

Supplemental Materials

AGENDA ITEM VI-B

Consideration of adopting the Negotiated Rulemaking Committee's recommendation relating to the allocation methodology for B-On-Time Loans (for private, independent institutions of higher education)

The public comment period on the proposed rules ended on January 6. The attached revised blue pages and proposed rules include a summary of the public comments received, the staff response, and the modified proposed rules in red bold font.

AGENDA ITEM VI-B

Consideration of adopting the Negotiated Rulemaking Committee's recommendation relating to the allocation methodology for B-On-Time Loans (for private, independent institutions of higher education)

RECOMMENDATION: Approval

Background information:

Senate Bill 215 passed by the 83rd Texas Legislature (Regular Session) requires the Coordinating Board to adopt rules for the allocation methodology used to distribute state financial aid dollars. Negotiated rulemaking was used in the development of the proposed rules in accordance with Texas Government Code Chapter 2008, as well as Senate Bill 215.

Specifically, the proposed amendments to Section 21.123(a) adjust language to indicate students receive B-on-Time Loans; institutions do not.

Section 21.123(b), which contained old language regarding the distribution of BOT funds among institutions, is deleted and will be replaced with a new Section 21.134, "Allocation and Reallocation of Funds for private or Independent Institutions of higher Education," which is described in the Texas B-On-Time Loan Proposed New Section Preamble.

New Section 21.134 is proposed in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board, by rule, to establish and publish financial aid program allocation methodologies and develop procedures to verify the accuracy of the application of those methodologies by Board staff. In addition, SB 215 called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Subchapter 2008, Government Code in the development of such rules. The BOT rule new Section 21.134 was reviewed and approved by the Negotiated Rulemaking Committee on B-On-Time Loan Program (for private institutions) on November 18, 2013. The report of the Negotiated Rulemaking Committee is available at the offices of the Texas Higher Education Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

In particular, new Section 21.134(a) describes the BOT allocation process, including how participating institutions are to be identified, the basis for allocation calculations, and the source of the data used in the calculations. It also, in accordance with SB 215, indicates the Board will provide the results of the allocation calculations to institutions for review before the allocation amounts are finalized and posted on the Board's loan program website.

New Section 21.134(b) provides a specific date (February 20) as a deadline for institutions to encumber program funds. Funds unencumbered as of that date are automatically released back to the Board for reallocation to other institutions.

New Section 21.134(c) provides the Board staff guidance in how to adjust procedures if funding for the program is reduced either during the first year of a biennium or prior to the beginning of the second year of a biennium.

Date approved by the Commissioner for publication in the *Texas Register*: November 22, 2013.

Date Published in the *Texas Register*: December 6, 2013.

The 30-day comment period with the *Texas Register* ends on: January 6, 2014.

Summary of comments received:

Comment 1: Austin College suggested Section 21.134(a)(2) be amended to also include students who completed a Texas Application for Student Financial Aid (TASFA).

Response: The comment is currently being reviewed by the Negotiated Rulemaking Committee on the B-On-Time Loan Program. The committee may accept, reject or modify the change. A consensus must be reached prior to the Board meeting. Coordinating Board staff will provide the committee's decision at the Board meeting.

Comment 2: The University of Texas at Austin commented that Section 21.134(a)(4) should be amended to indicate a minimum time of five business days for institutions to respond to allocation calculations when they are shared by the Coordinating Board staff for their review.

Response: The Negotiated Rulemaking Committee reached consensus on this issue and modified the rule to indicate Institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the calculations accurately reflect data submitted by the institutions.

Legal Review:

Approved by the Office of General Counsel _____ Date: _____

The amendments have been prepared in the following format:

- New language is in lowercase, underlined, and shaded.
- Deleted language is bracketed and struck through.
- When new language replaces deleted language, the new language precedes the deleted language.

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

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21.134.	<u>Allocation and Reallocation of Funds for private or independent Institutions of Higher Education.</u>

21.121. Authority and Purpose.

(a) Authority. Unless otherwise noted in a section, the authority for these provisions is provided by the Texas Education Code, Sections 56.451 – 56.465.

(b) Purpose. This subchapter establishes rules relating to the administration of the Texas B-On-Time student loan program that has been authorized by the Texas Legislature to improve and increase access to higher education in the State of Texas.

21.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board – The Texas Higher Education Coordinating Board
- (2) Commissioner – The Commissioner of Higher Education
- (3) Degree in Architecture – The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 04.0201 of the Texas CIP Codes.
- (4) Degree in Engineering – The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a

baccalaureate degree program identified as belonging to Category 14 of the Texas CIP Codes.

(5) Default – The failure of a borrower to make loan installment payments for a total of 180 days.

(6) Recommended or Distinguished Achievement Program–Advanced High School Program – The high school curriculum recommended under Section 28.025 (a) of the Texas Education Code.

(7) Resident of Texas – A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under Section 21.124 (a) (1) of this title (relating to Initial Eligibility for Loans).

(8) Texas CIP Codes – Classification codes for degree programs, agreed upon by institutions and approved by the Board, based on curricular content belonging to categories within the federal Classification of Instructional Programs (CIP) published by the National Center for Educational Statistics. Texas CIP Codes are available at <http://www.thecb.state.tx.us/apps/ProgramInventory/>.

21.123. Institutions.

(a) Institutions whose students [that] are eligible for Texas B-On-Time loans are institutions of higher education as defined in Texas Education Code, Section 61.003(8), and private or independent institutions of higher education as defined in Texas Education Code, Section 61.003(15).

~~[(b) In any academic year, if there are insufficient funds available to provide Texas B-On-Time loans to all eligible students, the Board will allocate funds to the institutions in proportion to the size of their full-time undergraduate populations. The institutions shall award the loans to the students according to financial need.]~~

21.124. Initial Eligibility for Loans.

(a) The Commissioner may authorize Texas B-On-Time Loans to students at any eligible institution which certifies that the student:

(1) is a resident of Texas as defined in these rules or beginning with the 2005-2006 academic year, be entitled, as a child of a member of the armed forces of the United States, to pay tuition at the rate provided for residents of this state under Section 54.058 of the Texas Education Code; and

(2) meets one of the following academic requirements:

(A) graduated not earlier than the 2002-2003 school year under the Recommended or Distinguished Achievement Program–Advanced High School Program (or its equivalent) from a public or private high school in Texas;

(B) beginning with the 2005-2006 academic year, graduated not earlier than the 2002-2003 school year from a high school operated by the United States Department of Defense and at the time of graduation was a dependent child of a member of the armed forces of the United States; or

(C) received an associate degree from an eligible institution not earlier than May 1, 2005;

(3) has not been granted a baccalaureate degree;

(4) is enrolled for a full-time course load, as determined by the institution, in an undergraduate degree or certificate program at an eligible institution;

(5) is eligible for federal financial aid, except that the student is not required to meet any financial need requirements applicable to other financial aid programs;

(b) A student is not required to be 18 years of age at the time that he or she establishes eligibility for participation in the program; for the purpose of any promissory note executed by a borrower, the defense that he or she was a minor at the time he or she executed a note shall not be available to him or her in any action arising on the note.

(c) If program funds are not sufficient to provide Texas B-On-Time Loans to all qualified students, priority must be given to students with demonstrated financial need.

21.125. Continued Eligibility for Loans.

(a) After initially qualifying for a Texas B-On-Time loan, a student may continue to receive a Texas B-On-Time loan for each semester or term at an eligible institution if he or she continues to meet all initial eligibility requirements in Section 21.124 of this title (relating to Initial Eligibility for Loans) and additionally:

(1) as of the end of the person's first academic year he or she meets the satisfactory academic progress requirements as indicated by the financial aid office of his or her institution.

(A) If a student ends his/her first year in the program without meeting the academic progress requirements of his/her institution, he/she may not get back into the program until the institution has determined that the student has met its academic performance requirements.

(B) A loan recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), must calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the current institution's

academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

(2) As of the end of the second and subsequent years, the student must complete at least 75 percent of the hours attempted in his/her most recent academic year, and maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public or private or independent institutions of higher education.

(A) The completion rate calculations may be made in keeping with institutional policies.

(B) Grade point average calculations may be made in keeping with institutional policies except that if a loan recipient's grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.

(C) A loan recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions), must calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the program's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.

(3) enrolls in a program leading to a bachelor's degree within 12 months after the month in which the student received an undergraduate certificate or associate's degree.

(b) A student may not receive a Texas B-On-Time loan for more than 150 semester credit hours or the equivalent. If, in any given academic period, a student drops courses so that he or she is no longer taking a full-time course load as determined by the institution, and the Board does not receive a refund of the Texas B-On-Time loan for that period, the dropped courses will be counted toward the calculation of the 150-hour limit.

(c) If a person fails to meet any of the requirements for receiving a continuation award as outlined in Subsection (a) of this section after completion of any year, the person may not receive a Texas B-On-Time Loan until he or she completes courses while not receiving a Texas B-On-Time Loan and meets all the requirements of Subsection (a) (2) of this section as of the end of that period of enrollment.

21.126. Disbursement to Students.

(a) No disbursement shall be made to any student until:

(1) for loans made from the proceeds of tax-exempt bonds, the institution has certified that the amount of the loan does not exceed the difference between the cost of attendance and other forms of student assistance for which the student is eligible, with the exception of Federal Plus loans, whether or not the student actually receives such assistance;

(2) the student has submitted an application containing the names of two personal references who live at different addresses and who are expected to know the student's whereabouts at all times throughout the life of the loan;

(3) the student certifies that he or she has read and understands the rights and responsibilities of a borrower of a Texas B-On-Time Loan;

(4) the student has executed a promissory note payable to the program for the full amount of any loan plus other authorized fees; and

(5) the Board has received the original of such executed promissory note.

(b) Electronically transferred funds must be disbursed to the student or returned to the Board on or before the 120th day after the electronic funds transfer date.

(c) A person receiving a Texas B-On-Time loan may use the money to pay for any usual and customary costs of attendance incurred by the student at an eligible institution, including tuition, fees, books, and room and board.

(d) Each student borrowing a Texas B-On-Time loan shall pay an origination fee in an amount that is determined from time to time by the Commissioner. The fee is deducted from the loan proceeds at the time of disbursement. The rate of the loan origination fee shall be posted on the Board's web site.

21.127. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person to receive a B-On-Time loan while enrolled for an equivalent of less than full-time but at least six semester hours. Such conditions are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

- (3) the requirement of fewer than nine hours to complete one's degree plan.

(b) If the onset of a condition that constitutes a hardship should occur after a student has enrolled for a full-time course load, and the institution determines that the student is justified by his or her circumstances in dropping to no fewer than six semester hours, the institution may also make a determination that the dropped courses will not count against the 75 percent requirement described in Section 21.125 (a)(2)(A) of this title (relating to Continued Eligibility for Loans), or toward the 150 hour maximum described in Section 21.125 (b) of this title (relating to Continued Eligibility for Loans). Among the circumstances that the institution may take into consideration in making this determination is whether the student has dropped below full-time in other academic periods while receiving loans under this program.

(c) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

21.128. Loan Amount.

(a) For students at public and private or independent four-year institutions, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average statewide amount of tuition and required fees for a full-time course load for resident undergraduate students at general academic teaching institutions.

(b) For students at public technical institutes, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average statewide amount of tuition and required fees for a full-time course load for resident students in an associate degree or certificate programs at public technical institutes.

(c) For students at public community/junior colleges and private or independent junior colleges, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average statewide amount of tuition and required fees for a full-time course load at a public junior college for students who are residents of junior college districts.

(d) In January of each year, the program's annual loan limits for the following academic year shall be posted on the Board's web site.

21.129. Forgiveness of Loans.

A Texas B-On-Time loan shall be forgiven if the student is awarded an undergraduate degree or certificate from an eligible institution, and the student either:

(1) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, and received:

(A) a baccalaureate degree within four calendar years after the date the student initially enrolled in an eligible institution;

(B) a baccalaureate degree within five calendar years after the date the student initially enrolled in an eligible institution if the institution has reported or will report that the student graduated with a degree in architecture, engineering, or any other program that the institution certifies to the Board is a program that requires more than four years to complete;

(C) a degree or certificate from a two-year program within two calendar years after the date the student initially enrolled in an eligible institution;

(D) a certificate from a one-year program within one calendar year after the date the student initially enrolled in an eligible institution; or

(2) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, with a total number of course credit hours earned, including transfer credit hours and excluding hours earned exclusively by examination, dual credit course hours, and hours earned for developmental coursework that an institution required the student to take under Texas Education Code, Section 51.3062 (relating to Success Initiative), or under the former provisions of Texas Education Code, Section 51.306 (relating to Texas Academic Skills Program), that is not more than:

(A) six hours more than the number of credit hours required to complete a two-year certificate or a baccalaureate degree; or

(B) three hours more than the number of credit hours required to complete a one-year certificate.

21.130. Loan Interest.

There shall be no interest charged for a Texas B-On-Time Loan unless a judgment is obtained against the borrower for default in payment. If a judgment should be taken, the interest rate shall be the amount specified in Section 304.003 of the Texas Finance Code, (relating to Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract).

21.131. Repayment of Loans.

(a) All loans extended under this program to any borrower shall be placed by the Board into an "account," with the full amount of principal and any fees and costs that accrue over the life of the loans to be repaid in monthly installments which shall be calculated to repay the account over a period of not more than 15 years from the beginning of the repayment period. In no case will the minimum annual repayment on the account be less than \$900.

(b) The repayment period shall begin no earlier than six months after the date on which the student ceases to be enrolled continuously in an eligible institution, as determined by the institution.

(c) An education deferment is available to any borrower whose account is not in a default status and who provides the Board with documentation of enrollment for at least a half-

time course load.

(d) The Commissioner may grant periods of forbearance in the form of postponed or reduced payments for unusual financial hardship if the Board receives a written request stating the circumstances that merit such consideration.

(e) A charge of 5 percent of the scheduled monthly payment or five dollars (\$5.00), whichever is less, shall be assessed if the past due amount is not received within 20 days of the scheduled due date. These charges shall be collected for late payment of all sums due and payable and shall be taken out of the next payment received by the Board.

(f) In the case of delinquent accounts, the Commissioner may authorize the assessment of charges necessary to collect the loan, which may include returned check fees, court costs fees, attorney fees, skip-trace fees, and long-distance telephone charges.

(g) In accordance with the terms of the promissory note, the Commissioner shall determine the priority order in which the payments shall be applied to late charges, collection costs, principal, and any other charges.

21.132. Deceased or Disabled Borrowers.

(a) All loans through the Texas B-On-Time Loan Program are discharged in the event of the borrower's death or permanent and total disability.

(b) Verification of death, and determination of permanent and total disability of a borrower through the Texas B-On-Time Loan Program, shall be made in accordance with student loan industry standards.

(c) The final determination of permanent and total disability of a borrower shall be made by the Commissioner.

21.133. Enforcement of Collection.

(a) When any Texas B-On-Time borrower fails to make as many as five monthly payments due in accordance with his or her repayment schedule, the full amount of remaining principal and other charges shall become due and payable immediately.

(b) When as many as six payments have been missed, the loans will be considered to be in default, and the Office of the Attorney General, at the request of the Commissioner, may file suit for the unpaid balance plus court costs, attorney fees, and judgment interest, as described in Section 21.130 of this title (relating to Loan Interest).

(c) All records of each student who is a borrower under this Subchapter shall be so identified in the Office of the Registrar at each eligible institution. The institution may not release an official certified copy of such records, nor may any student in this program re-register for classes in the institution, until the Texas B-On-Time program officer at the institution certifies to the registrar that the borrower's B-On-Time account is in good condition.

The Commissioner must approve exceptions to this section in advance of the institution's release of an official certified copy of the records or of the borrower's re-registration.

(d) In accordance with state law, the Board will notify the Comptroller of Public Accounts when a borrower's account has become 90 days or more past due. Until the delinquency is cured, no state warrant other than a wage warrant will be released to the borrower. This prevents the delinquent borrower from receiving further warrants for state student financial aid.

22.134. Allocation and Reallocation of Funds for Private or Independent Institutions of Higher Education.

(a) Allocations. Allocations for the B-On-Time Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation base for each institution choosing to participate will be its three-year average share of Texas residents enrolled full time in an undergraduate degree program who completed a FASFA.

(3) The source of data used for the allocation calculations are the three most recently certified financial aid database reports submitted to the Board by the institutions.

(4) Verification of Data. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting of the allocations on the Board's loan program website. **Institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the calculations accurately reflect data submitted by the institutions.**

(b) Reallocations. Institutions will have until February 20, or the first working day thereafter if it falls on a weekend or holiday, to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any unspent funds not yet disbursed to students. The funds released in this manner are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are disbursed.

(c) Reductions in Funding.

(1) If funding for the program is reduced during the first year of a biennium, the Board may choose to forego reallocations to better distribute the reduction across the biennium.

(2) If funding is reduced prior to the beginning of the second year of a biennium, the Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

