development committee but I think they had taken steps, but I think that 2000-2001 FAFSA was already too far along for them so it may even be the next year out that they're working on developing. I'd have to double check. But, yes, they are going to incorporate it into the FAFSA. I'm not sure which year's FAFSA.

ED Comment (N): (Pam Moran, ED) Regarding additional conditions to attach to PLUS borrowers. No one, the consumer advocates, the school representatives, the lending/guaranty agency representatives, everybody around the table, nobody really seems to see any reason - that was not true in '92. '92, everybody was sure that, because they lifted the PLUS cap, we were going to have people who were going to borrow a lot and be unable to pay. They were all concerned that there should be the ability to look at the ability to repay. But we didn't have any authority to look at that - the Secretary didn't. So, we basically said to them that we can't do anything other than define adverse credit. But, now the feeling has changed. I guess people have had five years of experience and still see relatively low default rates in PLUS and they don't really think we need to do anything with it and the Department isn't going to do anything if the people around the table don't feel we need to.

ED Comment (N): (George Harris, ED) Ultimately the lender can refuse PLUS loans for virtually any reason as long as they don't do it for race, religion, all that other stuff. They can have their own in-house policies.

INTEREST RATES:

Comment on Slide 14 (Interest Rates): (Pat Newcombe, ED)
Technical amendment: 2.2% during in-school, grace <u>and deferment</u> for Stafford loans

LOAN CONSOLIDATION AND ADMINISTRATIVE WAGE GARNISHMENT:

ED Comment (N): (Pam Moran, ED) . . . The fact that you have a defaulted loan subject to wage garnishment or judgment though litigation does not necessarily mean you can't consolidate. It just means you cannot consolidate those loans that are subject to that activity, at least that seemed to be the direction of the conversation going at the table. The other issue has been whether or not, even if you have such loans, if the wage garnishment order is rescinded, or the judgment is vacated, whether that borrower then would be able to include those loans in consolidation. And, I think that, tentatively, the discussion suggests that yes, if the wage garnishment is rescinded, I would think the borrower would have to make some payments over and above the wage garnishment for an agency to really decide they're going to rescind the wage garnishment order. And, that is also true in the case of a judgment through litigation. But, and this relates to Perkins, which is not your bailiwick, but there are some new provisions in Perkins related to loan rehabilitation that may require in that program to define what constitutes a voluntary payment. And, there are folks in that population and they're on this committee, too. They're also dealing with these same issues on the FFEL/Direct Loan side. Their view is that, if a judgment forces a borrower to make payments to the holder, and the payments are not coming through court, then that's a voluntary payment. So, I'm not sure where we're going on whether or not you would have to make payments over and above what the agency is receiving by the way of garnishment or through the judgment. It may come down to how we define voluntary payment because it seems to be that whatever we do in the Perkins program for their loan rehab purposes have duplications on FFEL and Direct Loans. Historically, we've said that, if you have a wage garnishment and if you have a judgment, if you make payments over and above, those can be considered voluntary payments. I think now, if you have a wage garnishment or a judgment account, that would not be eligible to be included in a consolidation but there might be something you could do to have that order rescinded or have that debt vacated that would then allow you to include those loans in the Consolidation loan. I think that there's tentative agreement around the table that we don't want to say having such a loan disqualifies you permanently from being able to consolidate or disqualifies you from taking the rest of your loans where there may not be a problem and consolidating those so you don't end up defaulting on those loans. And, that's the way we've handled the default loans that you had to make satisfactory payment arrangements to include it in a consolidation. And, I think the feeling is that we don't want to deal with these circumstances differently than we dealt with the defaulted loans. That didn't necessarily, at least in the FFEL program and I'm pretty sure, the Direct Loan program, if you added a defaulted loan, that you could only include what you made satisfactory payment arrangements. In the meantime, you still could go forward with a Consolidation with your other non-defaulted loans. You just couldn't include that defaulted loan unless you made satisfactory payment arrangements. And, I think we're interpreting this restriction in the same way- at least, that seems to be where we're headed.

Q (D): In a vacated judgement, will the borrower become eligible?
A (D): It appears that they could.

Q (D): Can a consolidated borrower that defaults, reconsolidate in order to get out of default?
A (D): (Pam Moran, ED) It appears they can.

Q (S): Are defaulted loans in administrative wage garnishment eligible for consolidation?
A (S): No, unless the borrower makes a satisfactory repayment arrangement.

Q (S): What if the borrower in administrative wage garnishment has not made 3 consecutive payments?
A (S): Probably not eligible.

Q (S): We were told that administrative wage garnishment does not preclude a borrower from being eligible for consolidation.
A (S): (Pat Newcombe, ED) There are issues regarding a judgment and a non-judgment, a voluntary and non-voluntary payment. Litigation and judgment and borrower eligibility are being discussed in negotiated rulemaking.

Q (S): We are of the opinion that AWG is not voluntary; therefore, it's not eligible for FFEL. However, it is my understanding that an AWG account is eligible for Federal Direct Loans. Doesn't this justify FFEL?
A (S): (Pat Newcombe, ED) For example, I have a judgment or administrative wage garnishment order for a certain amount. Payments are not voluntary. But making an extra payment is voluntary. This is a very complicated thing. Check back after negotiated rulemaking has concluded.

(S) Comments on judgment and AWG and eligibility for consolidation (Pat Newcombe, ED): The proposal is an eligible borrower for consolidation would be someone not subject to judgment secured through litigation with respect to a Title IV loan, unless the judgment has been vacated, or for wage garnishment under Section 488A (Part G) of the Act, unless arrangements have been made acceptable to the holder that are supplementary to the wage garnishment. So that's what they will be going to look at deciding on whether to agree to this or not. Will probably come out with some version of this language. Not cast in stone.

DEFINITION OF A LENDER AND ORIGINATION FEE:

ED Comment (N): (Pam Moran, ED)…. an attorney called me to say or ask if a lender was using multiple lender codes which we have allowed at least historically, mostly for administrative purposes its helped them track different portfolios for purposes of 799 billing. The question posed to me by this attorney was that in fact the lender was using separate lender codes, whether they can maintain different origination fee policy by segregating different portions of their student loan portfolio under these separate lender codes and, by virtue of doing that, could it be viewed as a separate lender and, therefore, they can have differing policies of origination fee assessment. The answer to that was no. The use of separate lender codes is not an authority to divide up your portfolio and, basically, undermining the intent of the law which was that if you're going to assess origination fees you do it consistently across the board. The other question that I had came from a national lender who participates with many guaranty agencies across the country and, in some states, apparently, there are special programs that are administered through the guaranty agency and all the lenders that participate with the particular agency offer a consistent program for all the residents of that state. The lender's question to me was whether or not, given this change in the law, a national lender could maintain such policy of participating in these different agency programs. The answer to that, at least from the Department's perspective, subject to negotiated rulemaking, because this may all come down to how we decide to define lender for this purpose but, an answer that we gave was no, we're sorry, but it seems pretty clear you can't continue to maintain that differing policies for different agencies that you work at who have special programs for residents in a particular area. This would not seem to support you being able to do that because this speaks to a lender providing a consistent approach for origination fees across the board unless they invoke the exception in the law which is based on need as documented through the borrower's adjusted gross family income. So, we basically said no for now at least, subject to negotiated rulemaking, you would not be able to maintain, as a national lender, these differing origination fee policies that are based somewhat on your participation with particular guaranty agencies and the programs that those agencies want to run in a particular state for state residents.

Q (S): Please expand on the definition of a lender. Example: holding company, lender by lender?
A (S): (Pat Newcombe, ED) Greater need to define it. More than one location? Apply one policy to all.

Q (S): What about the restriction on charging the same fee? You can do this across the board but can you categorize by loan type (ex., sub, unsub, PLUS)?
A (S): (Pat Newcombe, ED) It appears it applies strictly to origination fees on Stafford. Does not specify subsidized or unsubsidized Stafford Loan. The triggering mechanism discussed at this point would be the expected family contribution (EFC) which should be less than or equal to the maximum qualifying EFC to qualify for Pell Grant at the time the loan is certified. Treat subsidized and unsubsidized Stafford Loans the same.

Q (C): It is not permissible for a lender to charge varying origination fees to its borrowers. Does this apply to all of the LIDs used by the lender? Is each LID a separate issue?
A (C): GLOS' interpretation of the statute is that it applies to the lender and not to the LID.

Q (C): If a lender has its own policy but also serves as eligible lender trustee for another entity, does the lender's policy apply to loans held under the trust agreement? If the bank is a trustee may there be different treatment for each entity's agreement? May an entity have different terms in their separate trusts? Would restricting a bank to one origination policy potentially drive entities to other banks willing to accede to entity's policy objectives?
A (C): Lenders cannot waive fees for one LID and other LIDs it controls. No one has asked during negotiated rule making about how the statute applies to trust agreements. Whatever is decided will be driven by the intent of the law. This question is being discussed in negotiated rulemaking – Committee #2. The Final Regulations will answer this question.

ED Comment (B): Right now the lenders are not required to submit a 799. If you don't want your interest subsidy or Special Allowance… My understanding is that there's no actual regulatory requirement that the lender has to submit a 799. It's only if you wanted your interest subsidy then you do have to submit your 799. But if you're willing to just forgo it and eat it you're going to have to send a bill. The problem arises when the lender happens to owe us more in origination fees than we owe them. Maybe some lenders have figured it out that it's to their financial benefit not to submit a bill and that way if nobody catches them they get to keep their origination fees. So, we're going to put something in the regulations this time around that requires lenders to submit a 799, whether we owe them money or not, special allowance or subsidy, you're going to have to submit the 799 to us.

FORBEARANCE:

Q (N): Borrower goes into repayment. Principal is $2500, and his accrued interest is $100. Principal of $2500, accrued interest from the day he went into repayment up until the day the payment is made, you've got this 60 days out here and the payment is $75. How is that to be distributed?
A (N): (Pam Moran, ED) I don't know at this point . . .I think that everybody's aware that there is an operational difficulty about having this dangling interest and how, when you have an actual payment to apply whether or not you could perhaps take care of that first, get that out the way, whether you have to do a normal distribution of payment application . . .

Q (N): Now you got two unpaid interests. Are you doing the borrower a disservice by wiping that out first? Should it be pro-rated? Does the lender have to have two unpaid interest fields on their system?
A (N): (Pam Moran, ED) Well, those are all the operational issues associated with this. And, also another question that was asked during the break was whether or not a lender could, in granting the 60-day period knowing that they can't capitalize the interest at the end of that 60-day period, whether they could simply decline to assess the interest during that period. My answer was I guess. There's nothing that I can see that would prevent a lender from declining to assess interest or, let's say eating the interest that does accrue from that 60-day period. . . . Now, people in the back find it hard to believe that anybody would ever do that. However, looking at the operational difficulties, perhaps someone might do that. The other question that was posed on the table is whether or not you take the 60-day period is intended as an administrative forbearance for you to do paperwork associated with granting one of these deferment/forbearance periods, doing a change in repayment, doing a Consolidation process, but in the case of deferment or forbearance, let's say right after the 60-day period and you do grant the deferment, you do grant the forbearance, can you backdate the start date of the forbearance to incorporate the 60-day period which then gives the ability of capitalizing the interest at the end of the deferment or forbearance which is otherwise provided in the law and, I guess my answer is I'm not sure. That seems to me to undercut the intent of the prohibition on the 60-day period. However, you could decide simply not to grant the 60-day period and just backdate the forbearance or the deferment, as you historically have been able to, back to the first day. I mean, nothing forces the lender to grant the 60-day administrative period and that they simply just do the paperwork to grant the deferment and when they grant the deferment or forbearance, they grant it with a start date going back to the time the borrower first contacted them, then there is no issue.

Q (C): Can interest that accrued during a period of forbearance be capitalized after the forbearance ends?
A (C): GLOS' interpretation of the statute is that interest which accrues during a period of forbearance cannot be capitalized during the period of forbearance, but can be capitalized after the forbearance.

Q (C): How many guaranty agencies track forbearances? Isn't this usually a lender event?
A (C): Not sure how many agencies track forbearances.

Q (C): How will the forbearance issue affect the Cohort Default Rate? Is the forbearance an incentive for guaranty agencies to keep their cohort default low?
A (C): All borrower accounts that enter repayment in year one and default that year are counted. If you use forbearance, and it is during the Cohort Default year, it will lower the default rate. The change in default definition from 180 days to 270 days has thrown a monkey wrench into calculation of the Cohort Default Rate.

DISCLOSURE:

Q (S): Regarding the plain English disclosure: Can information be included on the actual disclosure as a separate statement at the time the loan is granted or must it be on a separate piece of paper?
A (S): (Pat Newcombe, ED) Probably can be included, but will check.

ED Comment (S): (Pat Newcombe, ED) Talked to George Harris in Policy since Pam Moran is out. George Harris thought additional disclosure would be on a separate piece of paper. Must be understandable and in a written or electronic format. Don’t know yet if additional disclosure could be a separate section of the disclosure. Don’t know exact answer.

ED Comment (B) (George Harris): The law says that the lender needs to disclose the name of the lender address and telephone number where the borrower can obtain additional loan information. Last week everybody agreed to have that be a toll free telephone number. And the electronic business where the law says that the borrowers have to have a way to communicate electronically to the lender and so the lender had to let them know what’s the way to do that. The law says you have to give them the address, well guess what, people said should we require them to give the electronic address to the lender. Well the law doesn’t say you have to but we’re going to put it in our regulations in preamble. That the Secretary does not object if the lender provides an electronic address to the borrower. We’re only going to be requiring in our regulations that you provide a toll-free number that they can get the other information from and the disclosures may be made in the electronic format. So, the lender does not have to do it in an electronic format and they do not have to give you anything in electronic format, but if you want to go ahead.

DEFAULT AND DUE DILIGENCE REQUIREMENTS:

ED Comment (S): (Pat Newcombe, ED) The new default definition necessitates changing timeframes in 34 CFR 682.411. Larry Oxendine wanted changes before – to be outcome-oriented and to have more flexibility. But as part of negotiated rulemaking, the group would only work on changes made by Reauthorization. (Protocol of neg-reg.) Group can't change 682.411 drastically since only the timeframe changed. Decided to take the demand letter to the last 30 days to shift to new timeframe. Once cycle of negotiated rulemaking is done, there would be another cycle. Will rewrite 682.411 to make open-ended and outcome-oriented, based on achievement, and not to tell the required numbers of letters and phone calls. A classic example: George Harris used to work on collections in the Boston office, and he liked to work the phones. Another colleague worked on letters. At the end of the month, both collection records were comparable. You know what you do best. Change regulations to allow flexibility.

Q (S): Will reviewing this new procedure be addressed in the review manual?
A (S): (Pat Newcombe, ED) Probably in the future. Get policy first then operational issues.

Q (C): (GLOS to GAs) What are the GAs advising lenders to do in regard to due diligence relative to the change in the default date from 180 to 270 days?
A (C): (GAs Response) The GAs are advising lenders to move the final demand letter to 30 days before default and insure that there is no gap greater than 45 days exists over the 270 days.

Q (S): My assumption is that 34 CFR 682. 411 would not be tinkered with until later. Probably 2002?
A (S): (Pat Newcombe, ED) It is always hard to put a definitive timeframe. Need to go to negotiated rulemaking. There's a statutory deadline for implementation of changes for Reauthorization. After cycle is done in 11/1/99, probably start during 1/2000 with a new negotiated rulemaking cycle and look at 682.411. If published by 11/1/2000, would be effective 7/1/2001, according to the master calendar. There's a caveat: If something is in the best interest of everyone and that is not effective until 7/1, option is to implement this provision earlier. The master calendar was applied to our program, unlike before. Had flexibility before (i.e., effective 45 days after publication, etc.)

MASTER PROMISSORY NOTE:

ED Comment (N): (Pam Moran, ED) . . . The note can be used both as a one-year note every year or as a multi-function, multiple year note and for the first stages of implementation, the Department has decided that four-year colleges and graduate schools will be able to use the multi functionality as its called of the master promissory note which will, of course, not come into play until 2000-2001 because that would be the first year where you might make a second loan off from the master promissory note and not have to have the borrower sign a new note. But, only four-year colleges and graduate schools can use that multi-year functionality. The Law also provides for other schools as identified by the Secretary and we will be doing some negotiated rulemaking, there will be some provisions developed in negotiated rulemaking that would identify the criteria under which these additional schools that are not four-year and graduate would be able to use the multi-year function of the master promissory note both in FFEL and Direct loan. So, we will be doing some regulation along those lines. There also will probably be something in the regs that will speak to conditions under which the Secretary may not even allow a four-year or graduate school to use the note in a multi-function way or multi-year way. Could be that there's some kind of emergency action that's been invoked on the school, they're ready to be terminated for cohort rate, or whatever. There may be some circumstances under which the Secretary would not even allow a four-year or a graduate school to use that master prom note as a multiple year note. We're already there for 1999-2000 at least on an initial implementation basis. But there are going to be some regulations to come.

Q (N): If the student going to a proprietary school wouldn't have the ability to voluntarily under that promissory note to only apply for $2000 and then needed the additional eligibility to be eligible for the $2625 could they get it under that promissory note?
A (N): (Pam Moran, ED) My answer would be that if the school has not qualified or hasn't been deemed qualified under the regulations to use the note in a multi-year functionality then they would have to fill out a new note for that additional loan amount. . . . I think there is a little bit of question as to when multi-year use can begin. I think that there is, and it's not addressed in the letter that went out in November to the FFEL community about the implementation of the master prom note. I think there's some confusion as to whether or not, during the 1999-2000 year, the first occasion of the use of the note as a multi-year note can begin or whether it can't happen until 2000-2001. I think that needs to be clarified because, while I understand that there may be different views out in the FFEL industry as to when the first occasion of using the master note as a multi-year note will happen versus the Department's perspective. My understanding was that some in the FFEL industry approved that if they were a four-year or graduate school, even within the 1999-2000 year, that if the borrower wanted to come back and get the balance of eligibility that they had not borrowed yet, that they would not have to do a new note even though it was within the 1999-2000 year. I'm not sure if that is the Department's view of this, but I'll get back to you on what the status is of that. I don't know if anybody here has an understanding of that issue, but I have understood that there is some different view on what was possible within the 1999-2000 year, that first year that we're committing the master prom note.

GA Comment (N): Currently, at our agency, the difference is that if they're entitled to $2625. . . say, they request $2625 but their initial eligibility is only $2000. If something changes over the course of the academic year to increase the eligibility, they can borrow the additional funds under that same promissory note because their request is $2625. They would need certification from the school showing additional eligibility.

A (N): (Pam Moran, ED) That may be how people have implemented that. You could go either way with that, I think. At some agencies, they insist that the person has to initiate a whole new application. Some agencies may say that, because the borrower filled out that item in reference to the maximum that there is leeway and go ahead and accept the re-certification. . . . I'll bring that back to the people that are already doing that. The other thing that came to light that I was surprised at and maybe I don't know what's going on out there is that because of the (cd) I think on the FFEL application its item 11 and on the Direct Loan application its item 8 where the borrower has the ability to request potentially a lesser amount that some agencies or lenders were pre-printing an amount on the application in this section and that's the first I'd ever heard of that and I said not to my knowledge but there was some information that got back to the Department that there were some, I don't know, guaranty agencies or lenders that were pre-printing that item. And that seems very strange to me because, in the regulations under .206 for the lenders, its pretty much always stated that the maximum the lender can approve is the lesser of the amount the borrower requests, the unmet financial need, or the statutory maximum under .204. It's always the lesser of those three possibilities. So that item has always been, as far as I knew, an item the borrower had to complete. Now, I do think that it's never going to reject in the FFEL world if that borrower left it blank. I don't know that that necessarily rejected the application, I'm not sure of that, and it may have differed from agency to agency. But I had never heard of any type of preprinting an amount for the borrower in that borrower item and its not permissible. But, no, those two items are still on the application because of the last year it's very controversial to even have that item on the application. Mostly, the Direct Loan schools.

Q (B): The only way that a student's going to get another Master Promissory Note is if he/she changes lenders. Is that correct?
A (B): I don't know any other way if you're with the same lender why I'd need one.
Comment (B): The way I understood it, a borrower attending a two-year school is going to have to get a new Master Promissory Note every year, regardless of having the same lender.

Q (D): If a GA has printed and distributed the "approved" MPN and now we find it needs some changes, will those MPNs already received and disbursed on be OK, and what about future disbursements?
A (D): Those MPNs were correct. The change was primarily for operations. They will be honored and will be OK for future disbursements.

Q (A): When can a list of the schools who can use the Master Promissory Note be published?
A (A): The list has not been published yet. The schools are requesting to be placed on the list to use the Master Promissory Note and it should be available in June. The MPN can be used for annual or for multi-year. Even if the multi-year MPN is used, it can also be used for annual renewal.

Q (A): What if there are multiple loans during the year, what should we tell the students?
A (A): Once the loan is made, we understand that the borrower's status or eligibility may change. The loan package can be expanded to accommodate this change in eligibility or status.

Q (A): Do you expect limited use of the Master Promissory Note this year?
A (A): Yes. We expect limited use for the 1999-2000 school year. Also the MPN has been revised and can be processed annually.

Q (A): Can an institution limit the processing to Stafford loans only?
A (A): No. It was discussed, but the institution must also process unsubsidized loans as well.

PROHIBITED INDUCEMENTS:

ED Comment (B): I can't remember the actual language that says Guarantee agencies are not allowed to send out unsolicited loan applications to students or parents of students unless the borrowers have previously obtained loans. But whatever the statutory language is, we've expanded it a little bit in our negotiated rulemaking to say that you cannot mail or otherwise distribute unauthorized loan applications. I think the law may have said you can't mail them and so maybe somebody's going to say, "Okay I'm not going to mail it, but I'm going to send it out on E-mail or whatever." So we're saying that you can't mail *or otherwise* distribute

FEDERAL AND OPERATING FUNDS:

Q (N): How would GAs distribute revenue generated from non-liquid assets? All of the expenses of the non-liquid assets are charged to the Operating fund, how about any revenue that is generated from these non-liquid assets? The consensus around the guaranty agencies seems to be that, as long as the Operating fund of the guarantying agency is absorbing all of the costs, that all of the revenue or income should go into the Operating fund, notwithstanding the fact that it's partially owned by the Federal government. Again, as Pam (Moran) has said, this will be on the table in Washington.
ED Comment (N): (Pam Moran, ED) I think from the Federal standpoint, you need to also address the issue that those non-liquid assets were developed with Federal funds. So, then, the question that follows from that is should there be a distribution that recognizes that when that non-liquid asset secures revenue. And this, again, is the discussion item, at the neg-reg table of the treatment of non-liquid assets. . . . I don't know that we have a response but it's just another issue that's somewhat related to what we're talking about right now is whether or not, if there is, and, clearly, there's an identification in the statute that non-liquid assets that were developed using federal money… to the degree that they were developed with federal money … is a federal asset. And, now we're talking about revenue streams that are generated from those non-liquid

assets and we talked about what issues are there. Another question that will probably be discussed is whether, if there has been a purchase of a non-liquid asset with federal money and, that's clear to everyone, whether there's any capability of an agency buying out that federal asset and how that would be done, how that would be achieved at whatever point in time. That's another issue that's on the table for discussion that, if you have a non-liquid asset that clearly has a federal portion attached to it, whether or not there's a way to have the agency at some point, buy out that non-liquid asset so that they no longer have to be concerned about the federal portion or revenue streams that might have to be distributed depending upon how that discussion works out.

And, if you have any input that you can channel through to the NCHELP negotiators … also at the table is a representative from a coalition of the guaranty agency executive directors. So, there are basically two major representatives at the negotiation table that represent and are concerned with these issues. . . . a couple of other things that have been identified that'll be presented or, to some extent, have already been presented to the negotiators to look at: Federal advances obtained under 422(a) and (c) of the Act, there are some advances out there still and so, the Department's out looking at what might fall into the category of "other receipts as specified" and the Department's regulations have identified that one. Investment earnings on the Federal fund; that's sort of like a given but it doesn't hurt to mention it. All payments obtained with respect to a loan that the Secretary has (cd) or discharged under section 437, is it a cancellation…. And, I don't think that that is specified in the statute. There's mention of payment for default, bankruptcy, death, disability, "certain other claims," but then, you may've kept payments subsequently. So that's an issue. And, then the other thing: any funds received from a State for the Agency's guarantee activity including matching funds under Section 422(a) of the Act. We would think that those would belong in the Federal fund. But those are the only things that have come to mind as we try to work through this and flush out what might be included in the "other receipts as specified." . . . I don't know that the Department really knows at this point. Obviously, the Dear Colleague Letter came out after the statutory date where you would have established the Federal fund and your Operating fund. The statute specifically requires an agency to provide the Secretary with a repayment schedule and there is other information: the ability for an agency to repay that loan that they've taken or the borrowing or the transfer… however you want to describe it… that they've taken from their Federal fund and deposited in their agency Operating fund. So, this is explicit instructions… the Dear Colleague Letter addresses it as you would have to have done this with the Secretary before you moved the money. Obviously, that didn't happen. We realize that. I don't know and this would come into GLOS, how many agencies have put together their submissions related to their borrowing with the certifications that are specified in the letter, whether or not repayment schedules are being submitted to the Secretary to show that the agency is capable of repaying the amount that they have borrowed from the Federal fund. I don't know if any of you folks can address where you are in that process of putting that submission together.

Q (N): What about extremely short-term borrowing?
A (N): (Pam Moran, ED) That would be something that we should probably talk to GLOS about: whether if it's extremely short-term borrowing on an on-going basis for the period of time when these transfers are allowed, whether or not, for every time that you do that, you'd have to make this submission or not. It seems to me that you're under a submission requirement. But, I guess you'd want to talk to Larry Oxendine in GLOS to figure out whether every time you do this, even if it's just for a few days, do you have to make these submissions. I would think that you'd want to discuss what we'd want from you.

Q (N): I imagine that some of the agencies probably did some sort of borrowing before the Dear Colleague Letter went out and then probably paid it back before they even had a value. Do they have to go back and submit something then?
A (N): (Pam Moran, ED) Even prior to the Dear Colleague Letter, under the statutory provision you were required to submit to the Secretary a repayment schedule and show the ability to repay that amount. So, I would say, Yes, even if you did these transactions before the DCL was out, and didn't know the full listing of things that you needed to certify to or forced to submit that you'd be, now, even after the fact, required to make a submission if you've done a transfer. I can check with GLOS and talk to Larry on that but my reading of the Law would be that there would have to be some submission even if you concluded that transaction before you actually received the DCL.

Q (N): The DCL made a statement that if you're a State entity and you participate in the State's full investment fund, that that was okay even though that fund may have invested in other than securities?
A (N): That particular issue has been an item of citation for the past couple of years from our reviews. That guaranty agencies that are part of the State organization, the Treasurer of the State does have the power to invest those funds on behalf of all State agencies and many, many times, the Treasurer of that State is empowered to invest in derivatives, stocks, and other things which are clearly prohibited by the regulations. But, it has come up so frequently that the Secretary has looked at that as a "normal" means of doing business in State agencies and recognizes the fact that, notwithstanding that the Treasurer can invest in those securities, for the most part they do not invest in those securities and has recognized in DCL's that those arrangements are acceptable.

Q (N): What I'm not seeing on that list is claim adjudication and I know that's been a subject of discussion: whether claim adjudication expenses are part of the Federal reserve fund or included under payment of claims or an expense of the Operating fund.
A (N): (Pam Moran, ED) I would think, although, I have not been part of that discussion, but, I would think it is a collection activity. Right now, people are doing more AWG's, they're not litigating although I expect that to change. I know that Larry, in discussions at neg-reg and with the guaranty agencies has indicated that, given the incentives that are now in place for guaranty agencies with the new financing model, that there is probably a good reason to start looking at what's been in .410 for guaranty agency due diligence including the prohibition that's currently in the regs on not

litigating accounts. There may be every good reason and every incentive to the agency to start doing litigation. We did not have the concern that led us to regulate it, to prohibit litigation except with the approval of the Secretary. So, that is all under examination: what we'll do for guaranty agency due diligence that no longer probably needs to be prescriptive, that the prohibition, again, litigation is probably no longer wise or useful.

Q (N): We're all for using AWG, but there are some instances where we can't use it and we want to get every dollar we can. What I'm referring to is a claim adjudication process where people, you're talking about who is responsible for the cost of processing the claim, reviewing the lender due diligence history, and actually cutting the claim payment check. That's not coming from us but I've heard it over the last year. Isn't that really a Federal student loan reserve fund expense and I don't think it is but I know…?
A (N): (Pam Moran, ED) I don't recall anybody bringing this up during neg-reg either, focusing in on that particular aspect of guaranty agency responsibilities as being something attributable to the Federal fund.

Q (S): Regarding the loan processing and issuance fee, are refunds deducted after disbursement has been consummated? Fees are not paid on loans cancelled.
A (S): (Pat Newcombe, ED) Will check.

Q (S): Regarding the uses of the Operating Fund draft chart by George Harris: other student financial aid related activities selected by the GAs that "directly benefit students." Does it have to directly benefit students?
A (S): (Pat Newcombe, ED) This issue came up during negotiated rulemaking. There are several groups involved from the student community, legal perspective, etc. The student representative was extremely interested in making sure that there was some specificity that students would benefit. There's still public comment after the Notice for Proposed Rulemaking (NPRM). The final regulations might be different from the NPRM even if consensus has been reached. We just have a representative group trying to get balanced proposals. If you don't think something is a good idea, it is incumbent upon you to comment during the public comment period. The more input we have, the better the final rule in the long run.

Q (C): Can you deposit the 24% collection proceeds into the Federal Fund and withdraw proceeds plus interest when you take it out and deposit it into the Operating Fund?
A (C): If you deposit the collection proceeds into the federal fund you cannot take interest out. You must withdraw the collection proceeds as soon as possible.

Q (C): Where do collection proceeds get deposited?
A (C): To Be Determined, a Neg. Reg. discussion is looking at three ways: federal fund; operating fund; and, clearing account. Also, accrued interest in the operating fund is not a part of the federal fund. In 1998, collections generated 7 Million dollars and there is no view on deposit but a strong view on ownership of the funds.

Q (C): Can money be transferred from the federal fund to the operating fund?
A (C): No! We don't have regulations to permit transfers.

Q (C): Why doesn't the Department pay interest on late reinsurance payments, which is similar to 24% collection proceeds accruing interest?
A (C): Congress did not pass on it.

Q (D): If a GA borrows from the Federal fund, when do you have to pay it back?
A (D): Three years from the date the agency establishes the fund.

Q (D): Is the operating fund established no later than 12/6/98 on accrual or cash basis?
A (D): Cash basis.

RECALL OF RESERVES:

Q (S): When will GAs be notified of the required share for the recall?
A (S): There has been no discussion on the reserve recall yet.
Also negotiated rulemaking sessions are posted on the Web (ifap.ed.gov).
A (C): Because payback does not have to occur until 2002, this issue has not been dealt with to date. Will probably be addressed within the next year.

Q (C): What is the actual date that the 85 Million must be transferred to Treasury? How should this be handled?
A (C): The date is 2002. It can be direct pay.

Q (C): Are you going to use the 1996 level to calculate the amount of the recall? What is our portion of the reserve fund?
A (C): The NCHELP version of the HEA, dated January 1999, states 1996. GLOS (Larry Oxendine) believes it is 1998. However, Oxendine believes the Act needs to be consulted. A Dear Colleague Letter will address the procedure.

DEFAULT AVERSION FEE:

ED Comment (N): (Pam Moran, ED) The comment is that if you delayed the payment allowing the agency to go in and take the fees from the Federal fund by a 30 day period, you'd be up to day 300 of delinquency and then there'd be no question as to whether or not the agency has earned the fees. But, if we are going to, in the forbearance environment, extend the window by the period of the forbearance, then I don't think just waiting the 30 days deals with it. I can call back and see whether any of this was a topic of discussion yesterday and whether any tentative decisions were arrived at. There is no magic 120 days anymore. I think the window on the other end is also extended because I think that the earlier Law talked about claims being filed. Now, I think the Law refers to claims being paid. So, we're talking about a much more extended, I mean, not only do you have a revised definition of default that puts default way out there. We're going to have like zero defaults in the program. We'll have congratulatory press conferences… Anyway, we have this extended definition of default. We also have one huge default aversion process, like there is no pre-claims and supplemental pre-claims. There is still one reference to pre-claims that really needs to be cleaned up but, that aside, there's really only a default aversion period that's a huge block of time. And, I think another issue is whether or not we're going to have to address what needs to take place as part of the default aversion activity or we're going to take a historical perspective and let the agencies and, working with the lenders, define and decide what their default aversion activities… I think we'll probably take the historical view that the less regulation in that area, the better. But, we've got this huge extended period of time so it does raise an issue as to what do you do. And, even with the extended default definition, one of the topics in neg-reg is you've got an additional 90-day period and you know the way the due diligence for lenders is established now, what are we going to do with the extra 90-day period and are we going to regulate additional activities or leave it up to creative development of the lenders and agencies working together?

Q (N): I think the question also is do you see any time limit with a default aversion if you have gotten supplemental pre-claim assistance previously on that account. Is there any time period where you need to wait? (Related to the earlier SPA activity?)
A (N): (Pam Moran, ED) I don't know. I'll have to take that question back because that's not been asked nor has anybody brought it up at neg-reg, I don't believe, as to how you relate the old process to the new process. Clearly, the statute speaks to an 18-month period that has interposed before you would ever be able to figure an account in the new system for a second payment. But there is a question probably about how the old SPA relates to the new system relative to a subsequent claim. I would think that we may end up talking about there having to be the same 18-month period but I'm not sure. I don't know how you make that transition and I don't believe that that's been anything that anybody brought up but I'll take that back and we'll talk about it. There is a problem and people may be aware of this in statutory language related to a second or subsequent filing because at least it's the statute speaks to… clearly, to make a request, you have to have a borrower who is at least 60 days delinquent. But, the language related to a second request for a default aversion fee says 18 months must elapse and that a borrower be never more than 30 days delinquent so you can't do both things…

Q (N): Is this a technical correction?
A (N): (Pam Moran, ED) It's a technical correction that the Department would need to make before you could ever receive a second payment on the same account under the new program of default aversion. So, in the Department's view right now, there is no opportunity for second payments. But, how the old SPA system relates … you've already brought an account through the old system and received a payment …. How that relates to the new system, I can take that back. But, if people feel they need some guidance on it, we could probably get the question. I know that NCHELP has submitted, actually on behalf of multiple organizations which is I think the Student Loan Servicing Alliance, and the Consumer Bankers Association, Association Finance Counsel

particularly are putting together the questions and answers with proposed answers that we have not, at the Department, dealt with yet and I don't believe this is an issue that would pose as part of those Q's and A's but, if they are preparing initial ones, you might want to final that question through that process.

Q (C): Can you elaborate on the Default Aversion Fee? Why have they come up with the restrictions?
A (C): The claim must be 60 days delinquent. The guaranty agency receives a request to assist the lender. The claim is brought current and the claim is not filed until the 360th day. Then the guaranty agency qualifies for the Default Aversion Fee. Brought current in repayment means the borrower made all overdue payments of principal and interest.

Q (C): Are we creating an incentive for default with the current policy on default aversion fee?
A (C): From a policy standpoint the Department of Education wants to create the right incentive to cure defaults. Therefore, we are trying to structure the Default Aversion Fee so that the borrower does not default. Great Lakes Higher Education Corporation has proposed that if forbearance is used then the window is extended by the effective days of the forbearance. CEOs are discussing this topic today (3/10/99) in Dallas. Again, we want to create the right incentive to prevent defaults. We do not want to reward defaults created by the GA. Both GA and ED goals can be satisfied. The position on the street creates an incentive for defaults and negatively impacts the borrowers. NEG REG has all these issues on the table for resolution.

Q (C): Were there any studies made on whether the guaranty agencies have delayed defaults to collect Default Aversion Fees?
A (C): We know that agencies can influence delay of defaults for economic incentives. However the economic incentives have not been that great in the past. But in the future there is a 24% collection fee, 1% default aversion fee, and other fees that the guaranty agency can use to benefit. Therefore, the Department will be tracking increased revenues in two ways: recovery rate and increasing default aversion fee rate.

Q (C): What is the forbearance incentive to make money collecting loans and not file for the default aversion fee? We make more money on collecting loans than defaulting loans for fees.
A (C): It is true that some guaranty agencies do make money on collections, however, some lose money. Guaranty agencies are concerned about the economic bottom line, but the forbearance issue is separate. The distinction is whether the guaranty agency gets a Default Aversion Fee before or after the forbearance is applied to the borrower's account. The Department will be looking at the 24% retention rate and the cost of collections.

Q (C): Has anyone discussed allowing the guaranty agency to collect the Default Aversion Fee using a Forbearance, and then refunding the default aversion fee in the event of no subsequent payments?
A (C): This is one of the options being discussed in negotiated rule making. It is attractive on the face and it appears that this would accomplish our policy objective.

Q (D): Has there been any discussion on the ten day preclaims window being treated the same for default aversion requests? i.e. can the request be made 10 days before the 60^{th} day.
A (D): Under discussion.

VOLUNTARY FLEXIBLE AGREEMENTS:

Q (C): Can three agencies come together and submit a Voluntary Flexible Agreement?
A (C): No! In 1999 it has to be six individual agencies.

Q (D): Is the VFA agreement in addition to the GA standard agreement with the Secretary or is it a substitution?
A (D): It is a substitution. The standard is suspended while the GA is in the VFA. When the GA is no longer in the VFA the standard agreement suspension is lifted.

ACCOUNT MAINTENANCE FEE:

Q (N): An account maintenance fee will paid on open loans, active loans, all from the NSLDS database. What about the loans that are in an error file that you haven't resolved yet that are open but not on the system?
A (N): (Pam Eliadis, ED) There is some discussion and we are working on some way to account for errors that are not the fault of agencies, such as SSN conflict.

GA Comment (N): I'm just saying that we need some sort of leverage for those smaller lenders who ignore our request, and don't report the data. A small portion of the portfolio but these are Stafford loans and they should be reporting the information. So, maybe you don't pay 799's or we don't pay their claims or … that would really help.
A (N): (Pam Eliadis, ED) That's an issue. And, Larry had recommended that GAs submit to GLOS in headquarters a list of those lenders.
A (N): (Pam Moran, ED) I just think that it would be easier, perhaps even on the GLOS staff if the NSLDS workgroup coordinated submissions from all the agencies.

MISCELLANEOUS:

Q (S): Doesn't reauthorization only apply to FFEL? It doesn't apply to Federal Direct, right?
A (S): (Pat Newcombe, ED) Yes.

Q (D): How is a high risk borrower determined?
A (D): The Department has not defined this term and has no plans to do so. In their proposals, GAs can identify target population that they plan to assist.

Q (D): Many of the GAs have money due from the Department for ACA and other reasons. When can they expect to receive these funds?
A (D): It is being mailed out today or tomorrow.