

Action Item

California Student Aid Commission

Consideration of approval to implement rulemaking to repeal
Title 5, California Code of Regulations, section 30904

The California Lenders for Education (CLFE) requested that the Loan Advisory Council (LAC) consider repealing 5 CCR §30904 (Tab 6.a). At the March 13, 2007 Loan Advisory Council teleconference meeting, Commission staff recommended that LAC consider either amending 5 CCR §30904 to eliminate the 60-day requirement for appeal or repealing it completely. Ultimately, LAC recommended that the Commission take action to repeal 5 CCR §30904.

Education Code Section 69763, 5 CCR §30904 was enacted in 1992 and allows the Commission to administratively cancel a guaranteed loan that is in non-disbursement status on the Commission's database for more than 150 days. (Tab 6.b) When 5 CCR §30904 was initially enacted, not only were lenders and servicers burdened by manually intensive paper manifesting processes, but the Commission was also adjusting to systematic and reconciliation issues with lenders and the United States Department of Education (USED).

Lenders and servicers have since expressed concerns that 5 CCR §30904 resembles no other regulation in the United States. As noted in CLFE's March 2007 Position Paper, the 60-day reinstatement period for loan guarantees may prove insufficient time for lenders/servicers to become aware of the potential for administrative cancellation. (Tab 6.a) Improvements in manifest disbursement processes have rendered this statutory requirement obsolete. Commission and EDFUND staffs agree with LAC that this regulation should be repealed.

The Department of Finance (DOF) must approve a form describing the fiscal effects of the repeal before the rulemaking process may proceed.

Recommended Action: Authorize staff to take the necessary steps to repeal 5 CCR §30904.

Responsible Person: Ed Emerson
Chief, Federal Policy & Programs Division



March 2007

Position Paper – Transmittal of Manifest and Fees, and Cancellation of Non-Disbursed Loan Guarantees by the Commission

The California Lenders for Education is urging the complete repeal of **Section 30904 of the California Code of Regulations, Title 5, Division 4, Chapter 1, Article 16 – Lender Transmittal of Manifest and Fees, and Cancellation of Non-Disbursed Loan Guarantees by the Commission**. *This provision of state law effectively administratively cancels a loan guarantee that is in non-disbursed status on the Commission's database for more than 150 days.* Technology and streamlined processes with demonstrated strong controls have rendered this state statutory requirement obsolete. However, the provision remains on the books and is occasionally harmful to student borrowers.

Background

This state law was enacted in March 1992 as an administrative response and penalty to loan providers who failed to manifest disbursements to CSAC in a timely manner. At the time of enactment, virtually all lenders and servicers were encumbered by having to report disbursements to CSAC via a manually intensive paper manifesting process. In addition, CSAC had its own set of systematic and reconciliation issues, both with the US Department of Education and lenders/servicers. CSAC/EdFund does allow a reinstatement period of 60 days from the date the loan is cancelled. However, due to loan sales and transfers, the 60 day reinstatement process is often not sufficient time for the recipient lender/servicer to become aware of the cancellation or of the potential for administrative cancellation on the respective loan. As a result, reinstatement may not be requested by the lender/servicer within the 60 day timeframe in all circumstances.

Vast Improvements

Disbursement and other reporting to CSAC/EdFund has been fully automated by lenders and servicers since that time, effectively eliminating the administrative cancellations processed by CSAC/EdFund. CSAC's own improved guaranty system integrity along with systematic, technological, and procedural controls in place at lender/servicers and the US Department of Education have rendered the administrative cancellation process obsolete. Nevertheless, there remain isolated occasions whereby loans are administratively cancelled, primarily due to transfers of loans between originating lenders and their servicers, and the subsequent reporting distribution between CSAC/EdFund and the lender or servicer. These infrequent situations affect neither the integrity of the loan guarantee nor that of the FFEL Program and its loan providers.

In addition, when a loan is administratively cancelled on these disbursed transferred loans, the Commission’s guarantee is immediately and permanently revoked on that loan and more importantly, student borrowers lose all federal benefits available to them, including interest subsidies on Subsidized Stafford loans, the ability to include the loan as part of a Consolidation loan, and any deferment eligibility under any loans within the FFEL program. Finally, borrowers may lose any lender sponsored borrower benefits - such as interest rate reductions for on-time payments because that loan is no longer insured.

Competition

As the FFELP is a federal program, other guarantors cancel guarantees only for reasons within the confines of the *federal* FFELP rules and regulations and the Common Manual (typically in the claim review process) – not for reasons that are codified in state law. And, of those loans in which the guarantee is inadvertently cancelled, other guarantors reinstate loans without restriction, but most frequently during the Default Aversion Assistance Request (DAAR) and Claims process. The following table is a summary of responses to a recent NCHELP survey with respect to cancellation of loan guarantees:

Question: “Do Guaranty Agencies cancel loan guarantees (allowing for reinstatement) if the loan is not disbursed after a certain point in time? If so, what is the time limit before canceling the loan?”

Number of Respondents	13
Cancellation of Lender Disbursed Loans	0
Cancellation of Guarantor Disbursed Loans*	5
Cancels 120 days after end of Loan Period	3
Cancels 12 days after disbursement date	2
Reinstates Guarantor Cancellations with no restrictions	5

*Of the guarantors that do cancel guarantees, their cancellation process is reflective of their responsibility as a disbursing agent for lenders in complying with Federal Regulations.

In Summary, the administrative cancellation provision is obsolete and should be repealed due to the following reasons:

- Improved technology and better reporting and controls are in place since the administrative cancellation process was implemented in 1992;
- The current administrative cancellation process is harmful to borrowers by losing their federal benefits as well as any lender borrower benefits;
- CSAC/EdFund is the only guarantor that permanently cancels guarantees on lender disbursed loans with restrictions on the reinstatement period.

The California Lenders for Education is urging the complete repeal of the administrative cancellation provision.

PROPOSED TEXT TO BE ELIMINATED

Education Code 69763, 5 CCR §30904. Transmittal of Manifest and Fees, and Cancellation of Non-Disbursed Loan Guarantees by the Commission.

Lenders shall submit to the California Student Aid Commission, or its designee, a manifest of loan transactions (i.e. disbursements, cancellations and any other transactions) within 45 calendar days of the date a loan transaction occurs or the lender learns of the transaction. Insurance premium fees shall be submitted to the Commission along with the manifest for all loans recorded as disbursements on the manifest or shall be submitted to the Commission within 30 calendar days of the date an insurance premium fee billing is sent to the lender. A loan which remains in a guaranteed, but non-disbursed status on the Commission's data base for more than 150 calendar days after the anticipated disbursement date shall have its guarantee canceled by the Commission. If such a loan had actually been disbursed, the lender may request reinstatement of the guarantee by providing the Commission with a written request for reinstatement including an explanation of the reason for the loan's non-disbursed status, a manifest and the appropriate insurance premium fee. This request shall be postmarked or received within 60 days of the date of the cancellation notification.

Authority cited: Section 69763, Education Code. Reference: Section 428(b)(1)(H), Higher Education Act of 1965, as amended.