Comments & Suggested Legislative Language for THE PROSPER ACT OF 2017

By Mary Lyn Hammer for Her Areas of Expertise
President and CEO of Champion College Services
March 26, 2018

''SEC. 465. DISBURSEMENT OF STUDENT LOANS, LOAN LIMITS, INTEREST RATES, AND LOAN FEES.

***** page 287 MU**

(a) REQUIREMENTS FOR DISBURSEMENT OF STUDENT LOANS—

''(3) EXCLUSION OF CONSOLIDATION AND FOREIGN STUDY LOANS.—The provisions of this subsection shall not apply in the case of a Federal ONE Consolidation Loan, or a loan made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if each of the educational programs of such home eligible institution has a loan repayment rate (as calculated under section 481B(c)) for the most recent fiscal year for which data are available of greater than 70 percent.

MLH Comment:
This section is about loan disbursements. Consolidation loans are not made in disbursements, they are composed of student loans that are already disbursed and then refinanced into a consolidation loan; therefore, this subsection is irrelevant because does not apply to consolidation loans.

Legislative Suggestion:
''(3) EXCLUSION OF ~~CONSOLIDATION AND~~ FOREIGN STUDY LOANS.—The provisions of this subsection shall not apply in the case of a ~~Federal ONE Consolidation Loan, or a~~ loan made to a student to cover the cost of attendance in a program of study abroad approved by the home eligible institution if each of the educational programs of such home eligible institution has a loan repayment rate (as calculated under section 481B(c)) for the most recent fiscal year for which data are available of greater than 70 percent.

***** page 292-293 MU**

TECHNICAL CORRECTION -- Sec. 465 (b)(2)(A)(v)

''(v) COURSEWORK FOR GRADUATE OR PROFESSIONAL ENROLLMENT OR TEACHER EMPLOYMENT.—With respect to the enrollment of a student who has obtained a baccalaureate degree in coursework specified in section 484(b)(3)(B) necessary for enrollment in a graduate or professional degree or certificate program, or coursework specified in section 484(b)(4)(B) necessary for a professional credential or certification from a State required for employment as a teacher in an elementary or secondary school, in the case of a student (without regard to whether the student is a dependent student or **independent** student), $12,500.

***** page 296-298 MU**

Sec. 465 (b)(2)(D)

(D) INSTITUTION DETERMINED LIMITS.—

‘‘(i) IN GENERAL.—Notwithstanding any other provision of this subsection, an eligible institution (at the discretion of a financial aid administrator at the institution) may prorate or limit the amount of a loan any student enrolled in a program of study at that institution may borrow under this part for an academic year—

> ‘‘(I) if the institution, using the most recently available data from the Bureau of Labor Statistics for the average starting salary in the region in which the institution is located for typical occupations pursued by graduates of such program, can reasonably demonstrate that student debt levels are or would be excessive for such program;
>
> ‘‘(II) in a case in which the student is enrolled on a less than full-time basis or the student is enrolled for less than the period of enrollment to which the annual loan limit applies under this subsection, based on the student’s enrollment status;
>
> ‘‘(III) based on the credential level (such as a degree, certificate, or other recognized educational credential) that the student would attain upon completion of such program; or
>
> ‘‘(IV) based on the year of the program for which the student is seeking such loan.

‘‘(ii) APPLICATION TO ALL STUDENTS.—Any proration or limiting of loan amounts under clause (i) shall be applied in the same manner to all students enrolled in the institution or program of study.

‘‘(iii) INCREASES FOR INDIVIDUAL STUDENTS.—Upon the request of a student whose loan amount for an academic year has been prorated or limited under clause (i), an eligible institution (at the discretion of the financial aid administrator at the institution) may increase such loan amount to an amount not exceeding the annual loan amount applicable to such student under this subparagraph for such academic year if such student demonstrates special circumstances or exceptional need.

ML Comment:

We strongly suggest that the institutions serving a substantial number of at-risk students be given authority to disburse excess funds in equal weekly or monthly amounts during the loan period. Because at-risk students typically have little to no experience in budgeting large amounts of money, they tend to overspend, over borrow and drop out of school if they have no way to pay their living expenses. Frequently dispersing smaller amounts of the loan helps students budget their living expense money and gain real-life budgeting knowledge. The institution’s graduation rates could subsequently increase.

Legislative Suggestion:

“(iv) LIMITS FOR EXCESS FUNDS INTENDED FOR LIVING EXPENSES—An institution can determine that excess funds intended for living expenses can be disbursed to the students in equal amounts, prorated monthly or weekly, during the loan period.

***** page 303 MU**

Sec. 465 (d)

"(d) PROHIBITION ON CERTAIN REPAYMENT INCENTIVES.—Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive or subsidy not otherwise authorized under this part to encourage on-time repayment of a loan under this part, including any reduction in the interest paid by a borrower of such a loan, except that the Secretary may provide for an interest rate reduction of not more than 0.25 percentage points for a borrower who agrees to have payments on such a loan automatically debited from a bank account.

MLH Comment:
While we understand that the intent of this section is to limit the Secretary's authority for defining repayment incentives, we strongly suggest that the final HEA bill defines additional repayment incentives that will encourage outcomes and good repayment behaviors that benefit students and serve the federal fiscal interest.

Traditionally, people respond favorably to rewards. We are strong advocates for repayment incentives or subsidies that encourage on-time repayment which consistently result in positive behaviors to the benefit of borrowers, institutions and taxpayers.

We are providing one example for an interest payment subsidy while students are in school for your consideration.

Consider the COST SAVINGS for taxpayers when an interest payment subsidy is given during enrollment:

- Betty Borrower is given incentives for making on-time payment of her accruing interest during her at-least-half-time enrollment in college.
- Betty makes the on-time payments each month to receive the interest payment incentives, thereby building good credit, maintaining her original loan balance, and minimizing the total interest that she pays on her student loans.
- When Betty graduates, her loan payment also includes the principal payment but like any amortization schedule, the principal amount in the payment is smaller in the beginning of an amortization schedule. Because this is standard in a loan repayment schedule, her loan payments are not that much higher than what she was paying while she was in school. This makes it easy for Betty to continue the good habit of paying her monthly student loan payment on-time.
- Betty has learned to be responsible with her student loan by making regular on-time payments so she does not become delinquent on her student loan. She continues to pay her student loans as required which **minimizes the cost of collecting her loan**. Because Betty paid her loan, **there is no costly loan forgiveness payment involved**.

Consider the TREMENDOUS COSTS associated when interest subsidies are NOT given during periods of at-least-half-time enrollment:

- Peter Procrastinator sees no real reason to pay his interest while he is in school. Why do today what you can put off to tomorrow, right? So, Peter doesn't pay a single penny in accruing interest.
- At the end of his 2-year program, Peter's accrued and unpaid interest is as high as the original principal balance of his loan. He is in shock because he doesn't fully understand how this could happen so quickly. Peter doesn't have that kind of money – if he did, he wouldn't have had to borrow the student loans in the first place. Feeling defeated, he agrees to let the accrued and unpaid interest be capitalized (added to the principal balance of his student loans.)
- Peter is already discouraged about his ability to make on-time payments on his student loans. The payments are twice as high as he was told in his student loan entrance interview when he enrolled in school. He knows it was his choice to not make interest payments but he feels that he was misled in some way. Yes, he was told this would happen but he just didn't fully understand the consequences.
- Peter looks at the standard repayment option and the income-driven repayment (IDR) option. Because the standard repayment option now has payments twice as high as he was expecting, he chooses the IDR option. This makes his loan payment more affordable but puts him into a negative amortization (the payment is lower than the interest accruing on the loan.) Peter knows that this means even more interest will be capitalized on his loans. He also knows that this is a 20-year repayment program instead of a 10-year repayment program so there will be a lot more interest charged. All of a sudden, Peter is angry – the wonderful student loan program has now become a financial burden that his BIGGER than he ever imagined and will take LONGER than he ever wanted to pay off. He looks at is as a financial burden that will last his entire adult life and is angry that he is leaving college discouraged and burdened instead of excited and motivated to begin his new adventures in the job he's been dreaming of for years. Peter's situation is one that affects millions of Americans while at the same time paralyzing their ability to purchase homes, cars, products and services. And the mental and emotional cost is the highest price that our children are paying for graduating from college with such tremendous financial burdens. The economic impact of student loan debt is not scored by the CBO and the hefty COST to taxpayers of collection fees being paid for 20-25 years instead of 10 years adds up quickly.
- Peter is also likely to have a balance at the end of his IDR repayment period. Under current terms and conditions, this balance is "forgiven" at 20-25 years and paid by taxpayers (HUGE COST not scored by the CBO because the scoring only includes 10 years of projected costs) and in many models the amount forgiven is LARGER THAN the original principal balance of the loan.
- Additionally, Peter will receive a Form 1099 for the amount forgiven and will on which he will owe all applicable taxes – if Peter couldn't make sufficient payments for the loan to be paid-in-full in 20-25 years, he will likely not be able to make a single "balloon"

payment for this tax burden to the IRS and this will be financially devastating to Peter and his family.

The suggested incentive for interest reduction would inclusive of the incentive provided for a borrower who agrees to have payments on such a loan automatically debited from a bank account because automated payments do not insure money will be in the account when it is debited. The newly defined incentive is directly tied to the on-time payment that is actually made.

Suggested Legislative Language for Sec. 465 (d):
''(d) PROHIBITION ON CERTAIN REPAYMENT INCENTIVES.—Notwithstanding any other provision of this part, the Secretary is prohibited from authorizing or providing any repayment incentive or subsidy not otherwise authorized under this part to encourage on-time repayment of a loan under this part, including any reduction in the interest paid by a borrower of such a loan, except that the Secretary may provide for the following:

(1) AUTOMATED DEBIT PAYMENTS.—An interest rate reduction of not more than 0.25 percentage points for a borrower who agrees to have payments on such a loan automatically debited from a bank account.
(2) ON TIME PAYMENTS.—An interest rate reduction of not more than half of the percentage points charged not to exceed 4.125 percentage points each month for a borrower who makes monthly payments on time to be inclusive of the automated debit payments defined in (1) of this subsection.
(3) ON TIME COMPLETION.—A reduction in the amount owed by a borrower up to 10 percent of the original loan balance before any interest was capitalized, if applicable, when a borrower completes a program on time.

***** pages 306-307 MU**

''SEC. 466. REPAYMENT.

''(a) REPAYMENT PERIOD; COMMENCEMENT OF REPAYMENT.—
''(1) REPAYMENT PERIOD.—
''(A) IN GENERAL.—In the case of a Federal ONE Loan—
''(i) subject to clause (ii), the repayment period shall—
''(I) exclude any period of authorized deferment under section 469A; and
''(II) begin the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); and

MLH suggested clearer language: "begin 6 months plus one day after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); and"

''(ii) interest shall begin to accrue or be paid by the borrower on the day the loan is disbursed.

MLH suggested language to be consistent with that provided for Consolidated and Parent ONE Loans as follows:

''(ii) begin—

''(I) on the day the loan is disbursed; or

''(II) if the loan is disbursed in multiple installments, on the day of the last such disbursement.

''(B) CONSOLIDATION AND PARENT LOANS.—In the case of a Federal ONE Consolidation Loan or a Federal ONE Parent Loan, the repayment period shall—

''(i) exclude any period of authorized deferment; and

''(ii) begin—

''(I) on the day the loan is disbursed; or

''(II) if the loan is disbursed in multiple installments, on the day of the last such disbursement.

MLH Comment: If this benefit is extended to parent and consolidation borrowers, it should be extended to student borrowers as well. Eliminating interest subsidies for student borrowers will increase student loan debt exponentially, will increase both cohort default rates, and will lower repayment rates. ANY period of relief for accruing interest will help reduce the financial burden for students and the unintended adverse consequences to borrowers, institutions and taxpayers.

***** pages 308-309 MU**

''(2) PAYMENT OF PRINCIPAL AND INTEREST.—

''(A) COMMENCEMENT OF REPAYMENT.—Repayment of principal on loans made under this part shall begin at the beginning of the repayment period described in paragraph (1).

''(B) CAPITALIZATION OF INTEREST.—

''(i) IN GENERAL.—Interest on loans made under this part for which payments of principal are not required during the 6-month period described in paragraph (1)(A)(i)(II) or for which payments are deferred under section 469A shall—

''(I) be paid monthly or quarterly; or

''(II) be added to the principal amount of the loan only—

''(aa) when the loan enters repayment;

''(bb) at the expiration of a the 6-month period described in paragraph (1)(A)(i)(II);

''(cc) at the expiration of a period of deferment, unless otherwise exempted; or

''(dd) when the borrower defaults.

''(ii) MAXIMUM AGGREGATE LIMIT.—Interest capitalized shall not be deemed to exceed the amount equal to the maximum aggregate limit of the loan under section 465(b).

MLH Comment: Capitalized interest can quickly raise a loan amount to an unaffordable level and cause unintended consequences for borrowers, institutions and taxpayers. Student loans are already a growing and unmanageable burden for many Americans that hinders economic

growth that will affect many generations. Capping the maximum aggregate limit at the original loan amount would be a safer, more reasonable approach and would keep the debt burden closer in alignment with the cost of education for the borrower's career.

Suggested language: ''(ii) MAXIMUM AGGREGATE LIMIT.—Interest capitalized shall not be deemed to exceed the amount equal to the original loan amount, excluding fees and interest, as determined in the borrower's master promissory note.

''(C) NOTICE.—**Not less than 60 days, and again not less than 30 days, prior to the anticipated commencement of the repayment period for a Federal ONE Loan, the Secretary shall provide notice to the borrower—**

''(i) that interest will accrue before repayment begins;

''(ii) that interest will be added to the principal amount of the loan in the cases described in subparagraph (B)(i)(II); and

''(iii) of the borrower's option to begin loan repayment prior to such repayment period.

ML Comment: For most students, interest can accrue up to several years and the cost of accrued and unpaid interest is high. Since interest now starts accruing when the loan is disbursed, the notice of such should also be made at the beginning of this process in addition to the end of the process.

Suggested Language:

''(C) NOTICE.—The Secretary shall provide notice to the borrower for a Federal ONE Loan—

"(i) Not more than 30 days, and again not more than 60 days, after the date the interest starts accruing on a loan, and

"(ii) Not less than 60 days, and again not less than 30 days, prior to the anticipated commencement of the repayment period, and

''(iii) Such notices shall include:

"(I) that interest will accrue before repayment begins;

''(II) that interest will be added to the principal amount of the loan in the cases described in subparagraph (B)(i)(II); and

''(III) of the borrower's option to begin loan repayment prior to such repayment period.

***** pages 309-311 & 317 MU**

''(b) REPAYMENT AMOUNT.—

***

''(2) AMORTIZATION.—

''(A) INTEREST RATE.—The amount of the periodic payment and the repayment schedule for a loan made under this part shall be established by assuming an interest rate equal to the applicable rate of interest at the time of the first disbursement of the loan.

‘‘(B) ADJUSTMENT TO REPAYMENT AMOUNT.—The note or other written evidence of a loan under this part shall require that the amount of the periodic payment will be adjusted annually in order to reflect adjustments in—

‘‘(i) interest rates occurring as a consequence of variable rate loans under parts B or D paid in conjunction with Federal ONE Loans under subsection (d)(1)(B)(i); or

‘‘(ii) principal occurring as a consequence of interest capitalization under subsection (a)(2)(B).

‘‘(c) REPAYMENT PLANS.—

‘‘(1) DESIGN AND SELECTION.—Not more than 6 months prior to the date on which a borrower’s first payment on a loan made under this part is due, the Secretary shall offer the borrower two plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower’s loans under this part. The borrower may choose—

‘‘(A) a standard repayment plan with a fixed monthly repayment amount paid over a fixed period of time, **not to exceed 10 years**; or

***

‘‘(G) if the borrower no longer wishes to continue the election under this subsection, then—

‘‘(i) the maximum monthly payment required to be paid for all loans made to the borrower under this part (other than a Federal ONE Parent Loan or an Excepted Federal ONE Consolidation Loan) shall not exceed the monthly amount calculated under subsection (c)(1)(A), **based on a 10-year repayment period**, when the borrower first made the election described in this subsection; and

MLH Comment: With elimination of interest subsidies and the high likelihood of capitalized interest, loan balances will be higher than traditionally seen—anticipated as much as two to three times higher. With this in mind, an extended standard repayment schedule with fixed payments will be a great option for borrowers with easy-to-budget payments and also serves the federal fiscal interest because the administrative burdens are greatly diminished which reduces costs and error risks.

Suggested language:

‘‘(A) a standard repayment plan with a fixed monthly repayment amount paid over a fixed period of time, not to exceed 30 years; or

***

‘‘(i) the maximum monthly payment required to be paid for all loans made to the borrower under this part (other than a Federal ONE Parent Loan or an Excepted Federal ONE Consolidation Loan) shall not exceed the monthly amount calculated under subsection (c)(1)(A), based on a repayment period of up to 30 years, when the borrower first made the election described in this subsection; and

‘‘(B) an income-based repayment plan under subsection (d).

MLH Comment: For consistency, we suggest using only one term – either “income-based” or “income-driven” to make it easier for borrowers to understand. We believe that the term “income-driven” will be more consistent with borrower education materials and terminology used with student loan borrowers and should be consistently used throughout the legislation and regulatory language. **This includes more than this section of the law.**

‘‘(2) SELECTION BY SECRETARY.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary shall provide the borrower with the repayment plan described in paragraph (1)(A).

*****pages 350-352 MU**

MLH Comment:
Currently, the positive repayment category of deferments and forbearances include the following:

- At-least-half-time enrollment in an eligible institution
- Participating in an eligible graduate fellowship program
- Participating in an eligible rehabilitation training program
- Serving active duty or performing a qualifying National Guard duty during a war or military operation or national emergency and for the 180period following the demobilization date of such service
- Is a member of the National Guard duty and is not eligible for a post-active duty deferment under section 493D and is engaged in active State duty for a period of more than 30 consecutive days beginning six months plus one day after the student ceases to be enrolled at-least-half-time or full-time or the day after the borrower ceases to be enrolled at-least-half-time or full-time for a loan in repayment (grace period already used)
- Serving in a medical or dental internship or residency program offered by an institution, a hospital or healthcare facility that offers post-graduate training, that is required to begin professional practice or service or that is required for a degree or certificate
- Is eligible for interest payments to be made on a loan made under this part for service in the Armed Forces under section 2174 of title 10, USC and pursuant to that eligibility, and pursuant to that eligibility, the interest is being paid on such loan under section 465(f)

Administrative and natural disaster forbearances should be considered positive repayment because the status has no correlation to the school’s performance. We are not sure if the addition of language for this would be appropriate in this section or in 481B(c)(3), or both. (See suggested legislative language herein below for pages 384-387)

Suggested Language:
Add new Sec. 469A(b)(1)(H)
"(H) is approved for an administrative forbearance or natural disaster forbearance due to circumstances beyond the borrower's control.

***** pages 384-396 MU**

''SEC. 481B. PROGRAMMATIC LOAN REPAYMENT RATES.

''(a) INELIGIBILITY OF AN EDUCATIONAL PROGRAM BASED ON LOW REPAYMENT RATES.—

''(1) IN GENERAL.—With respect to fiscal year 2016 and each succeeding fiscal year, an educational program at an institution of higher education whose loan repayment rate is less than **45 percent** for each of the 3 most recent fiscal years for which data are available shall not be considered an eligible program for the fiscal year in which the determination is made and for the 2 succeeding fiscal years, unless, not later than 30 days after receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of such program's eligibility to the Secretary.

ML Comment:
In considering a baseline for repayment rates, care must be taken to develop realistic expectations that will prevent unintended consequences of eliminating education programs that are important to the U.S. workforce and economy and that also attract a larger number of at-risk students than other, more traditional programs. Many programs have lower starting earnings, for example in entry-level healthcare jobs, but they provide for stable and long-term employment especially for at-risk populations like predominantly females who are also low-income single parents.

There are also variables in the economy that affect repayment rates and are totally unrelated to the quality of education. Programs should not be unfairly measured when a bad economy is affecting the outcome of the measurements.

Additionally, the elimination of interest subsidies will have a negative impact on a student's ability to repay student loans because the increased loan amount is significant for most students. For example, a student in a 4-year program who doesn't pay the accruing interest during the in-school deferment period will have approximately the equivalent of 25% of the original loan balance in accrued and unpaid interest that will be capitalized when the repayment period begins. This change is based on the federal fiscal budget and not based on improving or maintaining the quality of education for our students; therefore, a lower base for repayment rates is appropriate. We suggest a calculation using 40% as a base repayment rate with a variation for rates based on applicable unemployment rates.

From 1997 to 2017, the average unemployment rate is 6%. If we use this to calculate a variation from the 40% base repayment rate, a fair and equitable repayment rate can be achieved. The variation is calculated by taking the applicable unemployment rate and

subtracting the average unemployment rate for the year of calculation from 6%. This variation is added to or subtracted from 40% to get the repayment rate used for that year.

A chart based on the Bureau of Labor Statistics data is attached to this document. You will see in this chart that during the great recession between 2009 and 2014, the repayment rates were under 40%. As the economy has recovered, it has been above 40%.

The following example explains the calculation:

In 2017, the average unemployment rate was 4.4%. When you subtract this from 6%, you get 1.6%. When this is added to the base of 40%, the applicable repayment rate for data calculated in 2017 is 41.6%. This is a fair and equitable calculation.

Repayment Rate Threshold for 2017 Determination of FY 2015 Data	
Repayment Rate Base Rate:	40%
Repayment Rate Variable:	1.6% or (6% - 4.4%)
Applicable Repayment Rate:	41.6%

Suggested Language:

''(1) IN GENERAL.—With respect to fiscal year 2016 and each succeeding fiscal year, an educational program at an institution of higher education whose loan repayment rate is less than the applicable repayment rate threshold as defined in this subsection for each of the 3 most recent fiscal years for which data are available shall not be considered an eligible program for the fiscal year in which the determination is made and for the 2 succeeding fiscal years, unless, not later than 30 days after receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of such program's eligibility to the Secretary.

"(2) REPAYMENT RATE THRESHOLD.—For purposes of this section, the term 'repayment rate threshold', when used with respect to a repayment rate, is calculated—

"(A) using a base repayment rate of 40%;

"(B) using a repayment rate variable of 6% minus the average of the calculation year's monthly unemployment rates as published by the Bureau of Labor Statistics; and

"(C) is calculated by adding together the base repayment rate of 40% with the repayment rate variable.

''(2) APPEAL.—The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit a program to be considered an eligible program, if—

''(A) the institution demonstrates to the satisfaction of the Secretary that—

''(i) the Secretary's calculation of such program's loan repayment rate is not accurate; and

''(ii) recalculation would increase such program's loan repayment rate for any of the 3 fiscal years equal to or greater than **45 percent**; or

Suggested language:
''(ii) recalculation would increase such program's loan repayment rate for any of the 3 fiscal years equal to or greater than the repayment rate threshold; or

''(B) the program is not subject to paragraph (1) by reason of paragraph (3).
''(3) PARTICIPATION RATE INDEX.—
''(A) IN GENERAL.—An institution that demonstrates to the Secretary that a program's participation rate index is equal to or less than 0.11 for any of the 3 most recent fiscal years for which data is available shall not be subject to paragraph (1).
''(B) INDEX CALCULATION.—The participation rate index for a program shall be determined by multiplying—
''(i) the amount of the difference between—
''(I) 1.0; and
''(II) the quotient that results by dividing—
''(aa) the program's loan repayment rate for a fiscal year, or the weighted average loan repayment rate for a fiscal year, by
''(bb) 100; and
''(ii) the quotient that results by dividing—
''(I) the percentage of the program's regular students, enrolled on at least a half-time basis, who received a covered loan for a 12-month period ending during the 6 months immediately preceding the fiscal year for which the program's loan repayment rate or the weighted average loan repayment rate is determined, by
''(II) 100.
''(C) DATA.—An institution shall provide the Secretary with sufficient data to determine the program's participation rate index not later than **30 days** after receiving an initial notification of the program's draft loan repayment rate under subsection (d)(4)(C).

MLH Comment: As determined consistently in CDR appeals, 30 days is not a sufficient amount of time; therefore, this should be changed to **45 days**.

''(D) NOTIFICATION.—Prior to publication of a final loan repayment rate under subsection (d)(4)(A) for a program at an institution that provides the data described in subparagraph (C), the Secretary shall notify the institution of the institution's compliance or noncompliance with subparagraph (A).

''(b) REPAYMENT IMPROVEMENT AND ASSESSMENT OF ELIGIBILITY BASED ON LOW LOAN REPAYMENT RATES.—
''(1) FIRST YEAR.—
''(A) IN GENERAL.—An institution with a program whose loan repayment rate is less than **45 percent** for any fiscal year shall establish a repayment improvement task force to prepare a plan to—

Suggested language:

‘‘(A) IN GENERAL.—An institution with a program whose loan repayment rate is less than the repayment rate threshold for any fiscal year shall establish a repayment improvement task force to prepare a plan to—

> ‘‘(i) identify the factors causing such program’s loan repayment rate to fall below such percent;
> ‘‘(ii) establish measurable objectives and the steps to be taken to improve the program’s loan repayment rate; and
> ‘‘(iii) specify actions that the institution can take to improve student loan repayment, including appropriate counseling regarding loan repayment options.

MLH Comment:

This section is written mirroring the same language used for cohort default rates (CDR). With that, repayment rates will inherit the same technical issues with implementation and plans for improvement. When a CDR is published, the first subsequent year is already over and there is only one year left for the second subsequent year; therefore, by the time a plan is written and approved, there will be no effect on the following two subsequent years. A longer period of time is needed to write the plan, get the plan approved, implement the plan, and have time to measure and document the measureable objectives defined in the approved plan. This should apply to the first approved plan for low repayment rates as well as for the approved revised plan.

Suggested language:

“(iv) be given two full fiscal years after the Secretary approves the plan to implement the plan and document the effectiveness of the measureable objectives.

> ‘‘(B) TECHNICAL ASSISTANCE.—Each institution subject to this paragraph shall submit the plan under subparagraph (A) to the Secretary, who shall review the plan and offer technical assistance to the institution to promote improved student loan repayment.

‘‘(2) SECOND **CONSECUTIVE** YEAR.—

Suggested language:

“(2) LOW REPAYMENT RATE TWO FULL FISCAL YEARS AFTER FIRST PLAN IS APPROVED.—

> ‘‘(A) IN GENERAL.—An institution with a program whose loan repayment rate is less than **45 percent for two consecutive fiscal years**, shall—

Suggested language:

‘‘(A) IN GENERAL.—An institution with a program whose loan repayment rate is less than the repayment rate threshold two full fiscal years after the Secretary approves the first plan, shall—

> ‘‘(i) require the institution’s repayment improvement task force established under paragraph (1) to review and revise the plan required under such paragraph; and

‘‘(ii) submit such revised plan to the Secretary.

Suggested language:

“(iii) be given two full fiscal years after the Secretary approves the plan to implement the plan and document the effectiveness of the measureable objectives.

“(iv) shall release the institution from the plan mandates once the institution has two consecutive repayment rates above the applicable thresholds.

‘‘(B) REVIEW BY THE SECRETARY.—The Secretary—

‘‘(i) shall review each revised plan submitted in accordance with this paragraph; and

‘‘(ii) may direct that such plan be amended to include actions, with measurable objectives, that the Secretary determines, based on available data and analyses of student loan repayment and non-repayment, will promote student loan repayment.

Suggested language:

“(iii) shall give the remainder of the fiscal year in which the revised plan was approved plus two full fiscal years for the institution to and effectively document the results of the measureable objectives in the plan.

“(iv) shall release the institution from the plan mandates once the institution has two consecutive repayment rates above the applicable thresholds.

‘‘(c) PROGRAMMATIC LOAN REPAYMENT RATE DEFINED.—

‘‘(1) IN GENERAL.—Except as provided in subsection (d), for purposes of this section, the term ‘loan repayment rate’ means, when used with respect to an educational program at an institution—

‘‘(A) with respect to any fiscal year in which 30 or more current and former students in such program enter repayment on a covered loan received for attendance in such program, the percentage of such current and former students—

‘‘(i) who enter repayment in such fiscal year on a covered loan received for attendance in such program; and

‘‘(ii) who are in a positive repayment status on each such covered loan at the end of the second fiscal year following the fiscal year in which such students entered repayment on such loan; and

‘‘(B) with respect to any fiscal year in which fewer than 30 of the current and former students in such program enter repayment on a covered loan received for attendance in such program, the percentage of such current and former students—

‘‘(i) who, in any of the three most recent fiscal years, entered repayment on a covered loan received for attendance in such program; and

‘‘(ii) who are in a positive repayment status on each such covered loan at the end of the second fiscal year following the fiscal year in which such students entered repayment on such loan.

MLH Comment:
The U.S. House Health, Education and the Workforce Committee staff has clarified that the intent of this section was to mirror the three year average rates consistent with how low borrower cohort default rates have been calculated. The following suggested language addresses the corrections needed to be consistent with the intent.

Suggested language:
''(i) who entered repayment in the current fiscal year and two consecutive prior fiscal years on a covered loan received for attendance in such program; and

> ''(2) GUARANTY AGENCY REQUIREMENTS.—The Secretary shall require that each guaranty agency that has insured loans for current or former students of the institution afford such institution a reasonable opportunity (as specified by the Secretary) to review and correct errors in the information required to be provided to the Secretary by the guaranty agency for the purposes of calculating a loan repayment rate for programs at such institution, prior to the calculation of such rate.
> ''(3) POSITIVE REPAYMENT STATUS.—For purposes of this section, the term 'positive repayment status', when used with respect to a borrower of a covered loan, means—
>
> > ''(A) the borrower has entered repayment on such loan, and such loan is less than 90 days delinquent;
> > ''(B) the loan is paid in full (but not through consolidation); or
> > ''(C) with respect to a covered loan that is a Federal ONE Loan, the loan is in a deferment described in 469A(b)(1), and with respect to a covered loan made, insured, or guaranteed under part B or made under part D, the loan is in a deferment or forbearance that is comparable to a deferment described in 469A(b)(1).

MLH Comment:
Currently, the positive repayment category of deferments and forbearances include the following:

- At-least-half-time enrollment in an eligible institution
- Participating in an eligible graduate fellowship program
- Participating in an eligible rehabilitation training program
- Serving active duty or performing a qualifying National Guard duty during a war or military operation or national emergency and for the 180period following the demobilization date of such service
- Is a member of the National Guard duty and is not eligible for a post-active duty deferment under section 493D and is engaged in active State duty for a period of more than 30 consecutive days beginning six months plus one day after the student ceases to be enrolled at-least-half-time or full-time or the day after the borrower ceases to be enrolled at-least-half-time or full-time for a loan in repayment (grace period already used)
- Serving in a medical or dental internship or residency program offered by an institution, a hospital or healthcare facility that offers post-graduate training, that is required to begin professional practice or service or that is required for a degree or certificate

- Is eligible for interest payments to be made on a loan made under this part for service in the Armed Forces under section 2174 of title 10, USC and pursuant to that eligibility, and pursuant to that eligibility, the interest is being paid on such loan under section 465(f)

Administrative and natural disaster forbearances should be considered positive repayment because the status has no correlation to the school's performance. We are not sure if the addition of language for this would be appropriate in this section or in 469A(b)(1), or both. (See suggested legislative language for pages 350-352 herein)

Suggested Language:
Add new Sec. 481B(c)(3)(D)
"(D) the loan is approved for an administrative forbearance or natural disaster forbearance due to circumstances beyond the borrower's control.

''(4) COVERED LOAN.—For purposes of this section—

''(A) the term 'covered loan' means—

''(i) a loan made, insured, or guaranteed under section 428 or 428H;
''(ii) a Federal Direct Stafford Loan;
''(iii) a Federal Direct Unsubsidized Stafford Loan;
''(iv) a Federal Direct PLUS Loan issued to a graduate or professional student;
''(v) a Federal ONE Loan; or
''(vi) the portion of a loan made under section 428C, a Federal Direct Consolidation Loan, or a Federal ONE Consolidation Loan that is used to repay any loan described in clauses (i) through (v); and

''(B) the term 'covered loan' does not include a loan described in subparagraph (A) that has been discharged under section 437(a).

''(d) SPECIAL RULES.—

''(1) IN GENERAL.—In the case of a student who has attended and borrowed at more than one institution of higher education or for more than one educational program at an institution, the student (and such student's subsequent positive repayment status on a covered loan, if applicable)) shall be attributed to each institution of higher education and educational program for attendance at which the student received a loan that entered repayment for the fiscal year for which the loan repayment rate is being calculated.
''(2) DELINQUENT.—A loan on which a payment is made by an institution of higher education, such **institutions's** owner, agent, contractor, employee, or any other entity or individual affiliated with such institution, in order to prevent the borrower from being more than 90 days delinquent on the loan, shall be considered more than 90 days delinquent for purposes of this subsection.

Technical correction: institutions'

''(3) REGULATIONS TO PREVENT EVASIONS.—The Secretary shall prescribe regulations designed to prevent an institution of higher education from evading the application of a loan repayment rate determination under this section to an educational program at such institution through—

‘‘(A) the use of such measures as branching, consolidation, change of ownership or control, or any similar device; or
‘‘(B) creating a new educational program that is substantially similar to a program determined to be ineligible under subsection (a).
‘‘(4) COLLECTION AND REPORTING OF LOAN REPAYMENT RATES.—
‘‘(A) IN GENERAL.—The Secretary shall publish not less often than once every fiscal year a report showing final loan repayment data for each program at each institution of higher education for which a loan repayment rate is calculated under this section.
‘‘(B) PUBLICATION.—The Secretary shall publish the report described in subparagraph (A) by September 30 of each year.
‘‘(C) DRAFTS.—
‘‘(i) IN GENERAL.—The Secretary shall provide institutions with draft loan repayment rates for each educational program at the institution at least 6 months prior to the release of the final rates under subparagraph (A).
‘‘(ii) CHALLENGE OF DRAFT RATES.—An institution may challenge a program’s draft loan repayment rate provided under clause (i) for any fiscal year by demonstrating to the satisfaction of the Secretary that such draft loan repayment rate is not accurate.
‘‘(e) TRANSITION PERIOD.—
‘‘(1) DURING THE TRANSITION PERIOD.—During the transition period, the cohort default rate for each institution of higher education shall be calculated under section 435(m)(1) for each fiscal year for which such rate has not yet been calculated and any requirements with respect to such rates shall continue to apply, except that the loans with respect to which such cohort default rate shall be calculated shall be the covered loans defined in subsection (c)(4).
‘‘(2) AFTER THE TRANSITION PERIOD.—After the transition period, no new cohort default rates shall be calculated for an institution of higher education and any requirements with respect to such rates shall cease to apply.
‘‘(3) DEFINITIONS.—For purposes of this subsection—
‘‘(A) the term ‘cohort default rate’ has the meaning given the term in section 435(m); and
‘‘(B) the term ‘transition period’ means the period—
‘‘(i) beginning on the date of enactment of the PROSPER Act; and
‘‘(ii) ending on the date on which the Secretary has published under subsection (d)(4)(A) the final loan repayment rate for each program at each institution of higher education with respect to each of **fiscal years 2016, 2017, and 2018.**’’.

MLH Comments:

The proposed period of three (3) years to transition from cohort default rates (CDRs) to repayment rates is concerning for a these primary reasons:

1. Data has not been provided to determine the impact of this definition on programs and schools.
2. Similar language for rates over the threshold as has been used for CDRs for schools to develop plans to bring their rates into compliance; however, there is strong evidence that shows the measurement period for affecting rates is MUCH LONGER than has been given for either CDRs or repayment rates. As seen in the chart below, because the definitions for these rates uses a 3-year window and

another year is added before the rates are publicly released, a newly approved default prevention plan or repayment rate plan will not affect any rate in the three (3) years used to determine eligibility. From the time a plan is approved, a minimum of two (2) full fiscal years from the approval date is warranted to truly measure the effectiveness of the plan's components as defined in the "measureable objectives".

For this reason, the transition period and the eligibility period determination should be increased to 7-8 years, preferably 8 years, which will allow time for any approved plan to take effect and actually have time to document results of the "measureable objectives" included in the plan.

REPAYMENT RATE YEAR	FY1	FY2	FY3	FY4	FY5	FY6	FY7	FY8	FY9	FY10	FY11
1											
2											
3					plan has little to no effect						
4					plan has effect on about half of students measured						
5											
6							still have time to affect				
7											
8											
					FIRST APPROVED PLAN		REVISED PLAN				

Suggested Language:
''(ii) ending on the date on which the Secretary has published under subsection (d)(4)(A) the final loan repayment rate for each program at each institution of higher education with respect to each of fiscal years 2016 through 2023.''.