

Higher Education Relief Opportunities for Students (HEROES) act of 2003
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HIGHER Education Relief Opportunities for Students (HEROES) Act of 2003

HEROES required the Department to publish waivers or modifications to statutory or regulatory provisions applicable to the Title IV federal student aid programs. Originally the HEROES Act was set to expire on September 30, 2005 it has since been extended to September 30, 2012 unless the Department terminates or otherwise changes the provisions prior to that date.

The Department designated four categories of waiver recipients, and identified specific waivers and modifications that apply to each category. See the *Common Manual*, Section H.4.B., HEROES Act Waivers for more information and qualifications.

Q1. If a borrower was in-school and then called to active duty, under HEROES what status would the account be in?

A1. If the borrower was in-school they would stay in that status until they had a chance to return to school.

Q2. If a borrower is in-grace when they are called to active duty, what status do we indicate on the account?

A2. Provisions in the HEROES Act indicate that the borrower should remain in the in-grace status. Once they return from their deployment and do not return to school, they can submit their orders and the Military/Post-Active Duty Student Deferment form, correctly marked, and the lender/servicer will place the eligible loans on a 13-month deferment.

Q3. For HEROES, how long is the "time" necessary to resume enrollment granted if the length of service was less than 3 years? Are borrowers allowed up to 12 months to re-enroll in school?

A3. There does not appear to be any specific guidance, but some lenders/servicers give the borrower their grace period and then give them until the next enrollment period to re-enroll. In most cases the borrower will re-enroll before the grace ends.

Servicemember's Civil Relief Act (SCRA)

Effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service. For purposes of this reduction the interest rate includes service charges, renewal charges, fees, or any other charges (except for actual insurance).

Q1. What is the definition of "active duty" SCRA?

A1. Active duty for "regular" military is defined as the date the servicemember enters military service and ends on the date on which the servicemember is released from military service or dies while in the military service. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military department concerned. "Active Duty" National Guard and reserves is defined as the date they are called to active service authorized by the President or Secretary of Defense for more than 30 days to respond to a national emergency declared by the President and supported by Federal funds.

Q2. Is ROTC included in SCRA?

A2. No, only full-time enlisted or National Guard and reserve members qualify for SCRA benefits.

Q3. Can the loan holder charge the borrower a penalty equivalent to the difference between the interest that would have accrued at the applicable HEA rate and the interest that did accrue at the 6% rate, for the active duty service period?

A3. No

Q4. How is lender/servicer notified of the request for interest rate reduction?

A4. The borrower must contact the lender/servicer in writing to request the interest rate adjustment and provide a copy of their military orders. "In writing" may include a borrower's email request and a scanned copy of the orders attached to that email request.

Q5. Is the interest rate reduction applicable on a borrower level or a loan level?

A5. The interest rate reduction is applicable on a loan level. If either party to a co-made loan (i.e., spousal consolidation loan) or endorsed PLUS loan is the active duty servicemember, the rate cap applies to the loan as a whole. In the case of an endorser on a PLUS loan specifically, the rate cap applies only if the endorser signed the Endorser Addendum to the PLUS MPN before entering active duty status. The interest rate cap only applies if the consolidation loan itself, not the underlying loans, was made before the borrower entered active duty status.

Q6. If the endorser is in the military and paying on the borrower's account, do the requirements under SCRA apply?

A6. Yes, if the endorser is performing eligible military service. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or a graduate/professional student unless the endorser is performing eligible military service.

Q7. How far back can the interest rate reduction, as mandated from SCRA, be backdated?

A7. If the borrower has active loans that were taken out before enlistment or active duty, we must back date the interest rate reduction to the first date of service, provided there is a balance on the account, but no further than August 14, 2008.

Q8. At what point in time can the 6% interest rate be applied, at the time the servicemember receives their orders or the date on which the service actually begins.

A8. The date the service actually begins is the starting point for the 6% interest rate for FFEL borrowers. The servicemember is entitled to the interest rate reduction every time they are activated for training as indicated in the broader definition of "active duty" in SCRA.

Q9. Are borrower's who are enrolled in the Delayed Enlistment Program (DEP) eligible for the 6% reduced interest rate?

A9. No, in the SCRA the term active duty status refers to the definition of active duty (section 101(d)) and active status. The term active duty is not included and in the next section is excluded. The borrower will not be eligible for the reduced rate until they transfer from the DEP into the active duty program.

Military Deferment

When reviewing military orders and possibly comparing them to information that a commanding officer put at the bottom of the deferment make sure all the information matches.. There was an instance where a borrower's deferment form indicated that they were in the Marines and the orders indicated the Army. This same form indicated that the end of service was 2021 but the orders stated 2012. The borrower was not granted the deferment based on the orders did not state a transfer of duty station for a member of the regular Army.

Q1. What is the date of implementation for the Military Service Deferment?

A1. The Military Service Deferment was initiated under the Higher Education Act of 2005 (HERA) with an effective date of July 1, 2006. At that point in time the military deferment could not exceed a maximum time limit of three years and was available only for loans first disbursed on or after July 1, 2001. Effective October 1, 2007, the College Cost Reduction and Access Act (CCRAA) eliminated the three-year limit and the provision that limited the availability of the deferment to loans first disbursed on or after July 1, 2001. Eligible borrowers may now

receive the deferment on all outstanding title IV loans in repayment on or after October 1, 2007, for all period of active duty service that include that date or begin on or after that date.

Q2. What status does a borrower's loan have to be in to qualify for the Military Service Deferment?

A2. In order for a borrower to qualify for the Military Service Deferment loans must be in repayment. Loans in-school or in-grace do not qualify for a Military Service Deferment. A borrower is not eligible for a refund of any loan payments prior to the granting of the deferment even if the deferment period includes those payment dates. However, such payments on a subsidized loan may need to be adjusted in regard to principal and interest.

Q3. What loan types qualify for a Military Deferment?

A3. Federal Stafford Loans (both subsidized and unsubsidized), Federal PLUS Loans, Federal Consolidation Loans, and Federal Supplemental Loans for Students (SLS) (NOTE: SLS loans are no longer made under this program, but the deferments covered on this form are available to borrowers with SLS loans that are still in repayment.); Federal Perkins Loan (Perkins Loan) Program including borrowers with NDSL or Defense Loans that are still in repayment; Federal Direct Stafford, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, Federal Direct PLUS (Direct PLUS) Loans, and Federal Direct Consolidation (Direct Consolidation) Loans.

Q4. Is there a limit on the amount of time that may be used for a Military Deferment?

A4. No, under CCRAA the three year limit was removed. Also, after returning from each deployment the borrower is eligible for an additional 180-days of deferment.

Q5. If a borrower previously qualified for the deferment under HERA and has used the full three year limit and is now called to active duty are there any provisions that allow them to be eligible for the deferment?

A5. A borrower whose deferment eligibility had expired due to the prior three-year limitation and who is recalled to qualifying service or continued on or after October 1, 2007, may receive the deferment retroactively from the date the prior deferment expired until the end of the borrower's active duty service.

Q6. Will all active duty military personnel be eligible for the military deferment?

A6. No, the borrower must meet certain criteria before they are eligible for the military deferment. A borrower who does not qualify for this deferment may be eligible for the Armed Forces deferment (available to new borrowers prior to July 1, 1993) or the Post-Active Duty Student Deferment.

Q7. What types of service qualify a borrower for a Military Deferment?

A7. The borrower must meet one of the following criteria to qualify for the Military Deferment.

- 1) The borrower is a member of the Armed Forces reassigned to a duty station at a location other than the location where the member is normally assigned.
- 2) The borrower is a Reserve or Retired member of an Armed Force called to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, 12306 of 688.
- 3) The borrower is on full-time National Guard duty as defined in 10 U.S.C. 101(d)(5) under a call to active duty service authorized the President or the Secretary Defense. This training or other duty must be performed for more than 30 consecutive days in connection with a war or other military operation, or a national emergency as declared by the President and supported by federal funds.

Q8. What is a contingency operation?

A8. A contingency operation in which a member of the Armed Forces is, or may become, involved in military actions, operations or hostilities against an enemy of the U.S. or against an opposing military force; or results in the call or order to, or retention on active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12305, or 12046, or 10 U.S.C. Chapter 15, or any other provision of law during a war or during a national emergency declared by the president.

Q9. Where can I find a list of contingency operations that qualify a borrower for the deferment?

A9. There is not a comprehensive list of operations. Some operations and their acronyms that are being used by lenders/servicers as qualifiers are Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), Operation

Vigilant Resolve (OVR), Global War on Terrorism (GWOT), Operation Active Endeavour (OAE), and Georgia Train and Equip Program (GTEP). OEF (Afghanistan) and OIF (Iraq) encompass several other smaller operations. Operation Unified Response Haiti is also an authorized operation for the military deferment.

Q10. What documentation is needed for the lender to grant the deferment?

A10. For the first year of the deferment a borrower or his/her designated representative may call in and state that the borrower has been called to active duty or been transferred due to a qualifying military operation. For deferment of the student loan after the first year period is up, the borrower must provide the lender/servicer a completed deferment form with a copy of their military orders or have his/her commanding officer fill out Section 4 of the deferment form.

Q11. Is this deferment eligible for the simplified deferment processing?

A11. Yes, in granting the deferment in this manner, the lender may rely in good faith on the information obtained from another FFELP loan holder, the Department, or an authoritative electronic database maintained or authorized by the Department, unless the lender has information indicating that the borrower does not qualify for the military deferment. The lender must resolve any information discrepancies before granting a military deferment in this manner.

Some lenders and servicers are approving the Military Deferment, regardless of information attached, if Section 4, Authorized Official's Certification is completed. The thought is that the official signing the form knows the requirements and the accompanying orders may not include the information the lender/servicer needs to make a determination.

Q12. The borrower has an in-school or Graduate Fellowship deferment on their account and finished the Spring Term. They know they will be activated before the beginning of the fall term. What should the lender/servicer do?

A12. The lender/servicer should end the in-school or Graduate Fellowship deferment the day before activation. This may not be a simple process if the lender does not have a firm mobilization begin date. In this case the lender would keep the borrower in an in-school or Grad Fellowship deferment until the lender receives notification that the borrower either (1) dropped to less than half-time status (based on the school's enrollment reporting) or (2) has been activated.

Q13. Is a borrower entitled to use the Military Service Deferment and additional 180-day extension every time they are deployed or is this a one-time deferment?

A13. Every time the borrower is deployed they are entitled to the Military Service Deferment and the additional 180-day extension on eligible loans.

Q14. Can the 180-day extension of the Military Service Deferment be added automatically?

A14. Yes, if the lender knows the end date of the borrower's service period.

Q15. Can the 180-day extension be backdated once the deactivation notice is received?

A15. Yes, the extension can be backdated as long as the borrower was on active duty on or after October 1, 2007.

Q16. We received a letter from USMC concerning borrower's active duty status that does not include a begin date. Letter states borrower will be deployed for approximated 365 days to Afghanistan in support of Operation Enduring Freedom. However, letter states that "Due to classified information, we were not able to provide you with detailed information such as location, purpose or exact date". This borrower has previously had military deferments based on proper documentation being received. What should be done in this case?

A16. Without a begin date, we cannot process a military deferment. We do not need to know location or purpose but need to be able to determine the start date. If we can obtain a begin date for this deployment, from the borrower or representative, we could then consider the request complete and process.

Q17. We received a certified Military Deferment application. The borrower is engaged in service from 10/13/09 to 4/19/10 in the Air National Guard. If she is eligible, she may qualify for a military grace extension on her loan. In May of this year (2009) she called us and told us she was taking a year off from school for Basic Training. This is recorded in her Borrower History 5/11/09. Does the certified Military Deferment application override the borrower information we received on 5/11/09, as Basic Training would not be eligible for the Military Grace extension.

A17. The paperwork (orders) indicates she is in Basic Training only. Even though the deferment application was certified by an official, she is ineligible for deferment as basic training does not qualify as active duty for guard personnel.

Q18. We have general military documentation stating the borrower is in active duty from 7/25/09 to 9/23/12 but the document does not state specifically in war, national emergency or military operation. On 2/10/10 we received a statement from Commanding Officer indicating that the borrower was deployed beginning 7/25/09. When we spoke to the borrower on 5/7/10, the borrower told us his overseas deployment ended on 4/13/10 but what he is currently doing is in support of the war/military operation. Do you feel that we are okay extending the Military Deferment through the end date listed on his orders?

A18. We should get more information as he just returned from deployment which would indicate the end of the orders we received on 2/10/10. He now indicates he is home, presumably at his normal duty station. To be considered for Military Deferment, he would need to be assigned to a duty station at a location other than the location he is normally assigned. Based on the information known at this time, we would grant the Military deferment from 7/25/09 to 4/13/10 and grant the 180-day extension through 10/12/10. (Definition of Serving on Active duty 3rd bullet on back of form).

Post-Active Duty Student Deferment

The Post-Active Duty Student Deferment (PADSD) is for borrowers who have loans that do not qualify for the Military Deferment since they are still in-school or in-grace. Loans that are in-school or in-grace will remain in an in-school status until the borrower returns from their deployment or for the maximum of 3 years. At that time they are given time to re-enroll in classes at the beginning of the next term. If they chose to not re-enroll the borrower's loans are put into grace for the full 6-months beginning with the day after their deployment ends, even though they might have used some of their grace period time before deployment. Once they complete the grace period and enter repayment they are eligible for the PADSD for 13-months. The borrower must fill out the Military Deferment/Post-Active Duty Student Deferment form and submit it to their lender/servicer.

Q1. Does the 13-month Post-Active Duty Student Deferment include the six month grace period?

A1. No, it does not. The deferment can not be applied until the borrower has concluded their grace and entered repayment.

Q2. If the borrower in the above scenario would return to school anytime during the 13-month deferment and then be called to active duty during their enrollment would they be eligible for another 13-month period?

A2. Yes, the borrower would be eligible for the PADSD on all their loans upon return from active duty.

Administrative and Mandatory Forbearance

Q1. Under what circumstance would a borrower use the military mandatory forbearance?

A1. The military forbearance is for those National Guard members that are called to active STATE duty (for 30 days or more) that is not due to a war, military operation or national emergency (can not qualify for military deferment), but are called within 6 months of haltime enrollment.

Q2. Does a servicemember in training qualify for an administrative or mandatory administrative forbearance?

A2. No, training is not included as a qualification for either type of forbearance.