

officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request to enter the safety zone through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from 5 a.m. on January 10, 2024, through 11 p.m. on January 17, 2024.

Dated: January 9, 2024.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Francisco.*

[FR Doc. 2024-00694 Filed 1-12-24; 8:45 am]

**BILLING CODE 9110-04-P**

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 685

[Docket ID ED-2023-OPE-0004]

RIN 1840-AD81

#### Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Announcement of early implementation date.

**SUMMARY:** The U.S. Department of Education (Department) designates a regulatory provision in its final rule related to income-driven repayment for early implementation.

**DATES:** January 16, 2024. For the implementation date of the regulatory provision, see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Bruce Honer, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 987-0750. Email: [Bruce.Honer@ed.gov](mailto:Bruce.Honer@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:** Section 482(c)(1) of the Higher Education Act of 1965, as amended (HEA), requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. Section 482(c)(2) of the HEA also permits the Secretary to designate any regulatory provision as one that an entity subject to the provision may choose to implement earlier and to outline the conditions for early implementation.

On July 10, 2023, the Department published in the **Federal Register** a final rule amending regulations related to income-driven repayment (88 FR 43820). In that final rule we designated certain provisions for early implementation. In addition, on October 23, 2023, the Department published in the **Federal Register** a document announcing early implementation of provisions related to income-driven repayment (88 FR 72685).

The Secretary is exercising his authority under section 482(c) of the HEA to designate an additional regulatory change made in that final rule for early implementation beginning on January 21, 2024.

Under § 685.209(k)(3), a borrower receives forgiveness if the borrower's total original principal balance on all loans that are being paid under the Revised Pay as You Earn (REPAYE) plan was less than or equal to \$12,000, after the borrower has satisfied 120 monthly payments or the equivalent, plus an additional 12 monthly payments or the equivalent over a period of at least 1 year for every \$1,000 if the total original principal balance is above \$12,000. See 88 FR 43820, 43903. Under the regulations, the REPAYE plan is also known as the Saving on a Valuable Education (SAVE) plan. The Department will implement this provision on January 21, 2024.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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**Register.** You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Miguel A. Cardona,**

*Secretary of Education.*

[FR Doc. 2024-00204 Filed 1-12-24; 8:45 am]

**BILLING CODE 4000-01-P**

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 220, 222, and 226

[Docket No. 2021-8]

#### Copyright Claims Board: Active Proceedings and Evidence—Smaller Claims Procedures

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Copyright Alternative in Small-Claims Enforcement Act, the U.S. Copyright Office is adopting a final rule amending the procedures for “smaller claims” proceedings before the Copyright Claims Board.

**DATES:** Effective February 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Rhea Efthimiadis, Assistant to the General Counsel, by email at [mefth@copyright.gov](mailto:mefth@copyright.gov) or telephone at (202) 707-8350.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Copyright Alternative in Small-Claims Enforcement Act of 2020 (the “CASE Act”), the Copyright Office created the Copyright Claims Board (the “CCB”), an alternative and voluntary forum for parties seeking to resolve certain copyright-related disputes.<sup>1</sup> The CASE Act directed the Register of Copyrights to “establish regulations to provide for the consideration and determination, by not fewer than 1

<sup>1</sup> Sec. 212, Public Law 116-260, 134 Stat. 1182, 2176 (2020).

Copyright Claims Officer, of any claim under this chapter in which total damages sought do not exceed \$5,000 (exclusive of attorneys' fees and costs).<sup>2</sup> The Office has engaged in several rulemakings to establish the procedures necessary to implement the CASE Act.

On December 8, 2021, the Office published a notice of proposed rulemaking ("NPRM") that, among other topics, addressed procedures for "smaller claims" proceedings.<sup>3</sup> Under the proposed rule, smaller claims proceedings would be heard by one Copyright Claims Officer and discovery would be limited to that available in standard CCB proceedings.<sup>4</sup> Additional discovery, including requests for expert testimony, would be prohibited, and the Officer would issue a determination based solely on the parties' written testimony without holding a hearing.<sup>5</sup> In response to public comments, the Office decided to implement a "more expedited and less formal process" for smaller claims than the NPRM proposed.<sup>6</sup> On May 17, 2022, the Office published a final rule (the "May 2022 Rule") that reflected those changes.<sup>7</sup>

The May 2022 Rule provided that the smaller claims process would rely on "written submissions and informal conferences to minimize party burdens" and "allow[] the presiding Officer to take a more active role in case management."<sup>8</sup> Smaller claims proceedings would no longer use the same discovery rules as standard CCB proceedings. Instead, discovery would be "significantly limited, if allowed at all," and the scope of any permitted discovery would be discussed during an initial conference.<sup>9</sup> The May 2022 Rule "allow[ed] for a party position statement, a merits conference to discuss the evidence and the issues presented, a tentative finding of facts by the presiding Officer, the opportunity for parties to respond to those findings, and a final determination."<sup>10</sup> The May 2022 Rule also included several clarifications, including specifying when claimants must choose whether they want smaller claims proceedings, how counterclaims impact this choice, and the content of initial and second notices for smaller claims

proceedings.<sup>11</sup> The Office explained that this "updated, streamlined procedure for smaller claims substantially addresses commenters' concerns, will provide a clear alternative to both the CCB's standard proceeding and to Federal litigation, and will ultimately incentivize claimants to use the CCB's smaller claims procedures where appropriate."<sup>12</sup>

Concurrent with the publication of the May 2022 Rule, the Office sought further comment regarding the smaller claims process.<sup>13</sup> This second opportunity to comment was intended to help determine whether the updated regulations struck "the proper balance between streamlining the smaller claims process and providing sufficient procedural protections to all parties."<sup>14</sup>

The Office received two further comments, from the Copyright Alliance and the New York Intellectual Property Law Association ("NYIPLA").<sup>15</sup> These comments are addressed in detail below.

#### The Copyright Alliance's Comment

The May 2022 Rule provided that a claimant may request that the smaller claims procedures apply when filing its claim, and also that "[t]he claimant may change its choice as to whether to have its claim considered under the smaller claim[s] procedures at any time before service of the initial notice."<sup>16</sup> The Copyright Alliance noted that this language "seems to suggest that a claimant who initially chooses to have the proceeding considered under the smaller claims procedures may be able to change their choice and have the proceeding considered under standard small claims procedures, but that a claimant who initially opts to have the proceeding considered under the standard small claims procedures may not have that same opportunity."<sup>17</sup> The Copyright Alliance recommended that the Office clarify this provision and "also include reference to the opportunity for claimants to change

their choice in another section of the regulations."<sup>18</sup>

The Office intended for the current regulations to allow a claimant to change its election of which procedures to use before service of the initial notice, regardless of its original election. Considering the Copyright Alliance's comments, however, the Office has modified the regulatory language to clarify that rule.<sup>19</sup> The Office declines to take the Copyright Alliance's suggestion to duplicate this language in other sections of the regulations. The Office notes that several chapters of the CCB Handbook, a plain language resource for CCB parties, also reference claimants' ability to change their election of small or smaller claims procedures.<sup>20</sup>

The regulations also allow a claimant to change its election after service, so long as the other parties and the CCB consent.<sup>21</sup> The Copyright Alliance suggested there should be no opportunity for a claimant to change its election after service of the initial notice, even if the respondent agrees to the change. The Copyright Alliance argued for this restriction on the grounds that a claimant who wishes to change their choice after service "has the ability to withdraw their claim and file it again to reflect the new choice."<sup>22</sup>

The Office disagrees that a strict deadline is advisable and believes that a more flexible approach is preferable in a forum that is intended to be accessible to *pro se* parties. Requiring consent from the other parties and the CCB should be sufficient to protect against abuse of the election process.

In its comment, the Copyright Alliance also noted that the regulations give the Officer presiding over a smaller claims proceeding the authority to "issue additional scheduling orders or amend the scheduling order," indicating that there may be a difference between an additional scheduling order and an amended scheduling order.<sup>23</sup> The

<sup>18</sup> *Id.*

<sup>19</sup> The Office is also revising its regulations to reflect that a claimant's request to change their election should be submitted as a "tier one" request, e.g., a request found in 37 CFR 220.5(a)(1) that is filed through a fillable form on the CCB's electronic filing and case management system and is limited to 4,000 characters.

<sup>20</sup> See 37 CFR 226.2; U.S. Copyright Office, *CCB Handbook* at ch. 4, Smaller Claims (2022) <https://ccb.gov/handbook/>; *id.* at ch. 3(a), Starting an Infringement Claim; *id.* at ch. 3(b), Starting a Noninfringement Claim; *id.* at ch. 3(c), Starting a Misrepresentation Claim.

<sup>21</sup> 37 CFR 226.2.

<sup>22</sup> Copyright Alliance Final Rule Comments at 2–3. Although it acknowledged that the CCB Handbook is not binding authority, the Copyright Alliance also pointed to language in the CCB Handbook that suggests that a claimant may not be able to change their selection after service.

<sup>23</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 30074–75.

<sup>12</sup> *Id.* at 30075.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* On June 15, 2022, the Office published a correction to the May 2022 Rule, which included one technical correction related to the smaller claims provision. 87 FR 36060 (June 15, 2022).

<sup>15</sup> Comments received in response to this rulemaking are available at <https://www.regulations.gov/docket/COLC-2021-0007/comments>. References to public comments responding to the Office's May 2022 Rule are by party name (abbreviated where appropriate), followed by "Final Rule Comments."

<sup>16</sup> 37 CFR 226.2 (emphasis omitted).

<sup>17</sup> Copyright Alliance Final Rule Comments at 2.

<sup>2</sup> 17 U.S.C. 1506(z).

<sup>3</sup> 86 FR 69890 (Dec. 8, 2021).

<sup>4</sup> *Id.* at 69912–13.

<sup>5</sup> *Id.*

<sup>6</sup> 87 FR 30060, 30074 (May 17, 2023) ("May 2022 Rule").

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Copyright Alliance sought clarification on this point.<sup>24</sup>

Under the regulations, the initial scheduling order in a smaller claims proceeding includes “the dates or deadlines for filing of a response to the claim and any counterclaims by the respondent and an initial conference with the Officer presiding over the proceeding.”<sup>25</sup> That Officer may issue an additional scheduling order that includes dates or deadlines beyond those in the initial scheduling order, such as dates of other conferences or deadlines for discovery. An amended scheduling order is used to change the dates in a preexisting scheduling order, such as rescheduling the deadline for filing a response set forth in the initial scheduling order. In light of this explanation, the Office does not believe a regulatory change is necessary.

The Copyright Alliance also sought clarification on regulatory language that provides that “[i]f a party fails to submit evidence in accordance with the presiding Officer’s request, or submits evidence that was not served on the other parties or provided by the other side, the presiding Officer may discuss such failure with the parties during the merits conference.”<sup>26</sup> The Copyright Alliance observed that “the phrase ‘such failure’ can only be read to refer back to the first clause (referencing the party’s failure to submit evidence) and not the second clause (referencing a party’s submission of evidence that was not served on the other parties) since the latter is not phrased as a ‘failure.’”<sup>27</sup> The Copyright Alliance further noted that the regulations permit the Officer to draw an adverse inference as a remedy for the failure to submit evidence but does not mention remedies for the submission of evidence that was not served on or provided by other parties.<sup>28</sup>

The Copyright Alliance is correct that the Office’s intent was that both issues—the failure to submit evidence and the submission of evidence that was not served on or provided by the other parties—could be addressed during conferences and that the presiding Officer was empowered to impose remedies for either issue. The Office has revised the corresponding regulatory text to make clear that the Officer may discuss with the parties and impose appropriate remedies to address either issue. The Office notes, and the

regulatory text provides, that although imposition of an adverse inference is one remedy that is available to an Officer, there may be other appropriate remedies, such as excluding evidence that was not properly served or providing the other parties an opportunity to respond to such evidence.<sup>29</sup>

#### The NYIPLA’s Comment

Current CCB regulations allow parties in a smaller claim proceeding to submit a written statement setting forth their positions on the issues prior to the merits conference, but do not permit any written responses to these statements.<sup>30</sup> The NYIPLA recommended that parties be allowed to submit written responses, arguing that “it is important that parties before the CCB be afforded the right to respond to the statements and evidence initially submitted by their opponents” and “to permit some form of rebuttal submission in advance of the merits conference.”<sup>31</sup> The NYIPLA argued that written responses would also “provide the *other* side with fuller notice of what its opponent’s rebuttal case will consist of at the merit conference” and “are generally an effective means of responding to another party’s argument.”<sup>32</sup>

The Office declines to make the requested changes at this time. The smaller claims procedures are intended to provide a streamlined and less formal process than standard CCB procedures. Consequently, the Office’s regulations sought to minimize the filings in smaller claims proceedings to reduce the burdens on the parties, ensure that the timeline is not protracted, and distinguish the smaller claims procedures from standard CCB procedures. The Office believes that providing parties with a single opportunity to submit an optional written statement ensures fairness, especially with respect to both parties represented by counsel and those appearing *pro se*, while recognizing that some parties will be more comfortable communicating their positions in writing than orally. As the NYIPLA recognizes, parties will have an opportunity to respond to any written statements during the merits conference.<sup>33</sup> At the merits conference,

the presiding Officer will be able to ask questions and develop the parties’ positions further.

Under the CCB’s current regulations, if a claimant has selected a smaller claims proceeding, a respondent may bring a counterclaim that seeks only \$5,000 or less in damages, exclusive of attorneys’ fees and costs.<sup>34</sup> As the May 2022 Rule explains, “[a] respondent who is not content with a counterclaim limited to \$5,000 may decline to use the smaller claims track and either use the standard proceeding by bringing a separate claim against the original claimant or bring the claim to Federal court.”<sup>35</sup> The NYIPLA disagreed with this approach and recommended that the regulations “provide for reassignment from the smaller claim track for any proceeding in which a respondent wishes to assert within the CCB a counterclaim that would be eligible only for the non-smaller claim track.”<sup>36</sup> The NYIPLA argued that the benefits of the smaller claims proceeding “are lost, and the complexity compounded, if two concurrent proceedings are running simultaneously, under different procedures, particularly where both may, in some cases, involve similar questions of fact and law.”<sup>37</sup> The NYIPLA expressed concern about the logistics of consolidating a smaller claims proceeding with a standard CCB proceeding and the possibility of inconsistent determinations in the event that they are not consolidated.<sup>38</sup>

The Office declines to implement this proposed change. One of the key features of the CCB is its voluntary nature—including the parties’ ability to choose whether to participate, given the matters at issue and the scope of the proceeding. This feature could be frustrated were a respondent able to unilaterally move a claim from the relatively streamlined smaller claims process the claimant had selected to the standard CCB process.

The Office appreciates the NYIPLA’s concerns regarding the current process for consolidating proceedings before the CCB and the possibility of inconsistent determinations if two claims addressing similar facts are not heard together. To address these concerns, the Office is revising its regulations pertaining to consolidation. The revised rule addresses circumstances in which two proceedings—a smaller claims proceeding and a standard CCB

<sup>24</sup> *Id.*

<sup>25</sup> 37 CFR 226.4(b).

<sup>26</sup> Copyright Alliance Final Rule Comments at 3 (quoting 37 CFR 226.4(d)(3)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4.

<sup>29</sup> The Copyright Alliance also identified a nonsubstantive typographical error in the regulatory text, *id.* at 3 n.3, which has been corrected. The Office has made several additional nonsubstantive corrections.

<sup>30</sup> 37 CFR 226.4(d)(2)(ii).

<sup>31</sup> NYIPLA Final Rule Comments at 1–2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 2.

<sup>34</sup> 37 CFR 226.3.

<sup>35</sup> 87 FR 30060, 30074.

<sup>36</sup> NYIPLA Final Rule Comments at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

proceeding—involve the same or substantially similar parties and arise out of the same facts and circumstances. This includes instances in which a claimant selects the smaller claims procedures, and the respondent files a separate claim, rather than asserting a counterclaim subject to the \$5,000 cap on damages. The amended regulations state that, in such a situation, the Officers may hold a conference to determine whether the parties would be willing to consolidate their dispute into a single proceeding using either the standard CCB or smaller claims procedures. If the parties do not agree to consolidate their claims, the proceedings will continue on separate tracks.

The Office does not intend to add additional rules governing the possibility of inconsistent determinations related to smaller claims proceedings, as it concludes that the risk of inconsistent determinations is low and the CCB's regulations should be as straightforward and streamlined as possible. Moreover, while the Officers make smaller claims determinations independently, they are aware of all determinations issued by the CCB, and the Officer presiding over a smaller claims proceeding and any standard proceeding that involves similar parties or issues would be able to identify and avoid any potential inconsistency in the separate determinations.

The NYIPLA also commented on witness appearances in smaller claims proceedings.<sup>39</sup> The regulations permit a party to request that a witness appear at the merits conference for questioning if an opposing party has submitted that witness's statement beforehand.<sup>40</sup> Under the regulations, if the witness does not appear, the presiding Officer may still accept the witness's statement, but they may consider the inability to question when determining how much weight to give the witness's testimony.<sup>41</sup> The NYIPLA suggested that "the rule should more clearly set forth the Officer's discretion to *exclude* altogether the statement of a witness who fails to appear following an opponent's request," arguing that this change may encourage parties to make their witnesses available for cross-examination at the merits conference.<sup>42</sup>

The Office finds this recommendation is unnecessary, and not sufficiently responsive to the practical challenges related to witnesses' appearances. The CCB is already empowered to determine

what weight, if any, should be given to the evidence.<sup>43</sup> Since it does not have the authority to subpoena witnesses, witnesses appear at merits conferences on a voluntary basis. The regulations are drafted with the understanding that a witness may agree to submit a statement but may not wish to appear at the merits conference for any reason, including reasons that have nothing to do with the value of the statement. For example, a witness may not be able to take time off from work or have a personal conflict making an appearance burdensome. Even if potential evidentiary consequences might influence the behavior of the parties, they are unlikely to affect the witness' decision to give live testimony. The current regulations, which give the presiding Officer the authority to give any (or no) weight to witnesses' testimony, better reflect the balance of interests at stake in CCB proceedings.

#### Conclusion

The Office appreciates these comments and will be monitoring how the regulations are functioning to determine if any future changes are needed. Apart from the modifications described above, the smaller claims regulations remain unchanged from the May 2022 Rule.

#### List of Subjects in 37 CFR Parts 220, 222, and 226

Claims, copyright.

#### Final Regulations

For the reasons stated in the preamble, the U.S. Copyright Office amends 37 CFR parts 220, 222, and 226 as follows:

#### PART 220—GENERAL PROVISIONS

■ 1. The authority citation for part 220 continues to read as follows:

**Authority:** 17 U.S.C. 702, 1510.

■ 2. Section 220.5 is amended by revising paragraphs (a)(1)(xix) and (a)(1)(xx) and adding paragraph (a)(1)(xxi) to read as follows:

#### § 220.5 Requests, responses, and written submissions.

(a) \* \* \*

(1) \* \* \*

(xix) Requests to withdraw representation under § 322.5 of this subchapter;

(xx) Requests by a claimant under § 226.2 of this subchapter to change its

choice as to whether to have its claim considered under the smaller claims procedures or the standard Board procedures; and

(xxi) Requests not otherwise covered under § 220.5(d).

\* \* \* \* \*

#### PART 222—PROCEEDINGS

■ 3. The authority citation for part 222 continues to read as follows:

**Authority:** 17 U.S.C. 702, 1510.

■ 4. Section 222.13 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

#### § 222.13 Consolidation.

(a) *Consolidation.* Except as provided in paragraph (e) of this section, if a claimant has multiple *active proceedings* against the same respondent or multiple active proceedings that arise out of the same facts and circumstances, the Board may consolidate the proceedings for purposes of conducting discovery, submitting evidence to the Board, or holding hearings. Consolidated proceedings shall remain separate for purposes of Board determinations and any damages awards.

\* \* \* \* \*

(e) *Smaller claims proceedings.* Where the Board becomes aware that a standard proceeding and a smaller claims proceeding involve the same or substantially similar parties and arise out of the same transaction or occurrence, one or more Officers may hold a conference to determine whether the parties are willing to voluntarily consolidate the separate proceedings into a single proceeding using either the smaller claims procedures or the standard Board procedures. The Board will consolidate proceedings only where the parties agree, doing so would be in the interests of justice, and the proceedings involve the same or substantially similar parties and arise out of the same transaction or occurrence. If the proceedings involve the same or substantially similar parties and arise out of the same transaction or occurrence, but the parties do not agree to voluntarily consolidate the separate proceedings into a single proceeding, then each proceeding shall be considered separately.

#### PART 226—SMALLER CLAIMS

■ 5. The authority citation for part 226 continues to read as follows:

**Authority:** 17 U.S.C. 702, 1510.

■ 6. Section 226.2 is amended to read as follows:

<sup>39</sup> *Id.* at 3–4.

<sup>40</sup> 37 CFR 226.4(d)(2)(iii).

<sup>41</sup> *Id.*

<sup>42</sup> NYIPLA Final Rule Comments at 3.

<sup>43</sup> See 17 U.S.C. 1503(a)(1)(C)–(D); see also U.S. Copyright Office, *Copyright Small Claims* 126 (2013) (The Officers "should have the discretion to consider evidentiary submissions according to their worth."), <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

**§ 226.2 Requesting a smaller claims proceeding.**

A claimant may request consideration of a claim under the smaller claims procedures in this part at the time of filing a claim. The claimant may change its choice as to whether to have its claim considered under the smaller claims procedures or the standard Board procedures at any time before service of the *initial notice*. If the claimant changes its choice, but the *initial notice* has already been issued, the claimant shall request reissuance of the *initial notice* indicating the updated choice. Once the claimant has served the *initial notice* on any respondent, the claimant may not amend its choice without consent of the other parties and leave of the Board. A claimant's request to change its choice as to whether to have its claim considered under the smaller claims procedures or the standard Board procedures shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. If the request is made following service of the *initial notice* on any respondent, the claimant's request shall indicate whether the other parties consent to the request.

■ 7. Section 226.4 is amended by revising paragraphs (a), (d)(2)(iii), and (d)(3) to read as follows:

**§ 226.4 Nature of a smaller claims proceeding.**

(a) *Proceeding before a Copyright Claims Officer.* Except as provided in § 222.13(e), a smaller claims proceeding shall be heard by not fewer than one Copyright Claims Officer (Officer). The Officers shall hear smaller claims proceedings on a rotating basis at the Board's discretion.

\* \* \* \* \*

(d) \* \* \*  
(2) \* \* \*

(iii) May submit witness statements that comply with § 222.15(b)(2) of this subchapter. No later than seven days before the merits conference, an opposing party may request that the witness whose statement was submitted appear at the merits conference so that the party may ask the witness questions relating to the witness's testimony. The failure of a witness to appear in response to such a request shall not preclude the presiding Officer from accepting the statement, but the presiding Officer may take the inability to question the witness into account when considering the weight of the witness's testimony.

(3) *Failure to submit evidence.* If a party fails to submit evidence in accordance with the presiding Officer's request or submits evidence that was not served on the other parties or

provided by the other side, the presiding Officer may discuss this with the parties during the merits conference or may schedule a separate conference to discuss the missing evidence with the parties. The presiding Officer shall determine an appropriate remedy, if any, including but not limited to drawing an adverse inference with respect to disputed facts, pursuant to 17 U.S.C. 1506(n)(3), if it would be in the interests of justice.

\* \* \* \* \*

Dated: January 2, 2024.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

[FR Doc. 2024-00596 Filed 1-12-24; 8:45 am]

**BILLING CODE 1410-30-P**

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

**RIN 2900-AR56**

**85/15 Rule Calculations, Waiver Criteria, and Reports**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its educational assistance regulations by eliminating the four 85/15 rule calculation exemptions for students in receipt of certain types of institutional aid. Currently, VA regulations provide exceptions that allow certain categories of students to be considered "non-supported" for purposes of the 85/15 rule notwithstanding their receipt of institutional aid. In this final rule, VA is eliminating these exceptions, thus clarifying the types of scholarships that educational institutions must include in their calculations of "supported" students. Also, VA is revising the criteria that shall be considered by the Director of Education Service when granting an 85/15 rule compliance waiver. Lastly, VA is amending the timeline for certain educational institutions' submission of 85/15 compliance reports.

**DATES:** This rule is effective February 15, 2024. The provisions of this final rule shall apply to all terms that begin on or after January 16, 2025, to include all 85/15 waivers pending before VA on that date.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Alphonso, Assistant Director, Policy and Procedures Education Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-9800. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The 85/15 rule (38 U.S.C. 3680A(d); 38 CFR 21.4201(a)) prohibits the Department of Veterans Affairs (VA) from paying educational assistance benefits to any new students once "more than 85 percent of the students enrolled in the [program of education] are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs." 38 U.S.C. 3680A(d)(1). "Institutional aid" refers to the financial assistance that is provided by the educational institution to the student that includes any scholarship, aid, waiver, or assistance, *but does not include loans and funds provided under section 401(b) of the Higher Education Act of 1965* or financial assistance from a third-party. "VA aid" refers to financial benefits paid under Chapters 30, 31, 33, 35 and 36 of Title 38 and Chapter 1606 of Title 10. VA refers to students who receive such institutional or VA aid as "supported students." Conversely, no less than 15 percent of the students enrolled in the program must be attending without having any of their tuition, fees, or other charges paid to or for them by the educational institution or VA (referred to as "non-supported students"). The 85/15 rule is a market validation tool designed to prevent schools from inflating tuition charges for VA education beneficiaries. The rule functions by requiring a school to enroll no less than 15 percent of its students paying the full tuition charge without institutional or VA aid. If a school fails to enroll enough non-supported students, the cost of the program is presumed to be out of step with the competitive market and thus too expensive for VA to continue to support due to the burden on taxpayers.

Currently, in accordance with 38 CFR 21.4201, educational institutions are required to track the percentage of supported and non-supported students enrolled in each of their approved programs and to confirm their compliance with the required 85/15 percent ratio (38 CFR 21.4201(e)-(f)). During the time that the ratio of supported to non-supported students exceeds 85 percent, no new students can be certified to receive VA education benefits for that program (38 CFR 21.4201(g)(2)). "New students" include