Statement of Need and Reasonableness:

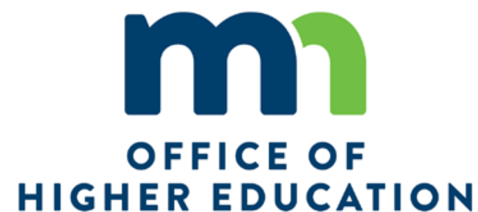
Rules Related to Higher Education Financial Assistance and Supplemental Student Loans

April 12, 2018

About the Minnesota Office of Higher Education

The Minnesota Office of Higher Education is a cabinet-level state agency providing students with financial aid programs and information to help them gain access to postsecondary education. The agency also serves as the state's clearinghouse for data, research and analysis on postsecondary enrollment, financial aid, finance and trends.

The Minnesota State Grant Program is the largest financial aid program administered by the Office of Higher Education, awarding up to $198 million in need-based grants to Minnesota residents attending accredited institutions in Minnesota. The agency oversees tuition reciprocity programs, a student loan program, Minnesota's 529 College Savings Plan, licensing and early college awareness programs for youth.



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Introduction

Proposed Amendment to Rules Related to Higher Education Financial Assistance and Supplemental Student Loans, Minnesota Rules, Chapters 4830 and 4850; Revisor's ID Number RD4425

The mission of the Minnesota Office of Higher Education (Office) is "To support the pursuit and completion of a higher education credential by every Minnesotan, regardless of race, gender, or socio-economic status, in order to enhance our democracy, the State's economic vitality, and individual quality of life." In support of the mission, the Office administers the Student Educational Loan Fund (SELF) program which is a source of financial aid helping students achieve financial access to postsecondary education. Supplemental student loan programs, including the SELF program, were authorized over 30 years ago during the 1983 Minnesota legislative session.

The SELF Loan is a long-term, low-interest student loan to Minnesota residents and non-residents attending participating SELF schools. Students are required to complete the Free Application for Federal Student Aid (FAFSA) before applying for the SELF Loan in order to ensure the student receives federal and state grant funds before taking on loan debt. As part of the student's overall financial aid package, the SELF Loan is intended to supplement other student loan options—particularly federal loans. The SELF Loan provides a low-cost option for students to finance their education. The interest rate is not based on a person's credit history, as is the case for many private student loans. This is an advantage to borrowers in that they know the interest rate before applying.

Minnesota Statutes 136A.1701, subdivision 10 prohibits the use of state money to fund student loans. As a result, it is imperative the SELF Loan program operate in a manner that allows students to benefit from the program while at the same time ensuring losses, especially those due to default, are minimized. The program needs to be self-sustaining with all expenses, including the cost of defaulted loans, covered by program earnings. Earnings are primarily interest paid by borrowers and cosigners.

The proposed rules are intended to:

- reduce default risks,
- align statute and rule language, and
- provide more flexibility to respond to the needs of borrowers and cosigners.

The Office did not use an advisory committee specifically created to review the proposed rules changes; however, the changes were reviewed with the Office's Student Advisory Council and the Financial Aid Advisory Committee.

The Student Advisory Council is authorized under *Minnesota Statutes* 136A. 031 and includes student representation from the University of Minnesota, Minnesota State Universities, Minnesota State Colleges, Minnesota Private Colleges and the Minnesota Career College Association. The Office informs

the Council of matters related to student issues under consideration and the Council makes recommendations to the Office.

The Financial Aid Advisory Committee is a group of Minnesota financial aid administrators working at various postsecondary institutions including the types of institutions listed above under the Student Advisory Council. The Committee receives updates from Office staff on implementing policy and statute changes and the Committee provides the Office feedback on issues relating to student financial aid.

The request for comment period on the proposed amended rules began on January 29, 2018 and will close on April 9, 2018. The Office will then prepare a notice to adopt the rules if no hearing is required.

Alternative Format

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Alexandra Djurovich at Minnesota Office of Higher Education, 1450 Energy Park Drive, Suite 350, St. Paul, MN 55108, phone at 651-259-3962, and fax at 651-642-0675.

Statutory Authority

The Office is authorized to operate supplemental loan programs and adopt rules per *Minnesota Statutes*, section 136A.16.

Regulatory Analysis

Affected Persons

"(1) a description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rules and classes that will benefit from the proposed rules"

The Office operates the SELF Loan program to benefit Minnesota residents attending participating Minnesota and out-of-state SELF schools or non-residents attending participating Minnesota schools. No direct costs for individual students or schools are associated with the proposed rules.

Individual Students

Proposed changes in the rules will be beneficial to some borrowers; particularly those who would benefit from longer forbearance periods if they are experiencing financial hardships and might default on their loan. Since the program is required to be financially self-sustaining, reducing program default rates keeps overall operating costs lower which in turn benefits students by keeping interest rates lower for borrowers.

Additional borrowers would benefit by remaining "in school status" if they subsequently transfer to a non-participating SELF loan school or enroll in a non-participating graduate school. These students would be able to hold off repaying their loans until they finish their education.

Individuals who may not benefit would be:

- Students unable to utilize the SELF Loan because they do not have a cosigner who meets the enhanced credit requirements to obtain a loan.
- Students currently attending a school no longer eligible to participate in the SELF program due to high institutional default rates. Some students would need to find other student loan sources to continue attending the ineligible school.
- Students planning to attend schools no longer eligible to participate in the SELF program due to high default rates. Students would need to find other funding sources to attend the ineligible school.

Individual Cosigners

The majority of SELF Loan cosigners are parents of students. Increasing the forbearance period benefits cosigner families experiencing financial hardships. Proposed changes in the rules will allow cosigners to apply for a longer forbearance period to repay the loan, thus helping to keep default rates low. Since the program is required to be financially self-sustaining, reducing program default rates keeps overall operating costs lower which in turn benefits cosigners by keeping interest rates lower.

Individuals who may not benefit would be those unable to utilize the SELF Loan because they could not find cosigners who meet the enhanced loan credit requirements.

Individual Schools

The proposed rules could impact individual schools with too many borrowers defaulting on SELF loans. High borrower default rates increase the institutional default rates and could lead to program termination. Termination could affect the decision of potential students to enroll in these schools and adversely affect the school's enrollment and financial sustainability.

Costs of Proposed Rules

"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

Enhancing credit requirements for the cosigner may result in lower default rates for the SELF program, which has a positive financial impact. The Office estimates there will be minimal costs associated with modifications the loan servicer will need to make to incorporate credit score requirements. There is no state funding for the loan program so there would be no impact on state revenues.

"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

Alternate proposed rules would likely not cost less or be less intrusive as there are minimal costs associated with the proposed rules and no work required of individuals or schools.

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

Since the proposed rules are primarily modification of existing rules, the rule making process appeared to be the appropriate method of making changes.

"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

The proposed rules do not require or request businesses or local government to take any action and the proposed rules do not place any regulatory burden expectations on local government or businesses. Schools may choose to invest resources to counsel students about student loan repayment obligations and the consequences of default. This counseling will not only help students with their own personal financial future but would benefit the school if the number of former students defaulting is low enough to prevent future termination of the school in the SELF Loan program.

"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"

The consequences of not adopting the rules would be the inability of the Office to promptly respond to market conditions which might cause higher student loan default rates; which could consequently cause higher institutional default rates. Providing the Office the ability to utilize credit scores to evaluate cosigner creditworthiness and/or terminating schools with high loan default rates from participating in the SELF program can help reduce SELF default rates. A terminated school is not beneficial to students as the student has less financial aid options available for them to pursue their education of choice. A terminated school may also experience financial consequences if fewer students decide to enroll if they cannot receive a SELF Loan. Higher SELF default rates increase the overall cost to operate the loan program and those increased costs are offset by higher interest rates to borrowers.

The consequences of not adopting the forbearance changes affects individual borrowers experiencing financial difficulties. Currently, borrowers have limited payment relief options available to them and may default on their loans. Defaulted SELF Loans negatively impact individual borrower and cosigner credit histories, making it more difficult to obtain future loans for automobile, home or other purchases. Defaulted SELF Loans may also negatively affect the ability of an individual to obtain certain types of jobs or rent property.

A consequence of not allowing borrowers to remain in the in-school status might be a financial hardship because repayment on the principal amount would start before they completed their postsecondary education if they transfer to a school not participating in the SELF program. A similar hardship may occur for borrowers pursuing a graduate degree if the school does not participate in the SELF program.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

There are no differences to evaluate between the proposed rules and existing federal regulations. The SELF Loan program is distinct to Minnesota and complies with applicable federal regulations.

"(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . '[C]umulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."

The Office is unable to determine if there are any incremental impacts on entities or individuals. Proposed changes in SELF rules combined with other federal or state regulations could influence owners of schools whether they want to continue to operate a school or participate in financial aid based on the cumulative requirements from all regulating entities. Businesses operating as for-profit educational entities may be impacted more than some private not-for-profit educational entities.

Performance-Based Rules

The Office made every effort to develop rules that were clear and practical, resulting in an efficient and effective process for operating the SELF Loan program. It is anticipated that the proposed rules relating to additional credit standards for cosigners, changes to forbearance guidelines and the ability to terminate schools with high institutional default rates will reduce the number of defaulted loans. Lower default rates will benefit all borrowers by keeping interest rates reasonable and offering a more affordable alternative educational loan option to students.

Additional Notice

The Office's Notice Plan includes notification required by statute along with additional notification the Office determined was necessary to broadly reach all potentially impacted and affected parties. The Office's Notice Plan included the following notice actions:

(1) reviewing this Additional Notice Plan with the Office of Administrative Hearings and approved in a January 10, 2018 letter by Administrative Law Judge Jeanne Cochran;

(2) emailing to the Office's general official rulemaking emailing list under *Minnesota Statutes*, section 14.14, subd.1a;

(3) posting draft rules and SONAR on the Office's rulemaking Web site and the SELF Web site

(4) notifying the Minnesota Legislature under *Minnesota Statutes*, section 14.116;

(5) mailing information to postsecondary institutions participating in the SELF program;

(6) including a notice on the loan servicer's Web site, Firstmark Services, for borrowers and cosigners to check the SELF Loan Web site for information on proposed rules changes;

(7) including a notice on billing statements of up to 100,000 current borrowers and cosigners to check the SELF Loan Web site for information on proposed rules changes; billing statements are scheduled to be sent within 45 days prior to end of comment period;

(8) emailing information to representatives of the Student Advisory Council; and

(9) emailing information to representatives of the Financial Aid Advisory Committee.

The Office will publish the "Notice of Intent to Adopt Rules" after the request for comment period ends on April 9, 2018 to the same interested or affected parties noted above.

Our Notice Plan does not include notifying the Commissioner of Agriculture because the proposed rules do not affect farming operations per *Minnesota Statutes*, section 14.111.

Consultation with Minnesota Management and Budget on Local Government Impact

As required by *Minnesota Statutes*, section 14.131, the Office will consult with Minnesota Management and Budget (MMB). We will send documents for review and approval to the Governor's Office with copies to MMB on the same day. We will do this prior to the Office publishing the Notice of Intent to Adopt. The documents will include the Governor's Office Proposed Rule and SONAR Form, the proposed rules and the SONAR. The Office will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearings at the hearing or with the documents it submits for Administrative Law Judge review.

Determination about Rules Requiring Local Implementation

As required by *Minnesota Statutes*, section 14.128, subdivision 1, the Office considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these proposed rules. The Office determined the proposed rules pertain to programs that do not impact local government; therefore, no action is required of local government.

Cost of Complying For Small Business or City

Agency Determination of Cost

As required by *Minnesota Statutes*, section 14.127, the Office considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or city. The Office determined that the cost of complying with the proposed rules is not anticipated to exceed $25,000 for any small business or city. The Office made this determination based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis section of this SONAR. The proposed rules do not require or request businesses or cities to take any action nor do the proposed rules place any regulatory burdens or expectations on cities or businesses.

Schools that are at risk of being terminated from the SELF Loan program can choose to invest resources to counsel students about student loan repayment obligations and the consequences of default.

List of Witnesses

If these proposed rules go to a public hearing, the Office anticipates having the following witness testify in support of the need for and reasonableness of the rules:

Marilyn Kosir, Student Loan Manager, Minnesota Office of Higher Education.

Rule-By-Rule Analysis

The following is an analysis of proposed rule amendments.

4830.0150 TERMINATION PROCEDURE.

Subp. 2. Notification.

The office shall send the institution written notification of the termination of the institution's eligibility to participate in a program. Termination shall be effective 90 days from the date of the written notification or after appeal proceedings are complete, whichever is later.

This change is not anticipated to have specific Supporters, Opponents or Controversies.

Need for rule and background information: After review of the current rules and *Minnesota Statutes* Chapter 14 there is a potential for conflict between rules and statute depending on the time frame for the administrative hearing process. The rules require the termination to be effective 90 days after the notice and also require the Commissioner to render a decision on the appeal after receipt of the written report from the Administrative Law Judge. The 90-day termination date may occur prior to receipt of the written report. The rules require the institution to wait 12 months after termination to request reinstatement.

Rulemaking authority or relevant statutes: Rules are in place for termination and this is a clarification of the rule to avoid conflict with statute.

4850.0011 DEFINITIONS.

Subp. 9. Creditworthy cosigner. "creditworthy cosigner" means one who, based on either information provided by a national credit bureau or information available to the office, has:

- *A. no account balances discharged through bankruptcy;*
- *B. no garnishments, attachments, foreclosure, repossession, or suit;*
- *C. no more than $300 combined total in unsatisfied credit or unsatisfied payment obligations including, but not limited to, charged-off loans, credit, medical, utility accounts, collection items, and tax or mechanics liens;*
- *D. no more than five percent of total credit bureau balances past due, unless the amount past due is $300 or less;*
- *E. no current delinquency on any loan payments to the office;*
- *F. no defaulted loan with the office which has not been paid in full in accordance with the requirements of the office; and*

G. *a required credit score, if established, under 4850.0013.*

Supporters: SELF borrowers and cosigners, liquidity providers, investors and others who recognize the Office's ability to utilize credit scores and require current borrowers to be in good standing on their prior loans reflects sound business practice. The proposed changes can reduce program losses and maintain a lower interest rate to borrowers due to:

- minimum credit score criteria can be implemented based on trends with the volume of defaulted loans, and
- the risk of additional financial loss related to a single individual is reduced by requiring existing loan payments to the Office to be current and payment in full of defaulted loans before obtaining new loans. This requirement is specified in rules for the borrower and the change will add the requirement for the cosigner.

Opponents: Individuals interested in borrowing from the SELF program who are unable to locate a qualifying cosigner due to the changes. Schools who tend to enroll a large proportion of students who may now not qualify for the SELF Loan based on the additional criteria.

Possible controversies: This may limit the ability of some students to benefit from the SELF program, especially students with low-incomes or students whose only available cosigners have limited credit histories.

Need for rule and background information: The SELF program currently does not utilize credit scores in the decision-making process and would like the flexibility to utilize scores if determined to be in the best interest of borrowers and cosigners and the financial strength of the program. The current criteria allows individuals who have minimal credit experience to be cosigners. An unpublished study by a University of Minnesota economist found that SELF Loans tied to cosigners with low credit scores default at higher rates. In addition, allowing people to cosign who do not have the ability to assist the student borrower in repaying the loan can be harmful to the borrower. The borrower may not be in a position to know and/or understand their cosigner has limited financial ability to help repay the loan if the borrower is unable to do so. The current rule language references credit worthiness based on the credit report. Credit report information regarding defaulted SELF Loans is removed by the credit bureau after seven years. Individuals who are not current on their payment obligations or have not paid in full their defaulted SELF Loans should not be permitted to cosign additional SELF Loans from the Office.

The proposed rules provides the Commissioner flexibility to establish and adjust eligibility criteria based on default trends, in response to current or projected market conditions, and the Office's ability to obtain financing for the loan program. If the Office chooses to use credit score criterion it would be disclosed on the SELF Loan Web site so consumers are aware of the requirements prior to applying for the loan. Any subsequent changes to the credit criteria would also be disclosed on the Web site.

Rulemaking authority or relevant statutes: Existing rules, *Minnesota Rules*, 4850.0011 Subp. 9, currently defines eligibility criteria for cosigners. This is an expansion of the current criteria.

Subp. 12. Delinquency. "Delinquency" means the condition that exists when a borrower's scheduled payment of principal or interest or both is not received by the commissioner or the office's agent by the due date.

This change is not anticipated to have specific Supporters, Opponents or Controversies.

Need for rule and background information: The current language defines delinquency based on payment being received after the due date. Delinquent payments may never be received and result in default. The rule change clarifies that delinquency is when a payment is not received by the due date.

Rulemaking authority or relevant statutes: This is a clarification of the existing rule defining delinquency.

Subp. 14. Eligible school. "Eligible school" means a school that meets the requirements for an eligible institution as defined in Minnesota Statutes, section 136A.155, subdivision 6; and either:

A. signs an institutional loan participation agreement with the commissioner that lists the duties and responsibilities of both the school and the commissioner; or

B. is designated by the office as a maintenance-only school. The office shall designate a school as a maintenance-only school if the school participates in the National Student Clearinghouse and the school is not certifying new SELF Loans. Maintenance-only schools allow eligible students, as reported by the Clearinghouse, to continue in the in-school period.

Supporters: Supporters include borrowers attending schools not wanting to sign a contract with the Office or schools terminated with regards to certification of new loans. The proposed rule would allow those borrowers to continue to be in an in-school status. There are no opponents or controversies anticipated.

Need for rule and background information: As a result of a statute change, the reference is changed from *Minnesota Statutes* 136A.15 to 136A.155. The second change allows borrowers to remain in the in-school status if the school they are attending does not want to sign a participation agreement. This change benefits borrowers who want to continue paying quarterly interest while they are attending a school choosing not to sign an agreement with the Office. Under the current rules if the school does not sign a participation agreement, the borrower's SELF Loans enter repayment status earlier. Schools participating in the National Student Clearinghouse who choose not to sign an agreement would be designated as maintenance only schools and could not issue new loans; however, the Office would be able to obtain information about the borrower's enrollment status. To enable the Office to obtain information about the student's enrollment status the school must participate in the National Student Clearinghouse.

Rulemaking authority or relevant statutes: This is a clarification to the existing rule defining eligible school and provides more flexibility for borrowers who enroll in non-participating schools.

Subp. 15. Eligible student. "Eligible student" means a student who:

A. *is enrolled in an eligible school in Minnesota, or is a Minnesota resident enrolled in an eligible school in another state, or United States territory as defined in Minnesota Statutes, section 136A.155;*

B. *is enrolled at least half time in a program leading to a certificate, associate, baccalaureate, masters, doctorate, or other professional degree;*

C. *is making satisfactory academic progress as defined in Minnesota Statutes, section 136A.101, subdivision 10.*

This change is not anticipated to have specific Supporters, Opponents or Controversies.

Need for rule and background information: This rule change updates the reference in statute to the eligible school definition in *Minnesota Statutes* 136A.155 and reflects the statute change to no longer include provinces. The rule change will make the requirements for the SELF program the same as for other Minnesota financial aid programs administered by the Office related to satisfactory academic progress. There are only 11 schools located in Minnesota participating in the SELF program not participating in the federal Pell Grant program. These schools were grandfathered into SELF participation when the statute was changed in 2010 requiring SELF Loan participating schools to also participate in the federal Pell Grant program. Schools not participating in the federal program can still abide by the satisfactory progress requirements under *Minnesota Statutes* 136A.101 which refers to sections in the *Code of Federal Regulations*, title 34, sections 668.16(e), 668.32(f), 668.34 and 668.231.

Rulemaking authority or relevant statutes: This updates the existing rules defining eligible student.

Subp. 24. Late charge. "Late charge" means a charge, not to exceed $20, that is assessed against borrowers each time a payment of principal and/or interest is not paid to the commissioner within 15 days after the due date.

This change is not anticipated to have specific Supporters, Opponents or Controversies.

Need for rule and background information: The current language refers to a late fee being assessed when a payment is received more than 15 days after the due date. A late fee is assessed when a payment is not made on time, not when a payment is received. The rule change clarifies the appropriate point in time to assess late fees.

Rulemaking authority or relevant statutes: This is a clarification of the existing rule defining late charge.

Subp.26a. Office. "Office" means the Minnesota Office of Higher Education or its predecessors or successors.

This change is not anticipated to have specific Supporters, Opponents or Controversies.

Need for rule and background information: The Office has had various names over the years. The rule change clarifies that the definition of the Office includes names for the Office other than the current name.

Rulemaking authority or relevant statutes: This is a clarification of the existing rule defining the Office.

4850.0012 SCHOOL AGREEMENTS AND STUDENT APPLICATIONS.

Subpart 1. Institutional loan participation agreement. For an eligible school to certify new SELF Loans, the eligible school and the commissioner must sign a loan participation agreement that will:

A. *state the eligible school's responsibility for proper certification and delivery of loans to students; and*

B. *name a representative of the eligible school who is to be responsible for the administration of the agreement.*

Subp. 2. Termination. The commissioner may terminate the agreement for participation in the SELF program with an eligible school upon determining:

A. *the school is not complying with parts 4850.0010 to 4850.0024 or*

B. *loans originated at the school that go into default exceed the guidelines established in the SELF Loan Operations Manual.*

Termination can also occur in accordance with the terms of the Institutional Loan Participation Agreement. All obligations of the school under the agreement shall continue in full force and effect with respect to all SELF loans then outstanding to students of the school. The termination of an agreement with a school shall be made pursuant to parts 4830.0140 and 4830.0150.

Supporters: Those individuals and entities who want to ensure schools with default problems can be terminated from the SELF program in order to minimize financial loss to the program. Included are current and future SELF borrowers and cosigners who benefit from the SELF program, liquidity providers, investors and schools whose students benefit from the SELF program.

Opponents: Schools with default problems and students attending those institutions.

Possible controversies: Termination of schools may result in a reduction in the number of low-income populations able to attend schools no longer eligible for SELF Loans. Termination of participation could impact schools that are heavily reliant on SELF Loans to fund their business operations.

Need for rule and background information: The current rules do not allow the Office to terminate schools with high default rates. Defaulted loans have a direct impact on the financial condition of the SELF program and the cost of defaulted loans are borne by all SELF participants. Specific guidelines would be adopted and periodically evaluated to determine if the guidelines reflect appropriate safeguards for the SELF Loan program. Allowing the Office to establish and modify guidelines enables the Office to be more responsive to changes in the economy affecting overall default rates. Schools have the option to discontinue participation if they do not want to abide by program requirements.

Rulemaking authority or relevant statutes: Rules are in place for termination and this is an expansion of those rules.

4850.0013 CREDIT SCORE.

The commissioner may establish credit score requirements if the financial strength of the loan program, or the office's ability to obtain cost-effective financing options, has been affected or is anticipated to be affected by factors including current or projected market conditions, loan defaults, bond rating agency requirements, and credit-scoring definitions. The commissioner must review and adjust the credit score requirements at least every 12 months using current and projected market conditions. The required credit scores must be available to prospective borrowers on the Web site.

Supporters: SELF borrowers and cosigners, liquidity providers, investors and others who recognize the Office's ability to utilize credit scores reflects sound business practice which can reduce program losses and maintain a lower interest rate to borrowers.

Opponents: Individuals interested in borrowing from the SELF program who are unable to locate a qualifying cosigner due to the changes. Schools who tend to enroll a large proportion of students who may not qualify for the SELF Loan based on the additional criteria.

Possible controversies: This may result in a reduction in the number of low-income populations who qualify for the SELF Loan.

Need for rule and background information: The SELF Loan program currently does not utilize credit scores in the decision-making process and would like the flexibility to utilize scores if determined to be in the best interest of the borrowers and cosigners and the financial strength of the program. The current underwriting criteria allows people who have minimal credit experience to be cosigners. An unpublished study by a University of Minnesota economist found that SELF Loans tied to cosigners with low credit scores default at higher rates. In addition, allowing people to cosign who do not have the ability to assist the borrower in repaying the loan can be harmful to the borrower. The borrower may not be in a position to know and/or understand that their cosigner has limited financial ability to help repay the loan if the borrower is unable to do so.

The proposed rules provides the Commissioner flexibility to establish and adjust eligibility criteria based on default trends, in response to current or projected market conditions and the Office's ability to obtain financing for the loan program. If the Office chooses to use credit score criterion it would be disclosed on the SELF Loan Web site so consumers are aware of the requirements prior to applying for the loan. Any subsequent changes to the credit criteria would also be disclosed on the Web site.

Rulemaking authority or relevant statutes: This is an expansion of current criteria in rules defining eligibility criteria for cosigners.

4850.0017 REPAYMENT PROCEDURES.

Borrowers or cosigners shall make payments of principal and interest according to the following schedule:

F. The commissioner shall grant forbearances in those instances when the borrower is unable to make payments and has not exhausted the permitted number of occurrences. Such a forbearance shall be granted upon receipt of a written request from the borrower and the cosigner. The commissioner shall grant exceptions for obtaining signatures from both the borrower and the cosigner in certain situations, such as when there is no current contact information for one of the parties or there are adversarial relationships between the parties. The commissioner shall set policies for the length of permitted forbearances and the maximum number of occurrences in a given loan repayment period. In setting policies the commissioner shall take into consideration the financial strength of the loan program, the impact of policy changes on the office's ability to obtain cost-effective financing options, current or projected market conditions, loan defaults and bond rating agency requirements.

Supporters: Those individuals who would like the Office to have flexibility in determining the length of forbearances and the ability to waive the signature requirements in situations where the signature of both parties cannot be obtained.

Opponents and controversies: None are anticipated.

Need for rule and background information: The current forbearance rules do not allow the Office the flexibility to deal with individual situations related to the inability to obtain signatures from both parties on the request form. This occurs when the borrower and cosigner are no longer communicating with each other and the Office does not have current contact information for one of the parties. It may also occur when there are adversarial relationships involving restraining orders and communication among parties regarding forbearances is not advisable.

When the rules were originally adopted, loan limits were significantly smaller and loan repayment periods were much shorter. With the increased loan borrowing limits, it may take the borrower longer than four months to return to a paying position after experiencing a hardship. The change in language allows the Office to establish internal policies to set the length of forbearances and the maximum number of occurrences. A loan repayment term of 20 years may have the need for more forbearance options than a 10-year repayment term.

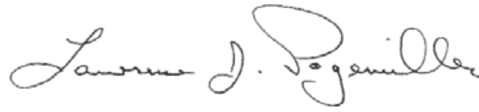
Other student loan lenders offer forbearances in shorter increments such as a month. It would be beneficial for borrowers to have the ability to utilize one-month forbearances rather than the current situation where forbearances are in four-month increments. Forbearance policies are of interest and concern to our bond partners and bond rating agencies because the policies impact the dollar amount of borrower payments that are put into the bond trust accounts.

The Office’s ability to obtain cost-effective financing includes an evaluation by bond partners and rating agencies of how the forbearance policies affect the cash flow of a bond deal.

Rulemaking authority or relevant statutes: Rules are in place for forbearance and this is a modification of those rules.

Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.



May 3, 2018

Date

Lawrence J. Pogemiller

Commissioner