

To: Sharon Mar
OMB Desk Office

From: Jeff Baker
Director, Policy Liaison and Implementation
Federal Student Aid
U.S. Department of Education

Subject: Request for emergency clearance of the collection (1845-NEW1) associated with the interim final regulations implementing a limitation on borrower eligibility for Direct Subsidized Loans equal to 150 percent of the published length of the borrower's program of study (RIN 1840-AD11) required under the Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141)

Date: March 22, 2013

On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act (MAP-21) into law. MAP-21 included a limitation on borrower eligibility for Direct Subsidized Loans for borrowers in the William D. Ford Federal Direct Loan (Direct Loan) Program. Specifically, a new borrower on or after July 1, 2013 is no longer eligible to receive Direct Subsidized Loans if the period during which the borrower has received such loans exceeds 150 percent of the published length of the borrower's educational program. Additionally, the borrower becomes responsible for accruing interest on any Direct Subsidized Loan made to the borrower on or after July 1, 2013 if he or she is enrolled after reaching this 150 percent limit.

Section 100302(b) of MAP-21 waives the negotiated rulemaking requirements in section 492 of the HEA (as well as the master calendar requirements in section 482 of the HEA) for regulations to implement the 150 percent limit on subsidized loan eligibility in the Direct Loan Program. Consequently, the negotiated rulemaking requirements in section 492 of the HEA do not apply to the interim final regulations and we will not subject them to negotiated rulemaking.

For the reasons outlined in the Department's justification to OMB for the waiver of the Administrative Procedure Act's requirements for notice-and-comment rulemaking, which was transmitted to OMB on February 22, 2013, the Department requests that OMB allow the Department to clear the collection associated with the interim final regulations using the emergency clearance procedures of the Paperwork Reduction Act of 1995, outlined in 42 U.S.C. 3507(j).

In addition to developing and issuing the interim final regulations, there are a number of other steps necessary for the Department to implement the changes to the Direct Loan Program for July 1, 2013, which make normal clearance of the collection impracticable. For example, we must alter the Department's financial aid systems to comply with the HEA.

Under current financial aid systems, schools would be unable to accurately monitor a borrower's eligibility for Direct Subsidized Loans under the 150 percent limit because the determination of maximum and remaining subsidized loan eligibility requires information about a borrower's attendance and receipt of Direct Subsidized Loans at all schools, which may not be available to the school the borrower is attending. Therefore, the Department must make the necessary system changes to the National Student Loan Data System (NSLDS), the Common Origination and Disbursement (COD) System, and the Central Procession System (CPS) to collect additional information, monitor borrower eligibility, alert borrowers and schools that a borrower is about to reach or has reached the 150 percent limit on eligibility for Direct Subsidized Loans, and ensure that no Direct Subsidized Loans are made to an ineligible borrower. Making such changes in a timely manner requires that the Department have the authority to collect the additional information as of the date the interim final regulations are published in the *Federal Register*. Doing otherwise would delay the effective date of the regulations and the Department's ability to comply with the requirements of MAP-21.

In order to make changes to its systems, the Department must rely on collections that have been cleared. Because collections that have been cleared under the emergency procedures are cleared immediately (even if temporarily), the Department would not be required to further delay these necessary changes. If the Department were required to put the collection through the normal clearance process, the Department could not begin implementing such changes until after the collection was cleared. We would be forced to delay the operational changes 2014.

Please let me know if you have questions related to this emergency clearance request. I may be reached at (202) 377-4009 or by email at jeff.baker@ed.gov, or you may contact Ian Foss of my staff at (202) 377-3681 or by email at ian.foss@ed.gov.