



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

OCT 19 2005

GEN-05-15

Subject: Child or Family Service Loan Cancellation Benefit in the Federal Perkins Loan Program

Summary: This letter re-affirms and clarifies long-standing policy regarding the eligibility requirements that apply to the child or family service loan cancellation benefit provided in the Federal Perkins Loan Program.

Dear Colleague:

In response to a recent decision by the United States Court of Appeals for the Second Circuit in de le Mota v. U.S. Department of Education, 412 F.3d 71 (2d Cir., 2005), the Department of Education (Department) is re-affirming and clarifying its long-standing policy regarding the eligibility requirements that apply to the child or family service loan cancellation benefit provided in the Federal Perkins Loan Program under §465(a)(2)(I) of the Higher Education Act of 1965, as amended (HEA) and 34 C.F.R. §674.56(b).

A Perkins Loan borrower may qualify for a child or family service cancellation for service "as a full-time employee of a public or private non-profit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children," §465(a)(2)(I) of the HEA; 34 C.F.R. §674.56(b). Based on the language of the statute, regulations, and legislative history of the statutory provision, the Department has consistently interpreted §465(a)(2)(I) of the HEA to require that an employee of a child or family service agency must provide services directly and exclusively to the high-risk children from low-income communities in order to qualify for the loan cancellation. The Department's interpretation gives effect to all parts of the statutory provision by requiring that the borrower must be providing services full-time to high-risk children from low-income communities in order to qualify for the cancellation.

Moreover, in explaining the intent of the child and family service loan cancellation provision, Congress stated that the provision was intended to "apply to employees working in Head Start programs, child care and child development programs, and programs providing health, mental health and psychological services, as well as social services to this population," H.R. REP. NO. 102-447, at 66 (1992), 1992 U.S.C.C.A.N. 334, 399. The Department believes that this statement indicates that Congress intended the cancellation to apply only to those borrowers who worked directly with high-risk children. In contrast, nothing in the legislative history of the HEA suggests that Congress

intends the child or family service cancellation to apply to everyone who works for an agency which provides child or family services.

The Department's interpretation is consistent with the history of the program and the limited appropriations for cancellation reimbursement provided to participating institutions in the Perkins Loan Program. Congress has authorized nine separate loan cancellations for Perkins Loan borrowers based on the borrower's employment. Each of these cancellations authorizes loan cancellation for a limited group of borrowers providing a specific type of public service. A broad interpretation that would permit loan cancellation for borrowers based only on their employment with a child or family service agency and not taking into account their specific responsibilities would be inconsistent with the other tailored loan cancellations that are offered.

The Department provides guidance to schools and borrowers through the Federal Student Aid Handbook and by responding to individual inquiries. The Department has consistently informed schools and borrowers that a non-supervisory employee of a child or family service agency must be providing services directly and exclusively to high-risk children from low-income communities to qualify for a child or family service cancellation. The employee may also provide services to adult family members of the children for whom services are provided, but the services provided to adults must be secondary to the services provided to the high-risk children.

The Department has received hundreds of inquiries regarding the eligibility for a child or family service cancellation for specific borrowers since the inception of this cancellation provision. These cancellation requests are reviewed on a case-by-case basis. The determination of eligibility is based on the nature of the employing agency, the type of work performed by the borrower, and the population served by the borrower. Many borrowers in eligible positions have been approved for child or family service cancellations. The types of positions held by borrowers that have been found to meet the qualifications of the statute include: a counselor in a residential treatment center for youth; a client technician in a shelter for runaways and other high-risk children; and a counselor at a program that provides services to children who are victims of domestic violence. These borrowers were determined to be providing the types of services to the types of children that Congress intended to support with the loan cancellation provision.

Defining "Directly"

The child or family service cancellation is not available to all employees of a child or family service agency. In enacting the child or family service cancellation provision, Congress included a very narrow cancellation provision to provide incentives for borrowers to work in a specific field – providing services to children who are both high-risk and from low-income communities. The Department has determined that, given this Congressional objective, "providing services" with regard to non-supervisory personnel is intended to include only those individuals who provide services directly to children.

Congress' stated intention in enacting the child or family service cancellation provision is to provide cancellation benefits to child or family service agency employees who provide social services, or work in childcare or child development programs, or provide health, mental health, or psychological services. Individuals in these types of positions work directly with children. Nothing in the legislative history of the HEA suggests that Congress intended the child or family service cancellation to apply to everyone who works for an agency which provides child or family services. Thus, while some employees of a child or family service agency may provide services that indirectly benefit high-risk children from low-income communities, Congress did not intend such employees to qualify for child or family service cancellations.

The statutory language in §465(a)(2)(I) of the HEA includes numerous limitations on the group qualified for the loan cancellation – it is only for “full-time employees” of “public or private nonprofit child or family service” agencies who provide services to high-risk children from low-income communities and their families. Congress stipulated one exception to the “provide services” requirement, by authorizing loan cancellation for borrowers who supervise the provision of services to qualified children. Congress did not similarly mention non-supervisory employees of child and family service agencies who support employees providing services to qualified children but who do not directly provide such services. Had Congress intended such employees to qualify for child or family service cancellations, the Congress would have provided for this in the statute.

While the Department has consistently interpreted the statute to require a non-supervisory employee to provide services directly to high-risk, low-income children, the Department recognizes that others may benefit from the services the borrower provides. The family of the child, the community in which the child resides, the child or family service agency itself all may benefit from the borrower's services. A borrower is not disqualified from receiving a child or family service cancellation if other parties indirectly benefit from the borrower's services, as long as the borrower's services are provided directly to qualified children and their families.

Defining “Exclusively”

Congress not only limited the child or family service cancellation to certain types of employees at child or family service agencies. It also limited the cancellation to individuals who provide services to a specific population: high-risk children from low-income communities. “High-risk children” are defined as “Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system,” 34 C.F.R. §674.51(h). The term “low-income communities” is defined as “Communities in which there is a high concentration of children eligible to be counted under Title I of the Elementary and Secondary Education Act of 1965, as amended,” 34 C.F.R. §674.51(k).

Based on the statutory language and legislative history, Congress intended the child or family service cancellation to apply to borrowers who provide services only to high-risk

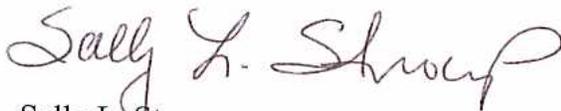
children who are from low-income communities or their families. The Department believes that providing services to individuals who are not high-risk children from low-income communities or the family members of such children is not consistent with Congress' intent and therefore does not qualify the Perkins borrower for the cancellation.

Opening up the child or family service cancellation to borrowers who do not satisfy the strict requirements for this benefit would diminish the Perkins Loan funds maintained by the institutions. Congress provides only limited appropriations for the Department to use to reimburse institutions for cancellations. As a result, the Department does not fully reimburse institutions for such cancellations. Thus, the use of funds to pay for loan cancellations means that less money is available to make new loans to needy students.

Schools (or servicers acting on their behalf) make the determination of eligibility for Perkins Loan cancellations. In doing so, schools must make these determinations in accordance with the statute and regulations governing the Perkins Loan Program and with the interpretations of those statutes and regulations by the Department. As part of the process for reviewing child or family service cancellation requests, schools must determine whether the borrower provides services directly and exclusively to high-risk children from low-income communities.

Should you have any questions concerning the guidance provided in this letter, please contact Pamela Moran at (202) 502-7732 or Brian Smith at (202) 502-7551.

Sincerely,



Sally L. Stroup
Assistant Secretary
Office of Postsecondary Education