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Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Parts 668, 674, 682, and 685**

RIN 1840-AD12

[Docket ID ED-2013-OPE-0063]

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions, Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The proposed regulations would: amend the FFEL and Direct Loan program regulations to reflect changes made to the Higher Education Act of 1965, as amended (HEA), by the SAFRA Act included in the Health Care and Education Reconciliation Act of 2010; incorporate other recent statutory changes in the Direct Loan Program regulations; update, strengthen, and clarify various areas of the Student Assistance General Provisions, Perkins Loan, FFEL, and Direct Loan program regulations; and provide for greater consistency in the regulations governing the title IV, HEA student loan programs. These proposed regulations would ensure that the title IV, HEA Federal student aid programs operate as efficiently as possible.

DATES: We must receive your comments on or before August 28, 2013.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education,

1990 K Street NW., Room 8031, Washington, DC 20006-8502.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Jessica Finkel, U.S. Department of Education, 1990 K Street NW., Room 8031, Washington, DC 20006-8502. Telephone: (202) 502-7647 or by email: <mailto:jessica.finkel@ed.gov>.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Purpose of This Regulatory Action: These regulations would address issues arising from the changes made to the HEA by the SAFRA Act, included in the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152). The SAFRA Act ended the origination of new loans under the FFEL Program after June 30, 2010. With this change, all new Stafford, PLUS, and Consolidation loans with a first disbursement on or after July 1, 2010, are now made under the Direct Loan Program. Because all new loans are being made under the Direct Loan Program, the proposed regulations would amend the FFEL Program regulations in 34 CFR part 682 by removing provisions related to the making of new loans. The proposed regulations would also amend the Direct Loan Program regulations in 34 CFR part 685 by adding detailed regulations in areas where the Direct Loan Program regulations currently cross-reference the FFEL Program regulations.

The proposed regulations would also strengthen and clarify provisions of the Perkins Loan, FFEL, and Direct Loan program regulations including, but not limited to, regulations governing: Deferments, forbearances, loan cancellation, rehabilitation of defaulted loans, administrative wage garnishment, and satisfactory repayment arrangements. The proposed regulations would also make the rules governing the various title IV, HEA loan programs more consistent.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Raise the participation rate index ceiling applicable to institutions that have a single three-year cohort default rate of over 40 percent for purposes of challenges to and appeals from sanctions based on that default rate.

- Clarify the Perkins Loan, FFEL, and Direct Loan program regulations to provide that a borrower who makes six payments in the course of rehabilitating a defaulted loan, but who does not seek additional title IV aid, will not be considered to have used the one-time-only opportunity to regain title IV eligibility by making satisfactory repayment arrangements. The proposed regulations would also define the term "satisfactory repayment arrangement" more consistently across the title IV, HEA loan programs.

- Amend the closed school discharge provisions in the Perkins Loan, FFEL, and Direct Loan program regulations to specify that a borrower may qualify for a loan discharge if the borrower withdrew from school not more than 120 days before the school closed, instead of the current 90-day standard. The proposed regulations would also add examples of the types of exceptional circumstances under which the Department may extend the 120-day window.

- Update the FFEL and Direct Loan program enrollment status reporting requirements for institutions to reflect current processes and eliminate obsolete terms and procedures. The proposed regulations would also add comparable enrollment status reporting provisions to the Perkins Loan Program regulations.

- Revise the terms under which a guaranty agency in the FFEL Program may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay a debt after default but prior to claim payment to require either a signed written agreement to repay or an oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations would provide that if a forbearance is granted based on the borrower's or endorser's oral request and affirmation of the obligation, the forbearance is limited to 120 days and cannot be granted for consecutive periods. In addition, the lender must orally review with the borrower the terms and conditions of the forbearance and send a notice to the borrower or endorser that confirms the terms of the forbearance. The proposed regulations would also define the term "affirmation." Finally, the proposed regulations would add comparable provisions in the Direct Loan Program.

- Require that lenders grant forbearance to FFEL borrowers who are performing service that qualifies them for loan repayment under the Department of Defense student loan repayment programs in addition to the program authorized by 10 U.S.C. 2171 (which is currently referenced in the regulations). A comparable forbearance provision would be added to the Direct Loan Program regulations.

- Authorize a lender to grant an administrative forbearance to a FFEL borrower who is delinquent at the beginning of an authorized period of forbearance and add a corresponding provision to the Direct Loan Program regulations.

- Provide that the Secretary, in the Direct Loan Program, and the guaranty agency, in the FFEL Program, would determine a borrower's reasonable and affordable payment amount under a loan rehabilitation agreement based on the borrower's and, if applicable, the borrower's spouse's current disposable income, family size, and reasonable and necessary expenses. The information about income and expenses needed to determine the reasonable and affordable payment amount would be provided by the borrower to the Secretary or the guaranty agency on a form approved by the Secretary and, if requested, with supporting documentation from the borrower or other sources.

- Specify in the FFEL and Direct Loan program regulations that a reasonable and affordable loan rehabilitation payment amount must not be a required minimum payment, a percentage of the borrower's total loan balance, or an amount based on other criteria unrelated to the borrower's total financial circumstances.

- Require that the Secretary, in the Direct Loan Program, or the guaranty agency, in the FFEL Program, provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment amount along with a comprehensive description of the borrower's rights, the terms and conditions of the payments, the effects of loan rehabilitation, and, for a FFEL borrower, the treatment of unpaid collection costs.

- Provide that, if the borrower objects to the payment amount determined by the guaranty agency based on the income and expenses shown by the borrower and contained in the written repayment agreement offered to the borrower, the guaranty agency or the Secretary will calculate an amount for the borrower's rehabilitation payment using the formula for calculating a

monthly payment amount under the income-based repayment (IBR) plan in the Direct Loan and FFEL Program regulations, and offer the borrower the option to use that amount as the rehabilitation payment amount. The borrower would be free to choose between the amount determined initially and the IBR-based payment amount.

- Provide that, while the borrower is making payments under a rehabilitation agreement, the Secretary and the guaranty agency would limit contact with the borrower to collection activities required by law or regulation and communications that support the rehabilitation.

- Amend the Direct Loan and FFEL program regulations to provide that, when a loan is being collected by administrative wage garnishment (AWG), the Secretary or the guaranty agency, respectively, will suspend AWG after the borrower makes five qualifying monthly payments under a loan rehabilitation agreement, unless the borrower requests that AWG continue.

- Incorporate into the Perkins Loan Program the same eligibility criteria used in the Direct Loan and FFEL programs to define an "eligible graduate fellowship program" and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment.

- Eliminate the debt-to-income economic hardship deferment category in the Perkins Loan Program.

- Modify the rehabilitation provisions in the Perkins Loan Program regulations to define the term "on-time" as it relates to the series of payments required to successfully rehabilitate a defaulted loan.

- Allow assignment of a Perkins Loan to the Secretary without the borrower's Social Security Number if the loan was made before September 13, 1982.

- Permit a Perkins Loan borrower who is unable to complete the second half of an academic year of teaching due to a condition covered under the Family and Medical Leave Act (FMLA) to still count that year as eligible teaching service for loan cancellation purposes, if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year.

- Permit a Perkins Loan borrower who is unable to complete a full year of eligible public service due to a condition that is covered under the FMLA to count that year as a full year of public service for loan cancellation purposes if the borrower completes at least six months of consecutive eligible service.

- Specify that, if a Perkins Loan borrower who is performing service that qualifies the borrower for loan cancellation at a cancellation rate progression of 15 percent for the first and second years of qualifying service, 20 percent for the third and fourth years of qualifying service, and 30 percent for the fifth year of qualifying service, takes a job in a different field that qualifies the borrower under a different cancellation category that provides loan cancellation at the same cancellation rate progression as the prior category, the borrower's cancellation rate under the new cancellation category would continue from the last year the borrower received a cancellation under the former cancellation category, rather than starting over at the first-year cancellation rate.

- Change the timeframe for FFEL lenders to send the required repayment disclosure for borrowers who are 60 days delinquent from five calendar days to five business days after the date the borrower becomes 60 days delinquent.

- Amend the FFEL Program regulations to provide that a lender does not have to send a repayment disclosure to a borrower who is having difficulty making payments if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

- Amend the regulations governing AWG to reflect the borrower's right to request a hearing on the enforceability of the debt and to allow the borrower to object to the amount or rate of AWG withholding if such withholding would cause financial hardship to the borrower.

- Revise the regulations governing AWG to conform the requirements for borrowers whose defaulted loans are held by a guaranty agency to the rules and procedures used by the Secretary.
- Amend the regulations governing AWG to incorporate existing policy guidance related to third-party servicers or collection contractors retained by guaranty agencies.

- Amend the regulations governing AWG to more clearly describe the process, from the initial garnishment notice to withholding.

- Amend the regulations governing AWG to better reflect due process requirements and to specify the functions, delegations of authority, recordkeeping requirements, and permissible activities of guaranty agencies and third-party servicers or collection contractors.

- Clarify the limitations on the amount that may be subject to AWG if a guaranty agency is garnishing pay

from a borrower who is not already subject to a withholding order or from a borrower who is already subject to one or more withholding orders. The proposed regulations would also permit a greater amount or percentage to be withheld with the borrower's consent.

- Require that for a borrower to receive a hearing before AWG begins, the borrower's written request for a hearing must be received on or before the 30th day following the date the garnishment notice was sent, and delete a provision that a borrower is considered to have received a garnishment notice five days following the date of the notice.

- Provide that if a borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice, the agency must provide the borrower a hearing and issue a decision within 60 days following receipt of the request. If a decision is not rendered within 60 days, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

- Amend the FFEL Program regulations to: Specify the contents of an AWG notice; describe how an AWG hearing is administered, including provisions for the submission of additional evidence and the granting of continuances; provide for the withholding order to end by either rescission or full recovery of amounts owed by the borrower; and clarify that a borrower who wishes to object that he or she is not subject to garnishment because of involuntary separation bears the burden of raising and proving that claim.

- Eliminate provisions in the FFEL Program regulations governing loan origination and disbursement and related requirements and activities except for certain school-based requirements and related activities.

- Eliminate obsolete provisions that do not reflect the current procedures in the FFEL Program.

- Make necessary conforming changes in various FFEL Program provisions to update the regulations.

- In the Direct Loan Program regulations, modify the exception to the minimum loan period requirement for clock-hour and certain non-standard term programs that allows a school, in certain transfer student situations, to originate a loan for a period shorter than the lesser of the academic year or program length only if the school accepts credit or clock hours from the school that the student was previously attending. The proposed regulations

would remove the provision that limits this exception to situations in which the school into which the student transfers accepts credit or clock hours from the prior school.

- Add detailed regulations to 34 CFR part 685 in areas where the Direct Loan Program regulations currently just cross-reference the FFEL Program regulations.

- Remove obsolete provisions that do not reflect current procedures used in administering the Direct Loan Program.

- Revise the Direct Loan Program regulations to reflect the impact of the SAFRA Act and other recent statutory changes.

Please refer to the *Summary of Proposed Changes* section of this preamble for more details on the major provisions contained in this notice of proposed rulemaking (NPRM).

Costs and Benefits: The proposed regulations are estimated to have a net budget impact of \$2.8 to \$3.4 million over ten years from 2013 to 2022. Consistent with the requirements of the Credit Reform Act of 1990 (2 U.S.C. 661(a)(5)), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources*. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories. The categories are:

- Loans for students attending less than four-year for-profit institutions;

- Loans for students attending less than four-year public and non-profit institutions;

- Loans for freshmen or sophomores in four-year institutions of all types;

- Loans for juniors or seniors in four-year institutions of all types; and

- Loans for graduate students in institutions of all types.

Risk categories have separate assumptions based on the historical pattern of the behavior of borrowers in each category, such as the likelihood of default or of the use of statutory deferment or discharge benefits.

Overall, the proposed regulations would strengthen and streamline the Federal student loan programs and help

support the American postsecondary education system. As more and more students depend on student loans to pay for their college education, it is essential that borrowers are able to fully understand and comprehend their rights and responsibilities in relation to their student debt obligations. It is also essential that the student loan programs operate as efficiently as possible. A college education has become essential for employment in a large part of the American economy and the percentage of jobs that require a degree will only increase in the future. The Department's loan programs support over ten million students per year, and this number will grow if the country pursues the President's 2020 goal of leading the world in college degree attainment. Keeping a strong and efficient higher education system is essential to America maintaining its economic advantage in the world.

Invitation to Comment: As outlined in *Negotiated Rulemaking*, significant public participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this NPRM. We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person, in Room 8031, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a

disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must establish a negotiated rulemaking committee and subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process may be found at: www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html.

On May 5, 2011, the Department published a notice in the **Federal Register** (76 FR 25650) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to streamlining institutional reporting requirements and proposed regulations regarding better State identification of low-performing teacher preparation programs pursuant to sections 205 and 207 of the HEA by focusing reporting on improved measures of program quality. A second committee (the “negotiating committee”) would address Federal student loan issues. The regulations considered by the negotiating committee would: Implement changes made by the SAFRA Act (Pub. L. 111–152), which ended the making of new loans in the FFEL Program as of July 1, 2010; make improvements to the income-contingent and income-based repayment plans; and improve the process for consideration of applications for total and permanent disability discharges. The notice requested nominations of individuals for membership on the committees who could represent the interests of key

stakeholder constituencies on each committee.

The Department developed a list of proposed regulatory provisions from advice and recommendations submitted to the Department in testimony by individuals and organizations in a series of three public hearings and a roundtable discussion held on:

- May 12, 2011, at Tennessee State University, Nashville, Tennessee.
- May 16, 2011, at Pacific Lutheran University, Tacoma, Washington.
- May 19, 2011, at Loyola University—Lakeshore Campus, Chicago, Illinois.
- May 26, 2011, at College of Charleston, Charleston, South Carolina.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. Transcripts of the regional meetings can be accessed at www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html and are also accessible in the rulemaking docket on www.regulations.gov.

Staff within the Department also identified issues for discussion and negotiation.

The negotiating committee included the following members:

- Mr. Getachew Kassa, Legislative Director, United States Student Association, and Mr. Abou Amara, Jr. (alternate), President, Graduate and Professional Student Association, University of Minnesota, Twin Cities.
- Ms. Deanne Loonin, National Consumer Law Center, and Ms. Radhika Miller (alternate), Program Manager, Educational Debt Relief and Outreach, Equal Justice Works.
- Ms. Jennifer Mishory, Deputy Director, Young Invincibles, and Ms. Maureen Thompson (alternate), The Hastings Group, LLC.
- Ms. Margaret Rodriguez, Senior Associate Director of Financial Aid, University of Michigan, and Chair, National Direct Student Loan Coalition, and Ms. Elizabeth Hicks (alternate), Executive Director, Student Financial Services, Massachusetts Institute of Technology.
- Mr. David Glezerman, Assistant Vice President and University Bursar, Temple University, and Ms. Maria Livolsi (alternate), Student Loan Service Center, State University of New York.
- Mr. Robert Perrin, President, Williams & Fudge, Inc.
- Mr. Todd Leatherman, Executive Director, Office of Consumer Protection, Office of the Kentucky Attorney General, and Ms. Michele Casey (alternate), Assistant Attorney General,

Consumer Fraud Bureau Office of the Illinois Attorney General.

- Ms. Cristi Millard, Director of Financial Aid, Salt Lake Community College, and Mr. Chris Christensen, (alternate), Director of Financial Aid, Johnson County Community College, Kansas.
 - Ms. Kris Wright, Director, Office of Student Finance, University of Minnesota, and Executive Council Member and Secretary, National Direct Student Loan Coalition, and Ms. Elaine Papas-Varas (alternate), University Director of Student Financial Aid and Director of the Primary Care Loan Redemption Program of New Jersey, University of Medicine and Dentistry of New Jersey.
 - Ms. Yvonne Gutierrez-Sandoval, Senior Associate Director of Financial Aid, Pitzer College, and Mr. Jeffrey A. Gall (alternate), Associate Dean, Office of Student Financial Services, Georgetown University.
 - Mr. Tom Sakos, Director of Student Lending and Regulatory Quality Assurance, DeVry Inc., and Mr. Anthony Fragomeni (alternate), Director of Governmental Affairs, Empire Education Group, and Chairman, American Association of Cosmetology Schools’ Government Relations Team.
 - Ms. Betsy Mayotte, Director, Regulatory Compliance and Privacy, American Student Assistance, and Mr. Scott Giles (alternate), Vice President for Operations, Social Marketing and Strategy, Vermont Student Assistance Corporation.
 - Mr. Robert Sandlin, Director of Policy and Compliance, Higher Education Servicing Corporation, and Ms. Vicki Shipley (alternate), Senior Advisor, National Council of Higher Education Loan Programs.
 - Mr. Albert Gray, Executive Director and CEO, Accrediting Council for Independent Colleges and Schools, and Ms. Sharon Tanner (alternate), Chief Executive Officer, National League for Nursing Accreditation.
 - Ms. Pamela Moran and Ms. Gail McLarnon, U.S. Department of Education.
- The negotiating committee met to develop proposed regulations during the months of January, February, and March of 2012. These proposed regulations, which reflect the work of this committee, relate to the administration of the Federal student loan programs. At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The negotiating committee’s protocols provided that, unless agreed to otherwise, for the committee to be considered to have reached consensus

on the regulations, consensus must be reached on all of the proposed regulations. Consensus means that there must be no dissent by any member.

During its first meeting, the negotiating committee agreed to negotiate an agenda of 25 student loan-related issues. The most significant issues were: Developing regulations necessary to implement the President's "Pay As You Earn" repayment initiative; developing regulations to incorporate statutory changes to the IBR plan and to address certain problems in the administration of the IBR and the income-contingent repayment (ICR) plans; overhauling the total and permanent disability discharge process; updating the FFEL Program regulations to eliminate obsolete and unnecessary provisions governing loan origination and disbursement; revising the Direct Loan Program regulations to eliminate cross-references to the FFEL Program regulations; revising regulations governing the determination of a defaulted borrower's reasonable and affordable payment amount for purposes of rehabilitation of the borrower's defaulted loan; revising the regulations governing AWG for defaulted borrowers in the FFEL Program; and providing for consistent treatment of borrowers requesting forbearance on or after the 270th day of delinquency.

The proposed regulations would also include certain technical changes to the regulations that are needed to reflect recent amendments to the HEA and to correct technical errors. These types of changes are not normally subject to the statutory requirements for negotiated rulemaking and public notice and comment. However, since those changes affected the regulations that would be considered by the negotiated rulemaking committee, the Secretary chose to include those changes in the proposed regulations to be considered by the committee to ensure that the committee could evaluate the full scope of changes to those regulations.

The Department stated its commitment to publishing the regulations to implement the Pay As You Earn repayment initiative and to overhaul and improve the total and permanent disability discharge process for borrowers as soon as possible.

During the development of proposed regulatory language and prior to the second meeting of the negotiating committee, the Department concluded that the scope and volume of the likely resulting proposed regulations resulting from the agenda approved by the negotiating committee would require extensive and significant changes to the regulations. In particular, updating the

FFEL Program regulations and making major changes to the Direct Loan Program regulations involved changes to the entirety of those program regulations. The Department determined that it was unlikely that one NPRM reflecting all of the issues could be published by the deadline established by section 482(c) of the HEA. To ensure the earliest possible implementation of the Pay As You Earn repayment initiative and the revised total and permanent disability discharge regulations, which will provide significant benefits to student loan borrowers, the Department determined that two NPRMs would result from the negotiating committee's work.

During the second meeting of the negotiating committee, the Department explained to the negotiating committee members that one NPRM would contain proposed regulations to implement the Pay As You Earn repayment initiative, to incorporate statutory changes in the IBR plan, to make other changes to improve the administration of the IBR and ICR plans, and to overhaul the total and permanent disability discharge process. The second NPRM would contain all the remaining proposed regulations that were on the negotiating committee's agenda, including proposed regulations involving rehabilitation of defaulted loans and AWG in the FFEL Program. The Department also explained that any final regulations published as a result of the second NPRM would not be published by November 1, 2012, and therefore would not become effective until July 1, 2014, under the master calendar provisions of section 482(c)(1) of the HEA. The Department committed, however, to authorize, to the extent possible, early implementation of the final regulations published as a result of the second NPRM under the Secretary's authority to designate regulatory provisions for early implementation by program participants under section 482(c)(2) of the HEA.

At the final meeting in March 2012, the negotiating committee reached consensus on the full agenda of loans issues.

On July 17, 2012, the Secretary published the first NPRM to propose changes to implement the President's Pay As You Earn repayment plan and to make changes to the ICR and IBR plans and the process for evaluating disability discharge requests (77 FR 42086). After reviewing the public comments received on the proposed rule, the Secretary published the final regulations on November 1, 2012 (77 FR 66088).

This NPRM is the second of the two NPRMs resulting from the negotiating committee's negotiations. It contains

proposed regulations to: Amend the provisions governing the participation rate index ceiling applicable to institutions with a single three-year cohort default rate of over 40 percent for purposes of challenges to and appeals from sanctions; revise the definitions of "satisfactory repayment arrangement" in the Perkins Loan, FFEL, and Direct Loan programs; amend the closed school loan discharge regulations in the Perkins Loan, FFEL, and Direct Loan programs; update the enrollment status reporting requirements in the FFEL and Direct Loan program regulations and add comparable requirements to the Perkins Loan Program regulations; amend the forbearance regulations in the FFEL and Direct Loan programs; amend the FFEL and Direct Loan program regulations governing the determination of a borrower's reasonable and affordable payment amount under a loan rehabilitation agreement, and the treatment of payments made through AWG while the borrower is also making payments under a loan rehabilitation agreement; amend the Perkins Loan Program regulations governing graduate fellowship and economic hardship deferments; modify the Perkins Loan Program regulations governing rehabilitation of a defaulted loan; amend the requirements for assigning a Perkins Loan to the Secretary; amend the Perkins Loan Program regulations related to loan cancellation; amend the FFEL Program regulations governing certain lender disclosures to borrowers; amend the FFEL Program regulations governing the AWG process; revise the FFEL Program regulations by removing provisions that are no longer needed and make necessary technical and conforming changes; amend the Direct Loan Program regulations governing the minimum period of enrollment for which a loan may be originated in certain transfer student situations; revise the Direct Loan Program regulations by incorporating provisions that apply in the Direct Loan Program but are currently only incorporated by reference to the FFEL Program regulations; amend the Direct Loan Program regulations to reflect recent statutory changes; remove obsolete provisions from the Direct Loan Program regulations; and make necessary technical corrections and conforming changes throughout the Direct Loan Program regulations.

More information on the work of the negotiating committee can be found at: www.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html.

Summary of Proposed Changes

Student Assistance General Provisions

For purposes of challenges to and appeals from sanctions, the proposed regulations would raise the participation rate index ceiling applicable to institutions that have a single three-year cohort default rate of over 40 percent from 0.06015 to 0.0832.

Changes That Apply to the Perkins Loan, FFEL, and Direct Loan Programs

- The definitions of “satisfactory repayment arrangement” in the Perkins Loan, FFEL, and Direct Loan program regulations would be revised to provide that a borrower is not considered to have used the one-time-only opportunity to regain eligibility for title IV aid by making satisfactory repayment arrangements if the borrower makes six payments during the course of rehabilitating a defaulted loan, but does not seek additional title IV aid after making those six payments. The proposed regulations would also extend the time period after the payment due date during which a payment is considered to be on-time for purposes of making satisfactory repayment arrangements in the FFEL and Direct Loan programs from 15 to 20 days, and would establish the same 20-day standard in the Perkins Loan Program. In addition, the proposed regulations would define the term “satisfactory repayment arrangement” more consistently across the title IV, HEA loan programs.

- The closed school loan discharge provisions in the Perkins Loan, FFEL, and Direct Loan program regulations would be revised to specify that a borrower who withdraws from a school prior to the school’s closure may qualify for a discharge if the borrower withdraws not more than 120 days before the date the school closes, instead of the current standard of not more than 90 days. The proposed regulations would also add examples of the types of exceptional circumstances under which the Department may allow borrowers who withdraw from a school more than 120 days prior to the school’s closure date to qualify for loan discharge.

- The FFEL Program enrollment status reporting requirements for institutions would be updated by eliminating outdated references to receiving enrollment reports from guaranty agencies and reporting enrollment status information to guaranty agencies, and by removing an obsolete requirement to report information about students who have ceased to be enrolled on a full-time

basis. The Direct Loan Program enrollment status reporting requirements would be revised by eliminating obsolete references to the frequency with which the Department provides student status confirmation reports to schools and the format of those reports. Both the FFEL and Direct Loan program enrollment status reporting requirements for institutions would be updated to eliminate obsolete terms and procedures, reflect current processes, and require institutions to report certain enrollment status changes for recipients of any type of title IV loan. Comparable enrollment status reporting requirements would be added to the Perkins Loan Program regulations.

FFEL and Direct Loan Programs

- The proposed regulations would revise the terms under which a guaranty agency in the FFEL Program may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay a debt after default but prior to claim payment. The proposed regulations would require the borrower or endorser to provide either a signed written repayment agreement or an oral affirmation of the repayment obligation. The proposed regulations would further provide that if a forbearance is granted based on the borrower’s or endorser’s oral request and affirmation of the obligation: (1) The forbearance may not exceed 120 days and cannot be granted for consecutive periods; (2) the lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization and other available repayment options; and (3) the lender must send a notice to the borrower or endorser that confirms the terms of the forbearance and the affirmation of the repayment obligation within 30 days of that affirmation. The proposed regulations would also define the term “affirmation.” Finally, the proposed regulations would add comparable forbearance provisions in the Direct Loan Program.

- The current FFEL Program forbearance provision for borrowers who are performing service that qualifies them for loan repayment under the student loan repayment program administered by the Department of Defense under 10 U.S.C. 2171 would be modified to also require lenders to grant forbearance to borrowers performing service that qualifies them for loan repayment under Department of Defense loan repayment programs that are authorized under 10 U.S.C. 2173 and 2174, and any other student loan repayment programs administered by

the Department of Defense. A comparable forbearance provision would be added to the Direct Loan Program regulations.

- The conditions under which a FFEL Program lender may grant an administrative forbearance would be modified to include a circumstance in which a borrower is delinquent at the beginning of an authorized forbearance period, and a corresponding forbearance provision would be added to the Direct Loan Program regulations.

- The proposed regulations would include the following changes to the provisions governing loan rehabilitation in the Direct Loan and FFEL programs:

- The Secretary or the guaranty agency, as applicable, would determine a borrower’s reasonable and affordable payment amount under a loan rehabilitation agreement based on the borrower’s and, if applicable, the borrower’s spouse’s current disposable income, family size, and reasonable and necessary expenses. The borrower would be required to provide the Secretary or guaranty agency with the information needed to determine the reasonable and affordable payment amount on a form approved by the Secretary and, if requested, would be required to provide supporting documentation. The proposed regulations would include a detailed list of the types of expenses that the Secretary or guaranty agency would consider in determining a borrower’s reasonable and affordable rehabilitation payment amount.

- The reasonable and affordable loan rehabilitation payment amount must not be: (1) A required minimum payment, such as \$50, if the guaranty agency or the Secretary determines that a smaller amount is reasonable and affordable; (2) a percentage of the borrower’s total loan balance; or (3) an amount based on any other formula or criteria unrelated to the individual borrower’s total financial circumstances.

- The Secretary or the guaranty agency would provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower’s reasonable and affordable payment. The agreement would include: (1) The rehabilitation payment amount; (2) a prominent statement that the borrower may object to the payment amount and the method and timeframe for raising such an objection; (3) an explanation of the terms and conditions of the required series of payments, and the effects of loan rehabilitation; and (4) for a FFEL borrower, the amount of unpaid collection costs to be added to the unpaid principal of the rehabilitated

loan when the loan is sold to an eligible FFEL lender.

- A borrower's rehabilitation payment amount would be recalculated if the borrower objects to the payment amount in the written repayment agreement. If the borrower objects to the amount determined based on an evaluation of income and expenses documented by the borrower, the Secretary or the guaranty agency would recalculate an alternative rehabilitation payment amount, based on documentation provided by the borrower, using the formula for calculating a monthly payment amount under the IBR plan in the Direct Loan and FFEL program regulations. If the recalculated amount using the IBR formula is less than \$5, the borrower's recalculated monthly rehabilitation payment amount would be \$5. The borrower may choose either rehabilitation payment amount.

- While a borrower is making payments under a rehabilitation agreement, the Secretary or guaranty agency would limit contact with the borrower to collection activities required by law or regulation and communications that support the rehabilitation.

- If a borrower who is making voluntary payments on a defaulted loan under a loan rehabilitation agreement is also making payments through AWG, the Secretary or guaranty agency would suspend collection through AWG after the borrower has made five qualifying monthly payments under the loan rehabilitation agreement. A borrower would have the option of requesting that the Secretary or guaranty agency continue collecting on the loan through AWG while the borrower continues to make voluntary payments under the loan rehabilitation agreement. A borrower would have only one opportunity to benefit from suspension of AWG while attempting to rehabilitate a defaulted loan.

Perkins Loan Program

- Schools that participate in the Perkins Loan Program would be required to use the same eligibility criteria used in the Direct Loan and FFEL programs to define an "eligible graduate fellowship program" and to establish the eligibility of a Perkins Loan borrower to receive a deferment while participating in a graduate fellowship program. The proposed regulations would add a definition of the term "eligible graduate fellowship program" to the Perkins Loan Program regulations consistent with the definition currently used in the Direct Loan and FFEL program regulations.

- The Perkins Loan economic hardship deferment eligibility criteria would be revised by eliminating the deferment category for borrowers who work less than full-time and have a specified debt-to-income ratio.

- The Perkins Loan rehabilitation provisions would be modified to specify that an "on-time" payment, for the purpose of loan rehabilitation, is a payment that is made within 20 days of the due date.

- For Perkins Loans that were made before September 13, 1982, the date the Secretary began requiring institutions to collect a borrower's Social Security Number (SSN) on the Perkins Loan Program promissory notes, the proposed regulations would allow assignment of those loans to the Secretary without the borrower's SSN.

- A Perkins Loan borrower who completes half of an academic year of teaching, but who is unable to complete the second half of the academic year due to a condition covered under the FMLA, would be able to count that year as a full year of eligible teaching service for loan cancellation purposes, if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. In addition, the proposed regulations would allow a borrower who is unable to complete a full year of public service under other loan cancellation categories due to a condition covered under the FMLA to count that year as a full year of public service for loan cancellation purposes if the borrower completes at least six months of consecutive eligible service.

- If a Perkins Loan borrower who is performing service that qualifies the borrower for loan cancellation at a cancellation rate progression of 15 percent for the first and second years of qualifying service, 20 percent for the third and fourth years of qualifying service, and 30 percent for the fifth year of qualifying service, takes a job in a different field that qualifies the borrower under a different cancellation category that provides loan cancellation at the same cancellation rate progression as the prior category, the borrower's cancellation rate progression would be uninterrupted. The borrower's cancellation rate under the new cancellation category would continue from the last year the borrower received a cancellation under the former cancellation category, rather than reverting to the first-year cancellation rate of 15 percent.

FFEL Program

- The timeframe for FFEL lenders to send the required repayment disclosure

for borrowers who are 60 days delinquent would be changed from five calendar days to five business days after the date the borrower becomes 60 days delinquent.

- The proposed regulations would eliminate the requirement for a lender to provide a repayment disclosure to a borrower who is having difficulty making payments if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

- The proposed regulations would include the following changes to the rules governing AWG in the FFEL Program:

- The proposed regulations would clarify the burden of proof that must be met by the borrower during the hearing process, specify the procedures that must be followed by the borrower and guaranty agency when objections are raised, and specify requirements that must be followed by a hearing official in determining whether the proposed withholding amount would cause a financial hardship for the borrower.

- The regulations would be revised to provide more consistent treatment with respect to AWG for borrowers whose defaulted loans are held by a guaranty agency and borrowers whose defaulted loans are held by the Secretary.

- Existing policy guidance related to functions that may be performed by third-party servicers or collection contractors retained by guaranty agencies for AWG purposes would be incorporated in the regulations, and the regulations would include examples of permissible activities of third-party contractors.

- The regulations would be revised to more clearly describe the complete AWG process, from the initial garnishment notice to the withholding of the borrower's wages.

- Regulations would be amended to better reflect due process requirements and to specify the functions, delegations of authority, recordkeeping requirements, and permissible activities of guaranty agencies and third-party servicers or collection contractors.

- The regulations would be amended to specify the limitations on the amount that may be subject to AWG if a guaranty agency is garnishing pay from a borrower who is not already subject to a withholding order, and to clarify the withholding amount or percentage and priority if a guaranty agency is garnishing the pay of a borrower who is already subject to one or more withholding orders. The proposed regulations would also permit a greater

amount or percentage to be withheld with the borrower's consent.

○ The proposed regulations would require that for a borrower to receive a hearing before AWG begins, the borrower's written request for a hearing must be received on or before the 30th day following the date the garnishment notice was sent, instead of on or before the 15th day following the borrower's receipt of a garnishment notice, as under current regulations. The proposed regulations would also delete a provision that a borrower is considered to have received a garnishment notice five days following the date of the notice.

○ If a borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice, the agency must provide the borrower a hearing and issue a decision within 60 days following receipt of the request. If a decision is not rendered within 60 days, the guaranty agency would be required to suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

○ The proposed regulations would also: (1) Specify the information that a guaranty agency must provide in the AWG notice it sends to a defaulted borrower; (2) describe how an AWG hearing must be conducted, including with respect to the submission of additional evidence and the granting of continuances; (3) provide for the withholding order to end by either rescission of the order for AWG or full recovery of the amount owed by the borrower; and (4) clarify that a borrower who wishes to object that he or she should not be subject to garnishment because of involuntary separation from employment bears the burden of raising and proving that claim.

• To reflect the impact of the SAFRA Act, FFEL Program regulations governing loan origination and disbursement and related requirements and activities (for example, requirements for due diligence in the making and disbursing of loans) would be eliminated, except for certain school-based requirements and related activities (for example, exit counseling requirements).

• FFEL Program regulations that are obsolete (for example, rules governing the Federal Insured Student Loan (FISL) Program) would be eliminated.

• Conforming changes and technical corrections would be made as necessary throughout the regulations to ensure consistency and accuracy.

Direct Loan Program

• The Direct Loan Program regulations would be expanded by adding provisions that apply in the Direct Loan Program, but which are currently reflected in 34 CFR part 685 only by cross-reference to the FFEL Program regulations (for example, eligibility criteria for graduate fellowship and economic hardship deferments).

• The proposed regulations would remove provisions that are obsolete or that do not reflect current procedures used in administering the Direct Loan program, such as loan limit amounts that are no longer applicable because of recent statutory changes, and outdated school loan origination options and eligibility criteria for initial participation in the Direct Loan Program.

• The Direct Loan Program deferment regulations would be restructured for greater clarity.

• The exception to the minimum loan period requirement for clock-hour and certain non-term programs that allows a school to originate a loan for a transfer student to cover a period of enrollment shorter than the academic year or the program length only if the school accepts credit or clock hours from the school the student previously attended would be revised by removing the provision that limits the exception to situations in which the new school accepts transfer credits or clock hours from the prior school.

• Throughout the Direct Loan Program regulations, conforming changes would be made to reflect the impact of the SAFRA Act and other recent statutory changes, and other conforming changes and technical corrections would be made as necessary.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We begin with an issue that involves the Student Assistance General Provisions regulations in 34 CFR part 668, followed by issues that apply to all three title IV loan programs, issues that apply to the FFEL and Direct Loan programs, issues that apply only to the Perkins Loan Program, issues that apply only to the FFEL Program, and finally issues that apply only to the Direct Loan Program. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

Student Assistance General Provisions

Three-Year Cohort Default Rate Participation Rate Index Challenges and Appeals (34 CFR 668.204 and 668.214)

Statute: Under section 435(a)(8) of the HEA, an institution's participation rate index (PRI) is determined by multiplying the institution's Direct Loan/FFEL cohort default rate (CDR) by the percentage of the institution's regular students, enrolled on at least a half-time basis, who received such a loan for a 12-month period ending during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's CDR is determined. Effective for fiscal years beginning on and after October 1, 2011, section 435(a)(8)(A) of the HEA provides that an institution that demonstrates to the Secretary that its PRI is equal to or less than 0.0625 for any of the three most recent fiscal years for which data is available will not lose eligibility to participate in the FFEL and Direct Loan programs for having three three-year CDRs that are equal to or greater than 30 percent.

Current Regulations: Under section 668.206(a)(1), an institution that has one three-year CDR of over 40 percent loses its eligibility to participate in the FFEL and Direct Loan programs. Sections 668.204(c)(1)(i), 668.214(a)(1), and 668.214(d)(2) use a participation rate index of 0.06015 as the ceiling for successful PRI challenges and appeals brought by institutions having one three-year CDR of over 40 percent.

Proposed Regulations: Proposed §§ 668.204(c)(1)(i) and 668.214(a)(1) substitute 0.0832 as the PRI ceiling for purposes of challenges to and appeals from sanctions based on one three-year CDR of over 40 percent. Similarly, in proposed § 668.214(d)(2), "0.06015" is replaced with "0.0832."

Reasons: Under the statutory PRI ceiling of 0.0625, which applies to sanctions based on three three-year CDRs of 30 percent or higher, institutions can be excused from sanctions based on the percentage of Direct Loan and FFEL borrowers among their enrollment even if that percentage is as high as almost 21 percent, depending on the lowest of the institution's three excessive CDRs ($0.30 \text{ CDR} \times 0.20 < 0.0625$ ceiling).

In contrast, using the current regulatory 0.06015 PRI ceiling for an institution that has a single three-year CDR of over 40 percent means that the cutoff for a successful PRI appeal of or challenge to the regulatory loss of eligibility is a borrower population

comprising no more than approximately 15 percent of enrollment ($0.401 \text{ CDR} \times 0.15 = 0.06015$ ceiling).

The Department is proposing to raise the PRI ceiling applicable to institutions that have a single three-year CDR of over 40 percent so that, as with the PRI challenge and appeal established by statute for three-year CDRs of 30 percent or higher, the institution can have borrower enrollment as high as almost 21 percent and still bring a successful PRI challenge to or appeal from the loss of eligibility ($0.401 \text{ CDR} \times 0.20 < 0.0832$).

Perkins Loan, FFEL, and Direct Loan Programs: Satisfactory Repayment Arrangements (34 CFR 674.2(b), 674.9(k), 682.200(b), 685.102(b), and 685.200)

Statute: Under section 428F(b) of the HEA, which is applicable to the Direct Loan Program under section 455(a)(1) of the HEA, a defaulted FFEL or Direct Loan borrower may regain eligibility for title IV student financial assistance if the borrower makes six consecutive, monthly payments on the defaulted FFEL or Direct Loan Program loan. The borrower may only regain eligibility once under this provision of the HEA.

Under section 464(h)(2) of the HEA, a defaulted Perkins Loan borrower may regain eligibility for title IV student financial assistance by making six on-time, consecutive, monthly payments on the defaulted Perkins Loan Program loan. As with FFEL and Direct Loan borrowers, a Perkins Loan borrower may only regain eligibility once under this provision of the HEA.

Current Regulations: In the Perkins Loan, FFEL, and Direct Loan programs, a defaulted borrower may regain eligibility for title IV student financial assistance by making satisfactory repayment arrangements with the loan holder. The term “satisfactory repayment arrangement” is defined in 34 CFR 674.2(b), 682.200(b), and 685.102(b) for the Perkins Loan, FFEL, and Direct Loan programs, respectively.

The “satisfactory repayment arrangement” definitions are slightly different for each of the three loan programs. For Perkins Loan borrowers, a satisfactory repayment arrangement is the making of six, on-time, consecutive, monthly payments on a defaulted loan. 34 CFR 674.2(b) (“Satisfactory repayment arrangement”). For FFEL and Direct Loan borrowers, for purposes of regaining eligibility, a satisfactory repayment arrangement is the making of six consecutive, on-time, voluntary, full monthly payments on a defaulted loan. 34 CFR 682.200(b) (“Satisfactory repayment arrangement”) and 685.102(b) (“Satisfactory repayment

arrangement”). For FFEL and Direct Loan borrowers, an on-time payment is a payment made within 15 days of the due date. The Perkins Loan Program regulations do not specify a standard for on-time payments. The standard for an on-time payment is established by the institution that is collecting the Perkins Loan, or by the Secretary if the Secretary holds the loan.

The “satisfactory repayment arrangement” definitions in the FFEL and Direct Loan program regulations specify that voluntary payments are payments made directly by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. These limitations are not in the Perkins Loan Program definition of “satisfactory repayment arrangement,” but are in § 674.9(j) of the Perkins Loan Program regulations.

The FFEL and Direct Loan program regulations specify that a borrower may only obtain the benefit of regaining title IV eligibility by making satisfactory repayment arrangements once. The Perkins Loan Program regulations state that a borrower may only obtain the benefit of regaining title IV eligibility by making satisfactory repayment arrangements on a defaulted loan once. None of the definitions address the status of borrowers who, in the course of making rehabilitation payments on a defaulted title IV loan, also make the required number of payments to regain title IV eligibility under a satisfactory repayment arrangement.

Proposed Regulations: The proposed regulations would make the definitions of “satisfactory repayment arrangement” more consistent across the three title IV student loan programs. Proposed § 674.2(b) would add to the definition of “satisfactory repayment arrangement” in the Perkins Loan Program regulations the requirements that the monthly payments be “voluntary” and “full.” The proposed Perkins Loan Program regulations would also specify that voluntary payments are payments made by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. The revised definition of “satisfactory repayment arrangement” in the Perkins Loan Program regulations would also specify that a borrower may only receive the benefit of regaining title IV eligibility by a satisfactory repayment arrangement once, not once on a defaulted loan, as in the current regulation.

The revisions to the “satisfactory repayment arrangement” definitions for the FFEL and Direct Loan programs in proposed §§ 682.200(b) and 685.102(b)

would extend the length of time during which a payment would be considered on-time from within 15 days of the due date to within 20 days of the due date. The revision to the “satisfactory repayment arrangement” definition for the Perkins Loan Program in proposed § 674.2(b) would establish the same 20-day standard for an on-time payment.

The proposed regulations would add a new paragraph to the definitions of “satisfactory repayment arrangement” in §§ 674.2(b), 682.200(b), and 685.102(b) of the Perkins Loan, FFEL, and Direct Loan program regulations. The proposed new paragraph would provide that a borrower who makes six qualifying payments under an agreement to rehabilitate a loan, but who does not receive additional title IV aid prior to defaulting on the loan again, will not be considered to have used the one opportunity the borrower has to renew eligibility for title IV aid by making satisfactory repayment arrangements.

The proposed regulations would add a new § 674.9(k) to the Perkins Loan Program regulations, to provide that a borrower who is in default on a FFEL or Direct Loan program loan may regain eligibility to receive a Perkins Loan if the borrower makes satisfactory repayment arrangements on the FFEL or Direct Loan program loan, as determined by the loan holder. The proposed regulations would also revise § 685.200(d) of the Direct Loan Program regulations, by adding a reference to defaulted Perkins Loans as well as to defaulted FFEL and Direct Loan program loans.

Reasons: A defaulted borrower may regain eligibility for Federal student aid by making satisfactory repayment arrangements on a title IV loan. In addition, a borrower also has the option of rehabilitating a defaulted title IV loan by making a series of on-time, voluntary, full monthly payments as part of a rehabilitation agreement with the loan holder. To rehabilitate a loan in the Direct Loan or FFEL program, a borrower must make nine reasonable and affordable payments within 20 days of the due date during ten consecutive months. To rehabilitate a loan in the Perkins Loan Program, a borrower is required to make nine consecutive monthly payments. In the course of making loan rehabilitation payments, a title IV borrower may also make the six consecutive on-time monthly payments necessary to regain eligibility for title IV aid.

A borrower making payments under a loan rehabilitation agreement might not have plans to return to school or to seek additional title IV aid after making the

required payments. The Department has previously been asked whether a borrower who makes the six payments needed under satisfactory repayment arrangements in the course of making loan rehabilitation payments, but who does not request additional title IV aid, will automatically be considered to have used the one-time-only opportunity to regain eligibility by making satisfactory repayment arrangements. The Secretary's policy is that a borrower in this situation has not used the one-time opportunity to regain title IV eligibility by making satisfactory repayment arrangements unless the borrower receives title IV aid after regaining eligibility. As a result of these inquiries, the Secretary proposed amending the "satisfactory repayment arrangement" definitions in the Perkins Loan, FFEL, and Direct Loan program regulations to codify this policy. The negotiating committee agreed with the changes proposed by the Department.

The Secretary also proposed making the definition of "satisfactory repayment arrangement" more consistent across the three loan programs. The Secretary proposed removing the language in the Perkins Loan Program regulations that stated that a borrower may only obtain this benefit once "on a defaulted loan." The proposed change would make the Perkins Loan Program definition consistent with the FFEL and Direct Loan program definitions, which state that a borrower may only obtain this benefit "once." Non-Federal negotiators recommended that the "on a defaulted loan" language be added to the FFEL and Direct Loan program definitions, rather than removed from the Perkins Loan Program definition. The Secretary reviewed the Perkins Loan and FFEL program statutory provisions, and determined that the HEA restricts this benefit to once per borrower, not once per loan, in all three of the title IV student loan programs. Accordingly, the Secretary declined to accept this recommendation from the non-Federal negotiators.

Non-Federal negotiators recommended expanding the standard for an on-time payment in the FFEL and Direct Loan definitions of "satisfactory repayment arrangements" from within 15 days of the due date to within 20 days of the due date. They also recommended adding this on-time payment standard to the Perkins Loan Program definition. The negotiators noted that the 20-day standard is already established for loan rehabilitation payments, and believed that it would be appropriate to use the same standard for payments made under a satisfactory repayment arrangement.

Using the same standard for on-time payments for purposes of satisfactory repayment arrangements and for purposes of loan rehabilitation would reduce complexity and confusion for borrowers and loan servicers. The Secretary agreed with the recommendation to have the same standard for on-time payments made under satisfactory repayment arrangements in the three title IV loan programs, and to make that standard consistent with the standard for rehabilitation payments.

The Secretary proposed revising the Perkins Loan and Direct Loan student and borrower eligibility regulations to specify that a defaulted FFEL or Direct Loan program borrower can qualify for a new Perkins Loan by making satisfactory repayment arrangements on the defaulted loan, and to specify that a defaulted Perkins Loan Program borrower can qualify for a new Direct Loan by making satisfactory repayment arrangements. Sections 428F(b) and 455(a)(1) of the HEA already provide for this treatment, and the Secretary proposed revising the Perkins and Direct Loan program regulations to more closely match these HEA statutory provisions.

Closed School Discharge (34 CFR 674.33(g), 682.402(d), and 685.214)

Statute: Sections 437(c)(1) (which is applicable to the Direct Loan Program under section 455 of the HEA) and 464(g) of the HEA provide for a closed school discharge for borrowers in the Perkins Loan, Direct Loan, and FFEL programs who are unable to complete a program of study because of a school closure.

Current Regulations: Under §§ 674.33(g), 685.214, and 682.402(d) of the Department's current regulations, borrowers in the Perkins Loan, Direct Loan, and FFEL programs (and PLUS loan endorsers) may receive a loan discharge if the borrower (or the student on whose behalf a parent borrowed) could not complete the program of study at the school because the school closed while the borrower (or student) was enrolled, or if the borrower (or student) withdrew from the school no more than 90 days before the school closed.

Sections 674.33(g), 685.214, and 682.402(d) of the Department's regulations provide that the 90-day period may be extended if the Secretary determines that exceptional circumstances related to the school closure justify an extension. The school's closure date is the date the school ceases to provide educational instruction in all of its programs, as

determined by the Secretary. For closed school discharge purposes a "school" is the school's main campus, or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible for title IV purposes.

Proposed Regulations: Proposed §§ 674.33(g)(4)(i)(B), 682.402(d)(1)(i), and 685.214(c)(1)(ii), respectively, would extend the current 90-day window for students who leave before a school closes to 120 days, and add examples of the types of exceptional circumstances under which the Department may extend the 120-day window. Specifically, the proposed regulations would list the following examples of exceptional circumstances for this purpose: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

Reasons: During the public hearings prior to the initiation of the negotiated rulemaking sessions, some commenters suggested that the 90-day window for student withdrawal prior to a school's closure date may be too short because there may be numerous signs of a school's pending closure that may prompt a student to withdraw more than 90 days prior to the school's closure date. The commenters also noted that the Department has not previously provided examples in the regulations of the exceptional circumstances under which the Department would extend the 90-day window.

To inform the discussions around the closed school discharge, the Department presented information to the negotiating committee on its experience with closed school discharges. In the last five years, 128 schools that participated in the title IV programs have closed. The primary reason for the school closures has been the loss of accreditation. Of the 128 schools that closed, 82 were proprietary schools.

The non-Federal negotiators raised many questions about the Department's implementation of the statutory requirement that a school must close in order for the borrower to receive a loan discharge. Some negotiators argued that the closed school discharge should include instances in which a program at the school is discontinued but the school continues to operate, especially in the case of a school that offers many of its programs online and which does not associate its online programs with a

physical location. The non-Federal negotiators asked the Department to clarify whether students would be eligible for a closed school loan discharge if a school discontinued one of its traditional or online programs.

In response to the negotiators' questions, the Department noted that for a borrower to receive a loan discharge, current regulations require that the school must close. Under §§ 674.33(g), 682.402(d), and 685.214(a), the term "school" means a school's main campus or any location or branch of the main campus, and a school is considered closed as of the date that the school ceases to provide education in all programs. The law and regulations do not provide a loan discharge when a program, either traditional or distance, is discontinued. The Department also noted that distance education programs are not locations of a school for title IV eligibility purposes. A location is a physical site where a student can receive instruction in 50 percent or more of an eligible program. If a school offers online programs, the online programs are considered associated with the main campus of the school. Thus, a borrower enrolled in an online course would receive a closed school discharge only if the main campus of the school closed.

The Department proposed expanding from 90 to 120 days the window in which a student must be enrolled at a school that closed for a borrower to receive the closed school loan discharge. Expanding the window should help address the circumstances under which a borrower has enough information to determine that a school is not providing an appropriate education and may close and withdraws from the school prior to its formal closure date. The Department believes that the extra time would help borrowers who are in this situation and would allow them to take advantage of other opportunities, such as the option to take advantage of a teach-out plan.

The non-Federal negotiators agreed that this change would be beneficial for borrowers and should be made.

In response to public commenters' requests that the Department provide examples of exceptional circumstances that might justify an extension of the window under §§ 674.33(g), 682.402(d), and 685.214(c), the Department invited the non-Federal negotiators to provide examples of what they believed should be considered exceptional circumstances. After much discussion, some of the non-Federal negotiators recommended that the following examples be included in the proposed regulations: The school's loss of

accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

In response to a question from some negotiators, in regard to the last of the listed examples, we note that we would consider the term "finding" to refer to a conclusion in a final or formal document issued by the State or Federal agency.

Some non-Federal negotiators believed that it was particularly important to treat as an exceptional circumstance a school's discontinuance of the majority of its programs. Those negotiators noted that while it is highly improbable that a school will be able to continue its operations after closing the majority of its programs, there is a possibility that a school in this situation will remain open. In light of the fact that a borrower cannot receive a loan discharge based upon a single discontinued program, the non-Federal negotiators believed this language would cover the exception and provide relief for affected borrowers.

It is important to note that, although the Secretary would view the cited examples as exceptional circumstances, these examples would not be exclusive or otherwise narrow the scope of exceptional circumstances that the Secretary would consider. The Secretary has the discretion to consider other extenuating circumstances that may warrant a closed school loan discharge for a borrower who withdrew from a school more than 120 days before the school closed. As the Department noted during the negotiated rulemaking session, the Secretary determines whether exceptional circumstances exist on a case-by-case basis and takes into account the facts of the particular situation.

The Secretary also wants to note that the listing of these examples is not intended to provide borrowers with a guaranteed right to a discharge. The Secretary would still need to determine that the situation presents exceptional circumstances justifying an extension of the 120-day window. Moreover, these examples are not intended to provide a borrower with a private right of action against the school; these examples would not establish any rights between the student and the school.

After much deliberation and discussion between the Department and the non-Federal negotiators, the Department and the non-Federal negotiators reached consensus on the

proposed changes to the closed school loan discharge regulations.

School Enrollment Status Reporting Requirements (34 CFR 674.61, 682.605, 682.610, and 685.309)

Statute: Section 428(b)(1)(P) of the HEA requires a borrower who received a FFEL Program loan to notify the school of any change in the borrower's local address while the borrower is enrolled. It also requires the borrower and the school to promptly notify the loan holder, either directly or through the guaranty agency, if there is a change in the borrower's permanent address, if the student ceases to be enrolled on at least a half-time basis, or if there is any other change in status that affects the student's eligibility for the loan.

Section 454(a)(1)(E)(i) of the HEA requires a school that participates in the Direct Loan Program to provide the Secretary with timely and accurate information concerning the status of student borrowers (and students on whose behalf parents borrow Direct PLUS Loans) while the students are in attendance at the school, and any new information related to students or parents after the borrowers leave the school. This information is provided to the Secretary to assist in the servicing and collection of Direct Loan Program loans.

Section 487(a)(3) of the HEA requires a school that participates in a program under title IV of the HEA to establish and maintain such administrative and fiscal procedures and records as are necessary to ensure the proper and efficient administration of funds received from the Secretary or from students. Upon request and in a timely manner, schools must provide information relating to their administrative capability and financial responsibility to the Secretary, the appropriate guaranty agency, and the appropriate accrediting agency or association. In addition, section 487(a)(5) of the HEA requires a school that participates in the title IV, HEA programs to submit reports to the Secretary (and to the holders of loans made to the institution's students) at such times and containing such information as the Secretary requires to carry out the purpose of title IV of the HEA.

Current Regulations: For the FFEL Program, current § 682.610(c) requires a school, upon receipt of a student status confirmation report from the Secretary or a similar report from a guaranty agency, to complete and return the report to the Secretary or guaranty agency, as appropriate. Unless the school expects to submit its next

student status confirmation report to the Secretary or guaranty agency within the next 60 days, the current regulations require a school to notify the guaranty agency or lender within 30 days if the school discovers that a student who received a FFEL Program loan has changed his or her permanent address, or discovers that: (1) A FFEL Program loan has been made to or on behalf of a student who enrolled at the school, but who has ceased to be enrolled on at least a half-time basis; (2) a loan has been made to or on behalf of a student who has been accepted for enrollment, but who failed to enroll on at least a half-time basis; or (3) a loan has been made on behalf of a full-time student who has ceased to be enrolled on a full-time basis. Current § 682.605(b) provides that if a student withdraws, the school must use the withdrawal date determined under § 668.22(b) or 668.22(c), as applicable, for the purpose of reporting to the lender the date that the student withdrew from the school. Current § 682.605(c) provides that, for the purpose of a school's reporting to the lender, a student's withdrawal date is the month, day, and year of the withdrawal date.

For the Direct Loan Program, current § 685.309(b) includes provisions comparable to § 682.610(c). That regulation requires schools participating in the Direct Loan Program to submit student status confirmation reports and information about address and enrollment status changes to the Secretary. However, there is no requirement for a school to report that a full-time student who received a Direct Loan has ceased to be enrolled on a full-time basis, as is the case in the FFEL Program under § 682.610(c)(2)(iii). In addition, current §§ 685.309(b)(3) and 685.309(b)(4) specify that the Secretary provides student status confirmation reports to a school at least semi-annually, and that the Secretary may provide these reports in either paper or electronic format.

For the Perkins Loan Program, current regulations do not include enrollment reporting requirements for schools comparable to the FFEL and Direct Loan program requirements.

Proposed Regulations: For the Perkins Loan Program, the proposed regulations would add a new § 674.19(f) with the heading "Enrollment reporting process." Proposed § 674.19(f)(1) would provide that, upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary in the manner and format and within the timeframe prescribed by the Secretary. Proposed

§ 674.19(f)(2) would provide that, unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that: (1) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis; (2) a student failed to enroll on at least a half-time basis for the period for which a loan was intended; or (3) a student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address.

For the FFEL Program, the proposed regulations would retitle § 682.610(c) "Enrollment reporting process," and replace the term "student status confirmation report" with "enrollment report." They would also revise § 682.610(c)(1) to provide that, upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary in the manner and format and within the timeframe specified by the Secretary. Proposed § 682.610(c)(2) would provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, the school must notify the Secretary within 30 days after the date the school discovers that: (1) A title IV loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis; (2) a student failed to enroll on at least a half-time basis for the intended loan period; or (3) a student who is enrolled at the school and who has received a loan under title IV of the HEA has changed his or her permanent address. References in the current regulations to receiving enrollment reports from a guaranty agency or reporting enrollment status information to guaranty agencies would be removed. The proposed regulations would also amend §§ 682.605(b) and 682.605(c) to require schools to report information about a student's withdrawal to both the lender and the Secretary.

For the Direct Loan Program, the proposed regulations would retitle § 685.309(b) "Enrollment reporting process," and replace the term "student status confirmation report" with the term "enrollment report." It would also revise § 685.309(b)(1) to provide that upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the

Secretary in the manner and format and within the timeframe prescribed by the Secretary. Proposed § 685.309(b)(2) would provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, the school must notify the Secretary within 30 days after the date the school discovers that: (1) A title IV, HEA program loan was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis; (2) the student failed to enroll on at least a half-time basis for the intended loan period; or (3) a student who is enrolled at the school and who received a title IV loan has changed his or her permanent address. Current §§ 685.309(b)(3) and 685.309(b)(4) would be removed.

Reasons: The current FFEL and Direct Loan program regulations in §§ 682.610(c) and 685.309(b) reflect terminology and procedures that are not consistent with current practices. These obsolete provisions include the use of the term "student status confirmation report," the references in the FFEL Program regulations to receiving enrollment reports from guaranty agencies and reporting information to guaranty agencies, and the references in the Direct Loan Program regulations to the frequency with which the Secretary provides student status confirmation reports and the format of those reports. In addition, the current FFEL Program provision requiring a school to report that a student has ceased to be enrolled on a full-time basis reflects an obsolete eligibility requirement. The proposed regulations would revise §§ 682.605(a) and 685.309(b) to reflect the current processes by which schools receive and report student enrollment status information. The proposed regulations would also provide the Secretary with greater flexibility to modify enrollment reporting procedures in the future by providing that schools must update all information included in the enrollment report received from the Secretary and return the report to the Secretary in the manner and format and within the timeframe specified by the Secretary. Further, the proposed regulations would replace the current provisions in the FFEL Program regulations that require a school to report certain status changes only for their students who received FFEL Program loans, and the comparable provisions in the Direct Loan Program regulations that require schools to report information only for students who received Direct Loan Program loans, with a more general

requirement for schools to report these status changes for students who received any type of title IV loan. The Department believes that it is appropriate to establish this more general requirement, since the National Student Loan Data System (NSLDS) enrollment reporting files that schools receive from the Department include all of a school's students who have received loans under the Direct Loan, FFEL, or Perkins Loan programs. The proposed changes to the FFEL and Direct Loan program regulations described here would also be incorporated in the proposed new enrollment status reporting requirements for the Perkins Loan Program that are discussed later in this section.

To reflect current procedures, current §§ 682.605(b) and 682.605(c) would be modified to state that a school must report information about student withdrawals to both the FFEL Program lender and the Secretary.

Schools that participate in the Perkins Loan Program have indicated to the Department's NSLDS staff that having enrollment status information on Perkins borrowers from all schools attended by the borrowers would improve loan servicing in the Perkins Loan Program. In response to this request, the Department modified the NSLDS enrollment reporting file sent to schools by the Department to include, beginning in June 2012, all of the school's students who received a Perkins Loan for attendance at any school. Perkins Loan schools, or their servicers, may enroll with NSLDS to receive enrollment data on their Perkins Loan recipients. This will help schools track their former students who have enrolled at other schools, and will allow schools to use NSLDS for enrollment verification rather than having to rely on paper Perkins Loan enrollment verification forms. Proposed § 674.61(f) would establish enrollment reporting requirements for Perkins Loan schools to support this new process.

To ensure more timely reporting of certain student status changes, the Department initially proposed to modify current § 682.610(c)(2) to provide that, unless a school expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 15 days (instead of the current 30 days) after the date the school discovers that certain status changes have occurred. The Department proposed to make the same change to current § 685.309(b)(2), and to incorporate the 15-day reporting deadline in proposed § 674.19(f). Although the non-Federal negotiators

generally had no objections to the Department's proposed changes to enrollment status reporting requirements, some of the negotiators expressed concerns about the proposed change from a 30-day reporting deadline to a 15-day deadline. Those negotiators were concerned that it may be difficult for some schools to report the required information within this shorter timeframe. These negotiators asked that the Department retain the current 30-day reporting deadline. After further consideration, the Department agreed to retain the current 30-day deadline.

FFEL and Direct Loan Program Common Issues Forbearance for Borrowers Who Are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status (34 CFR 682.211(d) and 685.205)

Statute: Section 435(l) of the HEA defines default on a loan as being 270 days past due in the case of a loan that is repayable in monthly installments. Section 428(c)(3) of the HEA specifies that a guaranty agency is not precluded from permitting the parties to a FFEL Program loan from entering into a forbearance agreement solely because the loan is in default. Under section 455(a)(1) of the HEA, Direct Loans have the same terms and conditions as FFEL Program loans unless provided otherwise.

Current Regulations: Section 682.211(b)(1) of the FFEL Program regulations provides that a lender may grant forbearance if the lender and the borrower or endorser agree to the terms of a forbearance and, unless the agreement was in writing, the lender sends a notice to the borrower or endorser confirming the terms of the forbearance within 30 days of the agreement and records the terms of the forbearance in the borrower's file. Section 682.211(c) of the FFEL regulations provides that a lender may grant a forbearance for up to one year at a time if both the borrower or endorser and the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms of the forbearance orally, the lender must send a notice to the borrower or endorser confirming the terms of the forbearance within 30 days of the agreement.

Section 682.211(d) of the FFEL regulations provides that a guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after the borrower has defaulted on a loan but before the guaranty agency has paid the

lender's default claim. The regulations further provide that the terms of the forbearance in this situation must include a new agreement to repay the debt signed by the borrower.

The Direct Loan Program regulations governing forbearance in § 685.205 do not include a comparable forbearance provision for borrowers who are 270 or more days past due on loan payments. However, Direct Loan borrowers are granted forbearance under the same circumstances based on the borrower's written or oral request.

Proposed Regulations: The proposed regulations would amend current § 682.211(c) to provide that if the forbearance is granted based on the borrower's or endorser's oral request and oral agreement to the terms of the forbearance, the lender must send a notice confirming the terms of the agreement within 30 days of the agreement. Section 682.211(d) of the proposed regulations would also be amended to specify in paragraph (d)(1) that in the case of a forbearance granted to a borrower or endorser who is in default, but prior to default claim payment, the forbearance agreement must include either a new agreement to repay the debt signed by the borrower or endorser, or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. Proposed § 682.211(d)(2) of the FFEL regulations would require that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation of the obligation to repay the debt: (1) The forbearance period is limited to 120 days; (2) forbearance cannot be granted for consecutive periods; (3) the lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization and other repayment options available to the borrower; and (4) the lender must send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt within 30 days of that agreement, and must retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file. Finally, proposed § 682.211(d)(3) would define "affirmation" for this purpose as an acknowledgement of the loan by the borrower or endorser in a legally binding manner that can take the form of, but is not limited to: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt; (2) an oral acknowledgment and agreement to

repay the debt documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser.

The proposed regulations would also add comparable forbearance provisions to § 685.205(a) for the Direct Loan Program.

Reasons: Prior to the formal negotiated rulemaking sessions, the Department received public comments requesting that § 682.211(d) of the FFEL regulations be amended to eliminate the requirement that a lender collect a signed repayment agreement from the borrower as a condition for granting a forbearance to a borrower who is in default on a loan for which the guaranty agency has not yet paid the default claim to the lender. Commenters noted that under the Department's current procedures, a forbearance may be granted to a defaulted Direct Loan borrower under the same circumstances without a signed repayment agreement. These commenters argued that the same terms and conditions for granting a forbearance to a defaulted borrower should apply in both programs.

During the negotiations, the Department stated its preference for retaining the requirement for a signed repayment agreement in the FFEL regulations and, for consistency, adding a comparable provision to the Direct Loan Program regulations. The Department indicated that it believes a written affirmation of the debt by a borrower who is in default after failing to make payments for 270 or more days increases the prospect that the borrower will resume repayment following the end of the forbearance period. Some non-Federal negotiators argued that lenders should have maximum flexibility to work with borrowers at the late stages of delinquency to avoid the negative consequences of default and supported a policy of allowing a lender to grant forbearance based on an oral request and oral affirmation of the debt documented in the borrower's file. One non-Federal negotiator noted that granting forbearance to a borrower who is more than 270 days delinquent is a matter of lender discretion and would be granted only when appropriate. Another non-Federal negotiator disagreed with permitting oral affirmation of the debt without a separate acknowledgment of the affirmation from the borrower that would become part of the forbearance agreement.

Some negotiators raised the issue of whether a written forbearance request and affirmation is demonstrably more

effective at ensuring a borrower's successful repayment following the end of a forbearance period than an oral request and affirmation. To address this issue, Department staff and lender servicing representatives reviewed data on delinquent and defaulted accounts on which forbearance was granted, but determined that most servicing systems did not capture the method used to request the forbearance. Limited data available from one servicer of Department-held loans suggested there was virtually no difference in successful repayment outcomes for borrowers making written requests and providing written affirmation of the debt versus those making an oral request and providing an oral affirmation of the debt. Taking all of these considerations into account, the negotiating committee agreed on the approach in the proposed regulations which permits forbearance based on the borrower's oral affirmation of the debt but requires the lender to follow-up on the oral agreement by sending a written notice to the borrower.

Non-Federal negotiators representing State Attorneys General raised concerns about the possible misuse of oral forbearance requests and affirmations by institutions of higher education that might try to manipulate their default rates. They requested that the Department consider ways to address the potential for abuse they believed was inherent in an oral forbearance request and authorization process by requiring verification of the identity of the borrower through the use of voice recognition software or telephone recordings of the borrower's request and affirmation. The Department noted that any conversation between a borrower and a lender servicer could lead to a forbearance agreement and, given applicable consent requirements, this proposal could necessitate recording all loan servicing calls with borrowers. The Department also noted that due to varying State laws on recording of conversations, it was not feasible to add a requirement to program regulations that would ensure compliance with all State laws. The Department agreed to monitor the use of forbearances in its oversight of schools and third-party servicers who are working on default aversion services on behalf of the schools.

The State Attorneys General representatives and student and consumer advocate representatives provided evidence to the negotiating committee that suggested that some institutions were attempting to manage their student loan cohort default rates by convincing borrowers to request

forbearances for the cohort default rate period, whether or not it benefited the borrower. This could allow the institution to evade the consequences of high default rates. To address this potential problem, the Department agreed to include a limit of 120 days on any forbearance granted to a defaulted borrower or endorser based on an oral request and affirmation, and to prohibit a servicer from granting the borrower or endorser consecutive 120-day period forbearances.

Some non-Federal negotiators also expressed concern that granting forbearance to a defaulted borrower or endorser may simply delay a default claim payment or transfer of the loan for default collections if the borrower or endorser is not provided with information on other repayment options. The Department agreed that a lender should be required to orally review with the borrower the various repayment options available to the borrower for any forbearance that is based on an oral request and affirmation. The Department also reminded the non-Federal negotiators that information on available repayment plans is disclosed to delinquent borrowers in their monthly billing statements prior to default claim filing or the transfer of the loan to default collections, and as part of due diligence and default aversion efforts in the FFEL and Direct Loan programs.

Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits (34 CFR 682.211(h) and 685.205)

Statute: Section 428(c)(3)(A)(i)(IV) of the HEA requires that, upon the borrower's request, a FFEL lender shall grant forbearance in renewable 12-month intervals to a borrower who is eligible for interest payments to be made on his or her loans under the repayment benefit program authorized in 10 U.S.C. 2174 for service in the Armed Forces. Under section 428(c)(3)(A)(ii)(II) of the HEA, this forbearance may not exceed three years. Under section 455(a)(1) of the HEA, this forbearance is also available to eligible Direct Loan borrowers.

Current Regulations: The mandatory forbearance for borrowers who are eligible for interest payments under the loan repayment program authorized in 10 U.S.C. 2174 is reflected in 34 CFR 682.211(h)(2)(ii)(B), but the current regulations include an incorrect statutory citation. There is no comparable provision in the Direct Loan Program regulations governing forbearance at 34 CFR 685.205.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.211(h)(2)(ii)(B) of the FFEL regulations to require that lenders grant forbearance to borrowers who are performing service that qualifies them for loan repayment under the Department of Defense student loan repayment programs authorized by 10 U.S.C. 2171, 2173, or 2174, or under any other student loan repayment programs administered by the Department of Defense. We are also proposing to amend 34 CFR 685.205(a)(9) of the Direct Loan Program regulations to include a comparable forbearance provision.

Reasons: Current FFEL regulations require a lender to grant forbearance to a borrower who is performing service that qualifies the borrower for a partial repayment of his or her loan only under the Student Loan Repayment Programs authorized under 10 U.S.C. 2171. During the public hearings prior to the formal negotiated rulemaking sessions, a number of commenters recommended that the regulations be revised to also include borrowers who receive benefits under other student loan repayment programs administered by the Department of Defense. The commenters also noted that there is no comparable forbearance provision in the Direct Loan Program regulations and recommended that one be added to ensure consistency between the two programs. The negotiating committee agreed that these regulatory changes should be made.

Borrowers Who Are Delinquent When an Authorized Forbearance Is Granted (34 CFR 682.211(f) and 685.205)

Statute: Under section 428(c)(3) of the HEA, FFEL Program lenders may exercise certain administrative forbearances that do not require the agreement of the borrower under conditions specified by the Secretary. The HEA specifies that such forbearances shall include forbearances for borrowers who are delinquent at the time an authorized period of deferment is granted and for borrowers who are less than 60 days delinquent on their loans at the time the loan is sold or transferred to another entity.

Current Regulations: The conditions under which a FFEL Program lender may grant an administrative forbearance, a form of forbearance that does not require a request and documentation from the borrower, are specified in 34 CFR 682.211(f). In addition to the circumstances identified in the HEA for granting such a forbearance, the regulations also authorize a FFEL Program lender to grant an administrative forbearance in a

number of other circumstances, including: (1) If the borrower has payments that are overdue at the beginning of a properly granted period of deferment for which the lender learns the borrower did not qualify; or (2) a forbearance period not to exceed three months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization. The current regulations do not authorize a forbearance for a period in which a borrower has payments that are overdue at the beginning of an authorized period of forbearance.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.211(f) to authorize a lender to grant an administrative forbearance to a borrower who is delinquent at the beginning of an authorized period of forbearance and would add a corresponding provision to the Direct Loan regulations in 34 CFR 685.205(b).

Reasons: Under the FFEL Program regulations, a borrower who is delinquent at the beginning of an authorized period of forbearance will remain in a delinquent payment status on the loan at the end of the authorized forbearance period, unless the borrower provides the lender with documentation to support granting an authorized forbearance that covers the borrower's entire period of delinquency. During the public comment period prior to the beginning of the formal negotiated rulemaking sessions, representatives of FFEL lenders and loan servicers asked the Department to amend the regulations to authorize FFEL lenders to grant administrative forbearances to borrowers to eliminate a period of delinquency prior to the borrower's authorized forbearance period that is not covered by the authorized forbearance, to ensure that the borrower is current in repayment at the end of the authorized forbearance period. The negotiating committee agreed that such a change would be beneficial for borrowers and would reduce the likelihood that a borrower will be confused if the borrower finds that the loan is considered delinquent at the end of a significant period of authorized forbearance. For purposes of consistency, the negotiating committee also agreed to include a comparable provision in 34 CFR 685.205(b) of the Direct Loan Program regulations.

Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard (34 CFR 682.405(b) and 685.211(f))

Statute: Under section 428F of the HEA, a borrower may rehabilitate a defaulted FFEL loan if the borrower makes at least nine payments on the loan, each of which is made within 20 days of its scheduled due date and all of which are made over a period of 10 consecutive months beginning with the month in which the first scheduled payment is to be made under the rehabilitation agreement. Once the borrower meets this standard the guaranty agency must, if practicable, sell the defaulted FFEL loan to an eligible lender. The guaranty agency may not demand from the borrower a monthly rehabilitation payment amount that is more than is reasonable and affordable based on the borrower's total financial circumstances. After selling the loan to an eligible FFEL lender, the guaranty agency must request any consumer reporting agency to which the guaranty agency reported the loan default to remove the record of default from the borrower's credit history. The requirements in section 428F(a) of the HEA also apply to defaulted FFEL loans held by the Secretary.

Section 428F(a)(1)(D)(i)(II)(aa) of the HEA authorizes a guaranty agency to charge the borrower collection costs not in excess of 18.5 percent of the outstanding principal and interest at the time the guaranty agency sells the rehabilitated loan to an eligible lender.

Current Regulations: Sections 685.211(f)(1) and 682.405(b)(1) of the Direct Loan and FFEL program regulations provide that the Secretary (for Direct Loans) and the guaranty agency (in FFEL) will provide a loan rehabilitation program for defaulted Direct Loan and FFEL borrowers. To rehabilitate a defaulted loan, a Direct Loan or FFEL borrower who requests rehabilitation must make nine, monthly, voluntary, on-time payments within a ten-month period. The payments must be for the full monthly payment amount required under the rehabilitation agreement, and must be received by the Secretary or the guaranty agency within 20 days of the payment due date. The monthly rehabilitation payment amount must be reasonable and affordable as determined by the Secretary under § 685.211(f)(1) of the Direct Loan regulations or by the guaranty agency under § 682.405(b)(1)(iii) of the FFEL regulations.

The Direct Loan Program regulations in § 685.211(f)(1) state that the Secretary's determination of reasonable

and affordable payment amounts will be based on the borrower's total financial circumstances. Under

§ 682.405(b)(1)(iii)(A), a guaranty agency's determination of reasonable and affordable includes a consideration of the disposable income of the borrower and the borrower's spouse and of the borrower's reasonable and necessary expenses. Reasonable and necessary expenses include, but are not limited to: housing, utilities, food, medical costs, work-related expenses, dependent care costs, and repayment of other title IV loans.

Section 682.405(b)(1)(iii)(B) of the FFEL regulations specifies that a reasonable and affordable payment amount may not be a required minimum payment amount, such as \$50, if the guaranty agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. If the guaranty agency determines that a reasonable and affordable payment for the borrower is less than \$50 or the monthly accrued interest on the loan, whichever is greater, the agency must include documentation in the borrower's file supporting that determination.

Section 682.405(b)(1)(iii)(C) requires a guaranty agency to base its determination of a reasonable and affordable rehabilitation payment on documentation provided by the borrower, or from other sources. The documentation that may be considered includes, but is not limited to:

- Evidence of current income (such as proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, the two most recent pay stubs, the most recent copy of a U.S. income tax return, or State Department of Labor reports);
- Evidence of current expenses (such as a copy of the borrower's monthly household budget on a form provided by the guaranty agency); and
- A statement of the unpaid balance on all FFEL loans held by other lenders.

Section 682.405(b)(1)(v) authorizes a FFEL borrower to request that the guaranty agency adjust the monthly payment amount due to a change in the borrower's total financial circumstances. The borrower must provide documentation supporting this request to the guaranty agency.

Section 682.405(b)(1)(vi) requires a guaranty agency to provide a FFEL borrower with a written statement confirming the borrower's reasonable and affordable payment amount. The written statement must explain any other terms and conditions applicable to the required series of payments that the

borrower must make before the borrower's account can be considered for repurchase by an eligible FFEL lender. The statement must inform the borrower of the effects of loan rehabilitation, and of the amount of the collection costs that will be added to the unpaid principal at the time the loan is sold to a FFEL lender. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

Section 682.405(b)(1)(vii) requires a guaranty agency to provide a FFEL borrower with an opportunity to object to the terms of the rehabilitation agreement.

Section 682.405(b)(2) requires a guaranty agency to attempt to secure a lender to purchase the loan after the borrower makes the required number of qualifying rehabilitation payments.

Section 682.405(b)(3)(i)(B) requires the guaranty agency, within 45 days of selling a rehabilitated loan to an eligible FFEL lender, to request that any consumer reporting agency to which the default was reported remove the record of the default from the borrower's credit history.

Some of the details related to loan rehabilitation in the FFEL Program regulations are not reflected in the current Direct Loan Program regulations. These include, for example, details such as the specific types of documentation of income and expenses that the Secretary uses to determine a borrower's reasonable and affordable payment amount.

Proposed Regulations: The proposed regulations would incorporate many of the details in current FFEL Program regulations at § 682.405(b) into the Direct Loan regulations at § 685.211(f) and also add new details into both of these sections. Specifically, the proposed regulations would add new §§ 685.211(f)(1)(i) and 682.405(b)(1)(iii) to provide that the Secretary (in the Direct Loan Program) and the guaranty agency (in the FFEL Program) would base the determination of reasonable and affordable rehabilitation payment amounts on information provided by the borrower on a form approved by the Secretary, and, if requested, supporting documentation provided by the borrower.

Proposed §§ 685.211(f)(1)(i)(A) and 682.405(b)(1)(iii)(A) would provide that the Secretary and the guaranty agency will consider the borrower's and, if applicable, the borrower's spouse's current disposable income in determining a reasonable and affordable rehabilitation payment. Disposable income includes public assistance payments and other income received by

the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income benefits, and workers' compensation benefits. Under proposed §§ 685.211(f)(1)(i)(A) and 682.405(b)(1)(iii)(A), spousal income would not be considered if the spouse does not contribute to the borrower's household income.

Proposed §§ 685.211(f)(1)(i)(B) and 682.405(b)(1)(iii)(B) would provide that, in determining the reasonable and affordable payment amount, the Secretary and the guaranty agency will consider the borrower's family size, as defined in §§ 685.221(a)(3) and 682.215(a)(3).

Proposed §§ 685.211(f)(1)(i)(C) and 682.405(b)(1)(iii)(C) would provide a more detailed list of the reasonable and necessary expenses that the Secretary and a guaranty agency will consider in determining a borrower's rehabilitation payment amount. The proposed expenses include:

- Food;
- Housing;
- Utilities;
- Basic communication expenses;
- Necessary medical and dental costs;
- Necessary insurance costs;
- Transportation costs;
- Dependent care and other work-related expenses;
- Legally required child and spousal support;
- Other title IV and non-title IV student loan payments; and
- Other expenses approved by the Secretary.

Proposed §§ 685.211(f)(1)(ii) and 682.405(b)(1)(iv) would provide that a reasonable and affordable rehabilitation payment amount must not be a required minimum payment, such as \$50, if the Secretary or the guaranty agency determines that a smaller amount is reasonable and affordable. The payment amount also must not be a percentage of the borrower's total loan balance, or be based on other criteria unrelated to the borrower's total financial circumstances.

Under proposed §§ 685.211(f)(1)(iii) and 682.405(b)(1)(v), the Secretary or the guaranty agency would provide the borrower with a written rehabilitation agreement within 15 business days of the determination of the borrower's reasonable and affordable payment amount. The written rehabilitation agreement would include the rehabilitation payment amount, a prominent statement that the borrower may object orally or in writing to the payment amount, and the method and timeframe for raising an objection to the payment amount. The written rehabilitation agreement would provide

an explanation of any other terms and conditions applicable to the required series of payments. The Secretary or the guaranty agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement would inform the borrower of the effects of having a loan rehabilitated. For FFEL Program loans, the written repayment agreement would inform the borrower of the amount of any unpaid collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible FFEL lender.

Proposed §§ 685.211(f)(3) and 682.405(b)(1)(vi) would provide that the borrower's rehabilitation payment amount would be recalculated if the borrower objects to the payment amount contained in the written repayment agreement that the Secretary or the guaranty agency would send to the borrower under proposed §§ 685.211(f)(4) and 682.405(b)(1)(vi).

Under §§ 685.211(f)(5) and 682.405(b)(1)(vii) a borrower who objects to the monthly repayment amount contained in the written repayment agreement would provide the Secretary or guaranty agency the documentation needed to recalculate a monthly payment amount under the IBR formula. The Secretary or the guaranty agency would recalculate the rehabilitation payment amount using the formula for calculating a monthly payment amount under the IBR plan in § 685.221(b)(1) and (b)(2) of the Direct Loan regulations or § 682.215(b)(1) of the FFEL regulations. If the recalculated amount using the IBR plan formula is less than \$5, the borrower's recalculated monthly rehabilitation payment would be \$5. If the borrower does not provide the required documentation to the Secretary or the guaranty agency, the Secretary or the guaranty agency would not proceed with the rehabilitation process.

Under proposed § 685.211(f)(7), a Direct Loan borrower may request that the Secretary adjust the borrower's monthly rehabilitation payment if there is a change in the borrower's financial circumstances. The borrower would be required to provide the documentation specified in proposed § 685.211(f)(1)(i) to support the request. This is comparable to the requirement in § 682.405(b)(1) of the current FFEL regulations.

Under proposed §§ 685.211(f)(8) and 682.405(b)(1)(x), while the borrower is making payments under a rehabilitation agreement, the Secretary and the guaranty agency would limit contact with the borrower on the loan being

rehabilitated. Contact with the borrower would be restricted to collection activities that are required by law or regulation, and to communications that support the rehabilitation.

After a defaulted Direct Loan has been rehabilitated, proposed § 685.211(f)(9) provides that the Secretary will instruct any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history. This is comparable to the requirement in § 682.405(b)(3)(i)(B) of the current FFEL regulations.

Proposed revisions to §§ 685.211(f) and 682.405(a) relating to the interplay of AWG and loan rehabilitation payments are discussed in the *Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment* section of this preamble. *Reasons:* During the public comment period prior to the formal negotiated rulemaking sessions, some commenters recommended that the Secretary consider using the IBR plan formula to determine a borrower's reasonable and affordable payment amount for loan rehabilitation purposes. IBR, which provides for a monthly loan payment that is intended to be affordable based on a borrower's income and family size, became available to borrowers in the Direct Loan and FFEL programs on July 1, 2009. The commenters believed that using the IBR formula would simplify and standardize the process for the determination of loan rehabilitation payments. In addition, the commenters argued that the availability of IBR as a repayment option for borrowers after rehabilitation of a loan provides further support for using the IBR formula to determine a reasonable and affordable payment for loan rehabilitation purposes, since borrowers who have rehabilitated their defaulted loans may request to repay under IBR.

Before the availability of IBR as a repayment option, a borrower who made very low monthly payments under a rehabilitation agreement based on the borrower's income might be faced with a much larger post-rehabilitation monthly payment amount that the borrower could not easily afford, since there were no available repayment plans that would provide for a payment as low as the rehabilitation agreement payment. If a FFEL Program borrower made very low payments during the rehabilitation period, the borrower might not have been able to make the larger, post-rehabilitation payments. Therefore, the guaranty agency might have had difficulty selling the loan to a FFEL lender, or might have been forced to sell the loan at a discount. A FFEL loan is not rehabilitated until the

guaranty agency sells it to a lender. The Secretary believes that using the IBR formula to determine what is a reasonable and affordable payment amount for loan rehabilitation purposes would address the issue of borrowers' payment amounts being too high after rehabilitation, since a borrower who paid the IBR amount during the rehabilitation period could choose IBR as his or her repayment plan post-rehabilitation. Therefore, the Secretary agreed to include this proposal on the agenda for negotiated rulemaking.

At the first meeting of the negotiating committee, non-Federal negotiators representing legal aid and consumer advocacy organizations proposed that the IBR formula be used as the starting point for determining a Direct Loan or FFEL borrower's reasonable and affordable rehabilitation payment amount. If the borrower objected to the payment amount determined using the IBR formula and could justify a lower amount, the Secretary or the guaranty agency could reduce the payment below the amount determined under the IBR formula.

Non-Federal negotiators representing guaranty agencies argued that requiring the use of the IBR formula would reduce their ability to work with borrowers to arrive at a rehabilitation payment amount acceptable to both the guaranty agency and to the borrower. They pointed out that it is not in anyone's interest to set a borrower's rehabilitation payment so high that the borrower cannot meet it. They contended that, under their current procedures, negotiations on loan rehabilitation that occur between a borrower and a guaranty agency result in appropriate rehabilitation payment amounts. Those negotiators contended that if the amount initially proposed is too high, the borrower will object and that the negotiations generally result in an amount acceptable to both parties. Using the IBR formula would preclude any such negotiations between the borrower and the guaranty agency. They argued that any change to the regulations with regard to reasonable and affordable rehabilitation payment amounts would amount to fixing a problem that does not exist.

Non-Federal negotiators representing consumer advocacy groups and students disputed this claim. They contended that defaulted borrowers rarely are given an opportunity to negotiate their loan rehabilitation payments and are often intimidated by the debt collectors trying to collect the loan. These negotiators asserted that borrowers are told by debt collectors that they have no choice but to accept the loan rehabilitation

payment amount that is proposed to them, even if the borrower has no practical means of paying that amount.

These non-Federal negotiators also asserted that the statutory requirement that a loan rehabilitation payment amount be “reasonable and affordable based on the borrower’s total financial circumstances” is routinely ignored by guaranty agencies and the Secretary. The current calculation methods, in their view, are designed to require the borrower to make as high a payment as possible, with no consideration of the borrower’s ability to maintain that level of payment throughout the rehabilitation period. These non-Federal negotiators contended that collection agencies working on behalf of guaranty agencies and the Secretary on a commission rate basis have no incentive to help borrowers successfully rehabilitate their loans.

Non-Federal negotiators representing guaranty agencies and collection agencies countered by noting that a collection agency does not earn a commission unless the borrower makes a payment. Setting the payment amount too high is counter-productive to that goal. These negotiators also stated that guaranty agencies do look at a borrower’s total financial situation when determining reasonable and affordable payment amounts. They stated that it is routine practice to review a borrower’s income and expenses when determining rehabilitation payment amounts.

The negotiators representing guaranty agencies also pointed out that under the IBR formula a \$0 payment is possible, and they argued that \$0 should not be an acceptable payment amount for purposes of rehabilitating a defaulted loan. They emphasized that loan rehabilitation is a significant benefit. It allows defaulted borrowers to have their credit reports cleared of the default and also allows them to receive additional title IV aid, including new title IV loans. Loan rehabilitation is intended to help the borrower develop a pattern of making monthly, on-time payments on the loan. If a borrower succeeds in making the required number of monthly payments, the borrower is more likely to succeed in continuing to make payments on the loan once the loan goes back into regular repayment. These negotiators pointed out that a borrower may only rehabilitate a loan once. If a borrower rehabilitates a loan, and then re-defaults on the loan, the borrower will not have another opportunity to rehabilitate that loan. These negotiators contended that allowing a borrower to rehabilitate a loan by making monthly payments as low as \$0 would not be

beneficial to the borrower or to taxpayers.

Non-Federal negotiators representing consumer advocacy groups agreed to address the \$0 payment issue by setting a minimum payment amount. However, they argued that the minimum payment should be a very low amount, such as \$5, arguing that there is no evidence that borrowers who successfully rehabilitate their loans by making small monthly payments are more likely to re-default than other borrowers or that guaranty agencies have difficulty selling these loans after the borrower has made the required rehabilitation payments. On the contrary, these negotiators asserted that borrowers who make small monthly rehabilitation payments are more likely to get into the habit of making on-time, monthly payments, and to continue making these payments after completing rehabilitation.

Non-Federal negotiators representing guaranty agencies pointed out, however, that, while a low-income borrower might have very small monthly payments under the IBR formula, a borrower with a high income would have higher payments under the IBR formula than under a different approach. Using the IBR formula for calculation of the reasonable and affordable payment amount could result in higher payment amounts than the guaranty agency would propose to a borrower under their current methodologies.

The proposed regulations attempt to address the concerns expressed on both sides of this debate. The proposed regulations would allow the Secretary and the guaranty agencies to retain the flexibility to work with borrowers to determine reasonable and affordable repayment amounts, but would more clearly define the parameters within which the guaranty agencies must work. The Secretary and the guaranty agencies would still be free, under the proposed regulations, to develop their own methodologies for determining the reasonable and affordable payment amount initially proposed to the borrower. However, the Secretary and all of the guaranty agencies would base their determinations of loan rehabilitation payment amounts on the same factors. Specifically, the proposed regulations would require the Secretary and the guaranty agencies to collect information on a borrower’s income and expenses using a standardized form. The form would identify the sources of income that the Secretary or the guaranty agency will consider, apply a consistent definition of family size for borrowers, and identify the types of expenses the Secretary or the guaranty

agency must take into account in determining the reasonable and affordable payment amount for the borrower.

The Secretary invites comment on whether the final regulations should require the Secretary and the guaranty agencies to use a standardized methodology to determine reasonable and affordable rehabilitation payment amounts. Under a standardized methodology, in addition to identifying the types of expenses that the Secretary or the guaranty agency may consider, we would use standard allowable expense amounts, such as the IRS National Standards, for each type of expense reported by the borrower so that the payment calculation is based on allowable expenses that are consistent across all borrowers. The IRS National Standards are described under the section of this preamble titled “Borrower Hearing Opportunities on the Enforceability of the Debt and a Borrower’s Claim of Financial Hardship.”

Regardless of the methodology used to determine the payment amount, the proposed regulations would establish a process by which borrowers may object to the payment amount proposed by the Secretary or the guaranty agency. The Secretary or the guaranty agency will notify the borrower of the reasonable and affordable payment amount the Secretary or the agency has calculated for the borrower. The notice would include a prominent statement that the borrower may object to the amount proposed. The borrower would be allowed to object, verbally or in writing, to the payment amount that has been determined. If the borrower objects, the Secretary or the guaranty agency would recalculate the amount using the IBR formula. This establishes the IBR formula as a fallback methodology for determining reasonable and affordable payment amounts for loan rehabilitation purposes. Furthermore, the borrower would have the option to reject the amount calculated using the IBR formula and accept the amount initially proposed for any reason, such as if the initially proposed amount is lower than the amount calculated using the IBR formula.

To address the concerns regarding the potential of payments of \$0, the proposed regulations specify that if the IBR formula results in a payment of \$0, the payment amount would be set at \$5. A payment amount this small would apply only to borrowers with extremely low incomes, and would help these borrowers establish the habit of making monthly, on-time payments on the loan.

We believe that this approach preserves flexibility for the Secretary and the guaranty agencies, while at the same time providing a borrower with access to an alternative payment amount if the borrower feels the payment amount proposed by the Secretary or the guaranty agency is too high. The proposed regulations would also ensure that, regardless of which method is used to determine the borrower's rehabilitation payment amount, the amount will be based on the borrower's total financial circumstances without regard to other factors.

Under proposed §§ 685.211(f)(5) and 682.405(b)(1)(vii), if a borrower objects to the initial monthly payment amount, but does not provide the documentation required to calculate a monthly payment amount using the income-based repayment plan formula, the rehabilitation does not proceed. However, the borrower may have already provided some or all of the information required for a recalculation when the borrower initially requested rehabilitation. We invite comments on whether it would be appropriate to make a change in the final regulations to require a borrower to submit information needed to recalculate the borrower's reasonable and affordable rehabilitation payment amount only if new information is required beyond what the borrower provided when he or she initially requested loan rehabilitation.

To ensure consistency in the treatment of Direct Loan and FFEL borrowers, the changes to the regulations discussed above would also be made in the Direct Loan program regulations and the Secretary would follow these same guidelines for defaulted FFEL loans held by the Secretary. We are also proposing to incorporate into the Direct Loan Program regulations the provision in § 682.405(b)(1)(v) of the current FFEL Program regulations that allows a borrower to request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances and that specifies the documentation a borrower must provide to support this request.

The proposed regulations would limit contact between the Secretary or a guaranty agency and the borrower during the rehabilitation period. Only those contacts required by law or regulation, or that support the rehabilitation, would be permitted. This addresses a concern raised during the negotiated rulemaking sessions that borrowers who are making good faith efforts to rehabilitate their defaulted Direct Loan or FFEL program loans

should not be subject to inappropriate collection contacts while they are making rehabilitation payments.

Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment (34 CFR 682.405(a) and 685.211(f))

Statute: Section 428F(a) of the HEA governs rehabilitation of defaulted loans; however, it does not address the treatment of borrowers who are subject to AWG while making voluntary payments under a loan rehabilitation agreement.

Current Regulations: The current Direct Loan and FFEL program regulations do not specifically address payments collected by AWG while a Direct Loan or FFEL borrower is also making voluntary payments under a loan rehabilitation agreement.

Proposed Regulations: The proposed regulations would add new §§ 685.211(f)(12) and 682.405(a)(3) to the Direct Loan and FFEL program regulations to provide that the Secretary or the guaranty agency, respectively, will suspend collection on a defaulted loan through AWG after the borrower makes five qualifying payments under a loan rehabilitation agreement. The suspension of the AWG collection would be automatic after the borrower makes five qualifying payments, but the borrower could request that the Secretary or the guaranty agency continue collecting on the loan through AWG while the borrower also makes voluntary payments under the rehabilitation agreement. The Secretary or the guaranty agency would not suspend AWG unless and until the borrower makes the fifth payment under a loan rehabilitation agreement.

Under proposed new §§ 685.211(f)(12)(ii) and 682.405(a)(3)(ii), the borrower would have only one opportunity to benefit from a suspension of AWG while attempting to rehabilitate a defaulted loan.

Reasons: Loan rehabilitation provides a borrower who has defaulted on a Direct Loan or a FFEL Program loan the opportunity to reaffirm his or her intention to repay the defaulted loan and to establish a repayment history sufficient to support treating the loan as no longer in default. In addition to regaining the benefits that apply to a non-defaulted Direct Loan or FFEL program loan, if a borrower successfully rehabilitates a loan the Secretary or guaranty agency requests that credit bureaus remove the default from the borrower's credit report. Loan rehabilitation payments in the Direct Loan and FFEL programs must be made

voluntarily. Payments made through AWG are not voluntary payments.

Currently, for loans held by the Secretary, if a borrower is subject to AWG at the time the borrower enters into a loan rehabilitation agreement, the Secretary will continue to collect on the loan by AWG while the borrower makes the series of voluntary payments necessary to rehabilitate the loan. The voluntary payments the borrower must make are over and above the payments secured through the AWG process.

In response to public comments received on this issue before the negotiated rulemaking sessions, the Secretary initially proposed to relax the requirement that loans continue to be collected through AWG while borrowers who are subject to AWG attempt to rehabilitate a loan. Many of the non-Federal negotiators argued that continuing to collect through AWG while a borrower makes voluntary rehabilitation payments makes it harder for a borrower to complete loan rehabilitation. The negotiations around this issue centered on the following issues: whether there should be a distinction between borrowers already subject to AWG at the time the borrower requests loan rehabilitation and borrowers for whom AWG is about to be initiated; the appropriate number of voluntary payments a borrower should make before AWG is suspended; and how frequently a borrower should be allowed to qualify for this opportunity.

In addition, although the Secretary's initial proposal did not address whether the amount of an AWG payment should affect rehabilitation payments, the negotiators discussed whether the total amount of an involuntary AWG payment and a voluntary rehabilitation payment should be limited to the calculated reasonable and affordable payment amount under the loan rehabilitation agreement.

Under current Department policy, a guaranty agency should not start AWG for a borrower who has requested loan rehabilitation. If the borrower requests the opportunity for rehabilitation, the borrower should be allowed that opportunity before the guaranty agency initiates AWG. If AWG collections started before the borrower requests rehabilitation, guaranty agencies are not required to suspend AWG during the loan rehabilitation process.

Negotiators representing guaranty agencies indicated that the guaranty agencies have different policies with regard to suspending AWG during the rehabilitation period. Some guaranty agencies do not suspend AWG while a borrower is making rehabilitation payments out of a concern that the

borrower will stop making payments as soon as AWG is suspended. Other guaranty agencies suspend AWG after six rehabilitation payments are received from the borrower; and some suspend AWG after three or fewer payments by the borrower.

A non-Federal negotiator representing consumer groups argued that having a single standard for all guaranty agencies would be preferable to having standards that vary from guaranty agency to guaranty agency. Although a uniform standard may increase the number of loan rehabilitation payments some borrowers would be required to make before AWG is suspended, this negotiator contended that, overall, standardizing the number of payments would be more beneficial to borrowers. That negotiator recommended a three-payment standard.

Borrowers are not subject to AWG unless they have been in default on the loan for a lengthy period of time and other collection efforts have been unsuccessful. Given the administrative requirements for initiating AWG, the Secretary does not believe that a standard of three voluntary payments is sufficient as a uniform standard for suspending AWG. The Secretary initially proposed requiring five payments—slightly more than half the number of payments needed to rehabilitate a defaulted Direct Loan or FFEL program loan—before the Secretary or a guaranty agency would suspend AWG.

A non-Federal negotiator representing students proposed that the five-payment requirement be a cap on the number of required payments. Under this proposal, guaranty agencies could suspend AWG after the borrower has made fewer than five loan rehabilitation payments, but would be required to suspend AWG after the fifth payment.

The Secretary believes this approach would contravene one of the goals of the proposal—to standardize the treatment of borrowers who are making loan rehabilitation payments while the loan is also being collected by AWG—and did not accept this proposal. The negotiating committee reached consensus on the Secretary's initial proposal of requiring five AWG payments before the Secretary or a guaranty agency would suspend AWG during a concurrent period of rehabilitation.

Some non-Federal negotiators asked whether borrowers who are subject to AWG by mistake would be required to continue in AWG for five months before AWG could be suspended. The proposed regulations would not affect longstanding guidance from the

Secretary that if a borrower is approved for AWG by mistake, the guaranty agency should immediately take steps to terminate AWG. The proposed regulations only apply to suspension of AWG due to payments made under a loan rehabilitation agreement.

Non-Federal negotiators representing guaranty agencies expressed concerns that borrowers who do not intend to actually rehabilitate the loan might use this provision to force guaranty agencies to suspend AWG indefinitely. Although a borrower may only successfully rehabilitate a loan once, there is no limit to the number of times a borrower may attempt to rehabilitate a loan. The guaranty agencies expressed concern that a borrower could interfere with the guaranty agency's ability to collect on a loan through AWG by requesting loan rehabilitation over and over again. These negotiators pointed out that AWG is an effective tool for collecting on student loans, and that the proposed regulations should not provide a loophole for defaulted borrowers to indefinitely forestall AWG.

To address the concern raised by these negotiators, the proposed regulations specify that a borrower may only receive this benefit once. If a borrower subject to AWG makes five qualifying payments on a loan under a rehabilitation agreement, AWG will be suspended. If the borrower fails to make qualifying loan rehabilitation payments, the Secretary or the guaranty agency may take the steps necessary to reinstate AWG. If the borrower attempts to rehabilitate the loan again, AWG would remain in place during the entire loan rehabilitation period.

A non-Federal negotiator asked whether a guaranty agency would be required to go through the AWG hearing and notice requirements if it resumes AWG. Since AWG would be suspended but not withdrawn, the formal hearing requirements would not apply. However, consistent with requirements to provide other notices to the borrower throughout the AWG process, the guaranty agency would be expected to notify the borrower of the resumption of AWG.

Although the proposal only addresses the suspension of AWG during a period in which the borrower is making payments under a loan rehabilitation agreement, some non-Federal negotiators asked about the relationship between the amount of money collected involuntarily from the borrower through AWG and the voluntary payments the borrower makes under a loan rehabilitation agreement. As discussed earlier in the *Loan Rehabilitation Agreement: Reasonable and Affordable*

Payment Standard section of this preamble, a loan rehabilitation payment amount must be reasonable and affordable. Non-Federal negotiators representing consumer groups and students recommended that the regulations require that the Secretary or the guaranty agency adjust the amounts collected under AWG and the loan rehabilitation agreement, so that the two payments would combine to equal the reasonable and affordable payment amount agreed to by the guaranty agency and the borrower in the rehabilitation agreement.

Under the HEA, a rehabilitation payment must not only be reasonable and affordable, but it must also be made voluntarily. AWG payments are not voluntary, and are not part of a borrower's loan rehabilitation payment.

Non-Federal negotiators representing guaranty agencies stated that some guaranty agencies currently do reduce AWG payments for borrowers who are rehabilitating their loans. These negotiators indicated that guaranty agencies would likely continue this practice under the proposed regulations, but, to preserve flexibility for guaranty agencies, they did not support requiring this practice in the regulations. The Department agreed with these negotiators that, since the guaranty agencies work with many different types of borrowers, it would be preferable to continue to allow the guaranty agencies flexibility in making these determinations. Therefore, proposed §§ 685.211(f) and 682.405(a) do not require the Secretary or the guaranty agencies to reduce AWG payments to reflect the amount of payments made by the borrower under a loan rehabilitation agreement, nor do they prevent the Secretary or a guaranty agency from making such reductions at their discretion.

Some non-Federal negotiators suggested that some borrowers may prefer to continue AWG payments while they are also making loan rehabilitation payments. These borrowers might view the AWG payments as similar to automatic debit payments that would pay down their loans faster than rehabilitation payments alone. These negotiators recommended that the proposed regulations allow these borrowers to request that AWG continue while they make rehabilitation payments. The Secretary agreed with this suggestion.

Perkins Loan Program Issues

Federal Perkins Loan Graduate Fellowship Deferment Eligibility (34 CFR 674.34(b)(1) and (f))

Statute: Section 464(c)(2)(A)(i)(II) of the HEA authorizes a deferment for a Perkins Loan borrower while the borrower is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, except that a borrower is not eligible for a deferment while serving in a medical internship or residency program. HEA section 464(c)(2)(A)(i)(II) does not specify the requirements that a Perkins Loan borrower must meet to be eligible for the graduate fellowship deferment.

Current Regulations: The Perkins Loan Program regulations in § 674.34(b)(1)(ii) provide that a Perkins Loan borrower is eligible for a graduate fellowship deferment when the borrower is enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary. To qualify for the deferment, § 674.34(f) requires a borrower to provide certification to the institution that the borrower has been accepted or is engaged in full-time study in the institution's graduate fellowship program.

Proposed Regulations: The proposed regulations in § 674.34(f)(1) would require schools that participate in the Perkins Loan Program to use the same eligibility criteria that lenders use in the FFEL Program (under § 682.210(d)) to define an eligible graduate fellowship program and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment. Proposed § 674.34(f)(2) would define an "eligible graduate fellowship program" as a program that:

- Provides sufficient financial support to allow for full-time study for at least six months;
- Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
- Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and
- In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

Proposed § 674.34(f)(1) would also require a statement signed by an official of the program certifying:

- That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;
- That the borrower has been accepted or recommended by an

institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

- The borrower's anticipated completion date in the program.
- Reasons:* We are proposing changes to § 674.34(f)(1) of the Perkins Loan Program regulations to mirror the definition of an "eligible graduate fellowship program" and the graduate fellowship deferment eligibility criteria that are used in the FFEL and Direct Loan programs. These changes would provide consistent treatment of borrowers across the HEA, title IV loan programs.

Federal Perkins Loan Economic Hardship Deferment Debt-to-Income Ratio Provision (34 CFR 674.34(e)(4))

Statute: Section 304 of the College Cost Reduction and Access Act (CCRAA), Public Law 110-84, amended the definition of "economic hardship" in section 435(o) of the HEA by eliminating section 435(o)(1)(B). That section defined the term "economic hardship" to include a borrower who is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower's adjusted gross income (AGI), if the difference between the borrower's AGI and the borrower's Federal debt burden is less than 220 percent of either the annual minimum wage or the poverty line.

Current Regulations: Under § 674.34(e)(4), a Perkins Loan borrower may receive an economic hardship deferment if he or she is not receiving total monthly gross income that exceeds twice the amount specified in § 674.34(e)(3) and, after deducting an amount equal to the borrower's payments on Federal postsecondary education loans, the remaining amount of the borrower's income does not exceed the amount specified in § 674.34(e)(3). The amount specified in § 674.34(e)(3) is the greater of the monthly earnings of an individual earning the minimum wage rate, or an amount equal to 150 percent of the poverty guideline for the borrower's family size.

Proposed Regulations: The proposed regulations would remove the debt-to-income economic hardship deferment category in § 674.34(e)(4) and related provisions in § 674.34(e)(6) and (e)(9) from the Perkins Loan Program regulations.

Reasons: Final regulations published by the Department on October 23, 2008, (73 FR 63232) eliminated from the Perkins, Direct Loan, and FFEL regulations the debt-to-income

economic hardship deferment that was based on former section 435(o)(1)(B) of the HEA. The final regulations also eliminated a similar debt-to-income economic hardship deferment category for a borrower who is working less than full-time from the Direct Loan and FFEL regulations, but inadvertently retained the comparable category in § 674.34(e)(4) of the Perkins Loan Program regulations, thus creating a disparity between the economic hardship deferment eligibility criteria in the Perkins program and the eligibility criteria in the Direct Loan and FFEL programs. We are proposing to eliminate § 674.34(e)(4) and related provisions in § 674.34(e)(6) and (e)(9) to reflect the statutory change made to the definition of "economic hardship" in HEA section 435(o) and to make the Perkins Loan Program regulations consistent with the comparable FFEL and Direct Loan program regulations.

Federal Perkins Loan Standard for On-Time Loan Rehabilitation Payment (34 CFR 674.39(a)(2))

Statute: In accordance with section 464(h)(1)(A) of the HEA, a defaulted Perkins loan is successfully rehabilitated if a borrower makes nine on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary. The term "on-time" is not defined.

Current Regulations: Under § 674.39(a)(2), a defaulted Perkins Loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for nine consecutive months and the borrower requests rehabilitation. The term "on-time" is not defined. In § 682.405(a)(2)(A)(3) of the FFEL Program regulations and § 685.211(f)(1) of the Direct Loan Program regulations, a payment made within 20 days of the due date is considered "on-time" for the purposes of rehabilitating a defaulted loan.

Proposed Regulations: The proposed regulations would modify § 674.39(a)(2) by requiring a borrower to make a full, monthly payment, as determined by the institution, within 20 days of the due date, each month, for nine consecutive months.

Reasons: The issue of establishing a standard for an on-time payment for the purposes of rehabilitating a defaulted Perkins Loan was added to the negotiating agenda at the suggestion of a non-Federal negotiator. The non-Federal negotiator believed that a similar standard for determining "on-time" in the Perkins Loan, FFEL, and Direct Loan programs would help

borrowers with more than one type of title IV loan to successfully rehabilitate the loan and would provide consistency across the HEA, title IV loan programs in the treatment of borrowers who are rehabilitating a defaulted loan. The Department agreed.

Social Security Number Requirement (SSN) for Assignment of Defaulted Federal Perkins Loans to the United States (34 CFR 674.50(e)(1))

Statute: The HEA does not include any specific rules for the process for assigning defaulted Perkins Loans.

Current Regulations: The current regulations in § 674.50(e)(1) provide that the Secretary does not accept assignment of a loan if the institution has not provided the SSN of the borrower, unless the loan is submitted for assignment under § 674.8(d)(3). (§ 674.8(d)(3) refers to the Secretary's authority to mandate assignment of certain defaulted Perkins Loans. This authority was eliminated by the Higher Education Opportunity Act of 2008, Public Law 110–315 (HEOA)).

Proposed Regulations: The proposed regulations in § 674.50(e)(1) would allow assignment of a Perkins Loan without the borrower's SSN if the loan was made before September 13, 1982, which was the date the Department began requiring institutions to collect the borrower's SSN on the Perkins Loan Program promissory notes.

Reasons: The Department believes that it is unfair to require an institution to provide the borrower's SSN when assigning a Perkins Loan if the institution was not required to collect the SSN at the time the loan was made. The proposed regulations would give the institution the option of assigning such a loan to the Department, rather than holding on to a defaulted loan that the institution has little chance of collecting.

Federal Perkins Loan Break in Cancellation Service Due to a Condition Covered Under the Family and Medical Leave Act (34 CFR 674.52(b)(2))

Statute: Section 465(a)(3)(A) of the HEA provides that a specified percentage of principal and interest on a Perkins Loan can be cancelled for each "year" during which the borrower is employed in certain specified positions. Section 465(a)(4) provides that the term "year" where applied to employment as a teacher means the academic year as defined by the Secretary. The HEA does not provide for a break in qualified service for cancellation purposes.

Current Regulations: Current regulations in § 674.52(b)(2) allow a borrower who is performing qualified

teaching service, but who is unable to complete the academic year due to illness or pregnancy, to still qualify for cancellation of the principal and interest on his or her Perkins Loan if the borrower completes the first half of the academic year, and has begun teaching the second half, and the borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement. The regulations in § 674.52(b)(2) address only qualified teaching service, not other types of employment which may qualify the borrower for loan cancellation, such as nursing or law enforcement.

In the FFEL and Direct Loan programs, under §§ 682.216(c)(7)(ii) and 685.217(c)(7)(ii), respectively, if the borrower is unable to complete the second half of an academic year of teaching due to a condition covered under the FMLA, the teaching service for loan cancellation purposes in those programs may still count as a year of eligible teaching service if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. Conditions covered under the FMLA include:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of his or her job;
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" and
- To care for a covered service member with a serious injury or illness who is the spouse, son daughter, parent, or next of kin to the employee (military caregiver leave). (29 U.S.C. 2601 et seq.)

Proposed Regulations: The proposed regulations in § 674.52(c)(1) would allow a Perkins Loan borrower who is unable to complete the second half of an academic year of teaching due to a condition covered under the FMLA to still count that year as eligible teaching service if the borrower's employer considers the borrower to have fulfilled the teacher contract requirements for that academic year. In addition, the proposed regulations in § 674.52(c)(2) would allow a Perkins Loan borrower

who is unable to complete a full year of eligible public service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA to count that year as a full year of public service if the borrower completes at least six months of consecutive eligible service.

Reasons: By allowing a Perkins Loan borrower to count a year of teaching service that is interrupted by a condition covered under the FMLA, the proposed regulations would provide for more consistent treatment of similarly situated borrowers who are performing teaching service that may qualify them for FFEL or Direct Loan teacher loan forgiveness. By allowing a Perkins Loan borrower to count a year of service that has been interrupted by a condition covered under the FMLA for the public service loan cancellations under §§ 674.56, 674.57, 674.59, or 674.60, the proposed regulations would provide for consistent treatment of all Perkins Loan borrowers who are seeking cancellation benefits on their Perkins Loans, not just those borrowers seeking a cancellation based on employment as a teacher.

Federal Perkins Loan Cancellation Rate Progression (34 CFR 674.52(g), 674.53(d), 674.56(h), 674.57(c)(2), 674.59(c)(2) and 674.60(b))

Statute: Under section 465(a)(3)(A)(i) of the HEA, the percent of original principal on a Perkins Loan that is canceled for each year of employment by a Perkins Loan borrower in certain qualified public service jobs is 15 percent for the first and second year of service, 20 percent for the third and fourth year of service, and 30 percent for the fifth and final year of service. The interest on the unpaid balance of the loan that accrues during any year of qualifying service is also canceled. Qualified public service under section 465(a)(2) of the HEA includes, among other things, teaching, military service in an area of hostility, law enforcement, nursing, and firefighting. There are two types of public service that have a different cancellation rate progression. Under section 465(a)(3)(A)(ii), the cancellation rate for each year of qualified service in certain early childhood education programs is 15 percent of the original loan principal plus the interest on the unpaid balance accruing during the year of qualifying service. Under section 465(a)(3)(A)(iii), the cancellation rate for each year of a borrower's qualified service as a volunteer under the Peace Corps Act or a volunteer under the Domestic Volunteer Service Act of 1973 is 15 percent of the original loan principal for the first or second year of qualified

service and 20 percent of the original loan principal for the third or fourth year of qualified service. The interest on the unpaid balance that accrues during any year of qualifying service is also canceled.

Current Regulations: The cancellation progression rate for qualified public service performed by a Perkins Loan borrower under §§ 674.53(d) (teachers), 674.56(a) (nurse or medical technician), 674.57(c)(2) (law enforcement or corrections officer), and 674.59(c)(2) (military service), is 15 percent of the original principal for the first and second year of service, 20 percent for the third and fourth year of service, and 30 percent for the fifth and final year of service, consistent with section 465(a)(3)(A)(i) of the HEA. The interest on the unpaid balance that accrues during any year of qualifying service is also canceled. The cancellation progression rate for each year of qualified service in an early childhood education program performed by a Perkins Loan borrower under § 674.58 is 15 percent of the original principal plus interest that accrues during the year of qualifying service on a Perkins Loan, which mirrors section 465(a)(3)(A)(ii) of the HEA. Lastly, the cancellation progression rate for each year of qualified service as a volunteer under the Peace Corps Act or a volunteer under § 674.60 is 15 percent of the original principal for the first or second year of qualified service and 20 percent for the third or fourth year of qualified service, plus any interest that accrued during the year of qualifying service, which mirrors section 465(a)(3)(A)(iii) of the HEA.

Proposed Regulations: The proposed regulations would not change the current cancellation progression rate under the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59. The percentage of original principal canceled would remain the same, and any interest on the unpaid balance that accrues during any year of qualifying service would continue to be canceled. However, under proposed § 674.52(g)(1), if, after the first, second, third, or fourth complete year of qualifying service the borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category. Under proposed § 674.52(g)(2), if, after the first, second, third, or fourth complete year of qualifying service under §§ 674.53, 674.56, 674.57, or 674.59 the borrower switches to a

position that qualifies the borrower for cancellation under § 674.58 or 674.60, the borrower's cancellation rate progression begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

Reasons: We believe that requiring a borrower to restart a cancellation progression is unnecessary. In each of these situations, the borrower is performing a valuable public service which qualifies for loan cancellation. Since the cancellation rates in these categories are identical, we believe it is more equitable to allow borrowers to continue their progression toward full loan cancellation when they change jobs to a position with the same cancellation progression.

We are not proposing to allow borrowers who switch to or from the cancellation categories in §§ 674.58 or 674.60 to continue under the same cancellation rate progression because the cancellation rates under these two provisions are not comparable to the cancellation rates in §§ 674.53, 674.56, 674.57, or 674.59. Under § 674.58(b), a borrower receives cancellation at the rate of 15 percent for each year of eligible service. Under § 674.60(a), a borrower may only receive cancellation of up to 70 percent of the original principal.

FFEL Program Issues

FFEL Lender Repayment Disclosures for Borrowers Who Are 60 Days Delinquent (34 CFR 682.205(c))

Statute: Section 433(e)(3) of the HEA requires FFEL Program lenders to provide a borrower who is 60 days delinquent in making payments on a FFEL Program loan a notice that informs the borrower of: (1) The date on which the loan will default if no payment is made; (2) the minimum payment the borrower must make to avoid default; (3) a description of the options available to the borrower to avoid default and the relevant fees or costs associated with each option; (4) a description of deferment and forbearance options and the requirements to obtain each; (5) any discharge options the borrower may be entitled to; and (6) any additional resources of which the lender is aware that can provide the borrower with advice and assistance on student loan repayment, including nonprofit organizations, advocates, counselors, and the Department's Student Loan Ombudsman.

Current Regulations: Section 682.205(c)(5)(ii) of the Department's regulations requires FFEL lenders to provide a repayment disclosure to a borrower, including all of the

information listed in section 433(e)(3) of the HEA, within five days of the borrower becoming 60 days delinquent on the FFEL loan. The Department interprets five days for this purpose as five calendar days, rather than business days. The regulations also specify that the minimum payment necessary to avoid default disclosed to the borrower must be the amount as of the disclosure date. The lender must also include the amount necessary to bring the loan current or pay the loan in full.

Proposed Regulations: The proposed regulations would redesignate current § 682.205(c) as § 682.205(a). Redesignated § 682.205(a)(5)(ii) would change the timeframe for FFEL lenders to send the required disclosure from five calendar days after the date the borrower becomes 60 days delinquent to five business days after that date.

Reasons: The non-Federal negotiators representing lenders and lender servicers indicated that the required disclosure is often system-generated and sent out automatically on a fixed schedule. These negotiators stated that office closures and delays due to necessary system maintenance and upgrades may result in a technical violation of the regulations if the lender is unable to send the required notice to the borrower within the five calendar days provided under current regulations. The Department and the other non-Federal negotiators agreed that unintended noncompliance with the regulatory deadline could result under these circumstances and that the regulations were not intended to penalize the lender for this type of possible delay. Accordingly, the proposed regulations would provide the lender with five business days to generate the required disclosure.

FFEL Lender Repayment Disclosures to Borrowers Who Are Having Difficulty Making Payments (34 CFR 682.205(c))

Statute: Section 433(e)(2) of the HEA requires FFEL Program lenders to provide certain information to assist borrowers who notify the lender that they are having difficulty making payments on their loans. The lender must provide the borrower with information about: (1) The repayment plans available to the borrower and how the borrower may request a change in repayment plan; (2) the requirements for obtaining a forbearance on a loan and any expected costs associated with forbearance; and (3) the options available to the borrower to avoid default and any relevant fees or costs associated with those options.

Current Regulations: Section 682.205(c)(4) of the Department's

regulations requires a lender to provide a borrower who is having difficulty making required payments on a loan a disclosure that contains the information specified in section 433(e)(2) of the HEA. The lender must send the disclosure each time the borrower contacts the lender and tells the lender that he or she is having difficulty making payments on the loan.

Proposed Regulations: The proposed regulations would amend 34 CFR 682.205(c)(4) to no longer require a lender to provide the disclosure required by that section if the borrower's difficulty has been resolved through contact resulting from an earlier disclosure or from other contact between the lender and the borrower.

Reasons: The non-Federal negotiators representing FFEL lenders and lender servicers noted that providing the required disclosure in response to every borrower contact may confuse the borrower if prior contact between the borrower and the lender or servicer has addressed the borrower's repayment problem. The negotiating committee agreed that the disclosure should not be automatically triggered under these circumstances because the repeated disclosure could confuse the borrower and be counterproductive to keeping the borrower in active, timely repayment or in another acceptable repayment status.

Administrative Wage Garnishment of the Disposable Pay of Defaulted FFEL Program Borrowers (34 CFR 682.410(b) Borrower Hearing Opportunities on the Enforceability of the Debt and a Borrower's Claim of Financial Hardship (34 CFR 682.410(b)(9)(i))

Statute: Section 488A(a)(3) of the HEA provides borrowers who have defaulted on a title IV loan and who are subject to AWG the opportunity to inspect and copy records relating to the debt. Section 488A(a)(5) of the HEA provides that these borrowers must be provided the opportunity for a hearing concerning the existence or amount of the debt. Section 488A(b) of the HEA establishes certain requirements for the hearing opportunity required under subsection (a)(5).

Current Regulations: Section 682.410(b)(9)(i)(E) of the Department's regulations reflects the statutory requirement that the borrower be provided the opportunity for a hearing concerning the existence or amount of the debt. Section 682.410(b)(9)(i)(J) provides that the borrower has the choice of having an oral or written hearing. However, the current regulations do not include further details on how the hearing should be conducted, the method by which the

borrower may raise objections to the AWG or how the hearing official should make decisions during the hearing. The current regulations do not address a borrower's objections to the enforceability of the debt or a claim of financial hardship.

Proposed Regulations: The proposed regulations would amend § 682.410(b)(9)(i)(E) of the Department's regulations to require that a guaranty agency offer a borrower the opportunity to contest the enforceability of the debt in addition to the existence or amount of the debt. The proposed regulations would also require the guaranty agency to provide the borrower with the opportunity to raise an objection that withholding from the borrower's disposable pay—in the amount or at the rate proposed in the notice advising the borrower of the planned garnishment—would cause financial hardship to the borrower.

The proposed regulations would also amend § 682.410(b)(9)(i)(F) to clearly address the burden of proof that applies with regard to objections by the borrower to garnishment, and to describe the procedures that must be followed by the borrower and guaranty agency when the borrower raises the objections described in paragraph § 682.410(b)(9)(i)(E). Under proposed § 682.410(b)(9)(i)(F)(1)(i), as part of the oral or written hearing, the guaranty agency would have to provide evidence of the existence of the debt. Once the agency provides that evidence, the burden of proof would shift to the borrower to establish, by a preponderance of the evidence that: No debt exists; the amount of the debt the agency claims is incorrect, including that any amount of collection costs assessed to the borrower exceeds the regulatory limits; the debt is not enforceable under applicable law; or the debt is not delinquent. If the borrower objects to the amount of the collection costs charged by the agency included in the debt, the borrower must prove that collection costs charged on the defaulted loan exceed the amount a guaranty agency is permitted to assess a borrower under § 682.410(b)(2) of the Department's regulations.

Under proposed § 682.410(b)(9)(i)(F)(1)(ii), the borrower would be able to raise any of these objections at any time before the hearing official closes the record and notifies the parties that no additional evidence or objections will be accepted.

If the borrower claims that the withholding amount or rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and

dependents, the borrower bears the burden of proving the claim of financial hardship by a preponderance of the evidence. Under § 682.410(b)(9)(i)(F)(2)(ii), in determining whether the withholding amount would cause a financial hardship for the borrower, the hearing official would compare the borrower's living expenses against the amount spent for basic living expenses by families of the same size and similar income to the borrower's, as reflected in the IRS National Standards. The term "National Standards" is more precisely used by the IRS to refer to a subset of living expenses that includes five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous. In addition, the IRS has established standards for: Out-of-pocket health care expenses, which include medical services, prescription drugs, and medical supplies (e.g. eyeglasses, contact lenses, etc.); transportation standards for taxpayers with a vehicle; and housing and utilities standards, which include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service. The IRS refers to these standards collectively as the "Collection Financial Standards." The proposed regulations refer to all these standards collectively as the "National Standards." For more information on the IRS National Standards refer to www.irs.gov/Individuals/Collection-Financial-Standards. We invite comment on whether the term should be changed to conform to the term used by the IRS, which developed the standards.

Under proposed § 682.410(b)(9)(i)(F)(2)(iv), if the hearing official upholds the borrower's objection to the amount or rate of withholding in part, then the garnishment may be ordered at a lesser rate or amount that would allow the borrower to meet basic living expenses. If the garnishment order is already in effect when the hearing official makes a decision, the guaranty agency must notify the borrower's employer of any change in the amount to be withheld or the rate of withholding.

The Department notes that the consensus language of § 682.410(b)(9)(i)(F)(2)(iv) of the proposed regulations differs from regulations governing wage garnishment of Department-held loans at 34 CFR part 34. The proposed regulations state that a withholding order "may be ordered at a lesser rate or amount" by a guaranty

agency if a hearing official upholds, in part, a borrower's claim of financial hardship. The Department believes that the proposed language could be interpreted as providing a guaranty agency discretion in adjusting a borrower's payment and rate based on a hearing official's finding, rendering the hearing official's ruling moot and potentially resulting in inconsistent treatment of similarly situated borrowers. The Department considers the hearing official's determinations whether garnishment would cause hardship, and whether garnishment can be ordered only at a lesser rate than proposed by the guaranty agency, to be binding on the agency, and not a matter left to the discretion of the agency. The Department particularly invites comments on whether the agreed-upon language—using “may” in this context rather than “must”—is contrary to the intent of providing the borrower an opportunity for an independent determination on a financial hardship objection.

Proposed § 682.410(b)(9)(i)(F)(2)(v) would also require that a determination of financial hardship be effective for no longer than six months, and that if, after that period, the guaranty agency determines that the amount or rate of withholding should be increased, the guaranty agency must notify the borrower of the increase and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection.

The proposed regulations would also add a new § 682.410(b)(9)(i)(N) to the regulations to specify the process by which a borrower may raise an objection to the amount or rate of a withholding order on grounds of financial hardship. The proposed regulations would allow the borrower to raise an objection at any time, but would not require the guaranty agency to consider the objection until at least six months after the date the order was issued. Under the proposed regulations the guaranty agency may provide a hearing earlier than six months after the date the order was issued under extraordinary circumstances—that is, if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as an injury, divorce, or a catastrophic illness.

The Department is also proposing to reorganize current provisions in § 682.410(b)(9) to more logically reflect the AWG process, from the initial garnishment notice, to the hearing process, to the withholding of wages. The following sections summarize the

discussion and proposed changes to § 682.410(b)(9).

Reasons: The Department did not include the regulations governing AWG for defaulted FFEL Program borrowers on the original list of regulations to be addressed by the negotiated rulemaking process. However, a non-Federal negotiator asked that the topic be added to the agenda and that § 682.410(b)(9) of the regulations be amended to make certain provisions consistent with the requirements in 34 CFR part 34 that govern AWG for loans held by the Department.

Specifically, the negotiator requested that the regulations be amended to specifically reflect a borrower's right to request a hearing on the enforceability of the debt and to allow the borrower to object to the amount or rate of AWG withholding on the basis that such withholding would cause financial hardship to the borrower.

As negotiations proceeded, other non-Federal negotiators requested that additional changes be made to the regulations to provide more detail on the guaranty agency's administration of the AWG notification and hearing process.

The Department agreed to revise the FFEL Program regulations to provide more consistent treatment for both borrowers whose defaulted loans are held by a guaranty agency and those with loans held by the Secretary. In addition, the Department is proposing to amend certain regulatory provisions to incorporate existing policy guidance and, at the request of the non-Federal negotiators, to provide examples of permissible activities associated with certain phases of AWG.

To respond to a request from a non-Federal negotiator that borrowers be allowed to object at any time to the amount or rate of withholding on the basis of financial hardship, the negotiators agreed to propose new § 682.410(b)(9)(i)(N). This proposed paragraph was added to balance the ability of borrowers to raise a financial hardship objection at any time against the practical necessity of limiting the number of hearings to a reasonable number. Accordingly, the proposed regulations limit such a hearing opportunity to once every six months absent extraordinary circumstances that have substantially changed the borrower's financial circumstances.

Use of Third-Party Contractors in AWG Hearings (34 CFR 682.410(b)(9))

Statute: Section 436(a) of the HEA provides that a FFEL Program lender or guaranty agency that delegates its functions to another entity is not

relieved of its duty to comply with the HEA and must monitor the other entity's activities to ensure compliance with the requirements of the HEA. Section 488A(b) of the HEA prohibits the use of a hearing official who is under the supervision or control of the guaranty agency, but does not otherwise prevent a guaranty agency from retaining a third-party agent to perform AWG-related administrative functions for the agency.

Current Regulations: Section 682.203(a) of the FFEL Program regulations reflects section 436(a) of the HEA and acknowledges that a guaranty agency may contract or otherwise delegate the performance of its functions to a servicing agency or other party. Such a delegation does not relieve the guaranty agency of its duty to ensure that the other party's actions comply with the requirements imposed on the guarantor by the HEA. Section 682.410(b)(9) of the regulations governing a guaranty agency's administration of the AWG process does not address the use of third-party contractors within the AWG context.

Proposed Regulations: The proposed regulations would add new § 682.410(b)(9)(i)(I) to specify that the wage garnishment hearing official may not be under the control of a third-party servicer or collection contractor employed by the guaranty agency. Paragraph (b)(9)(i)(I) would also clarify that payment of compensation to the hearing official for hearing services does not constitute impermissible control by the guaranty agency, a third-party servicer, or a collection contractor employed by the agency. The proposed regulations would also provide that all of the hearing official's oral communications must be made with both the guaranty agency (or its representative) and the borrower present, and that all of the hearing official's written communications with one party must be promptly shared with the other party, with the exception of those communications necessary to plan the time, place, and manner of the hearing.

The proposed regulations would also add a new § 682.410(b)(9)(i)(T) to specify the functions that may be performed by a third-party servicer or collection contractor employed by the guaranty agency for AWG purposes, such as obtaining employment information for the purposes of garnishment, negotiating alternative repayment arrangements with borrowers, and responding to inquiries from borrowers. The proposed regulations would make it clear that the guaranty agency may not delegate to a

third party the decision to order withholding of an individual borrower's wages, and that the agency must create and retain records to demonstrate that each AWG order has been individually authorized by an appropriate official of the guaranty agency. The proposed regulations would also specify the manner by which a withholding order may be sent to employers.

Reasons: In an effort to ensure that AWG hearings are impartial, the Department is proposing new paragraph (b)(9)(i)(I) to clarify that an AWG hearing official may not be under the supervision or control of the guaranty agency or of a third-party servicer or contractor employed by the agency. A non-Federal negotiator requested that language be added to the regulations to provide that the normal payment of compensation to the hearing official for performance of his or her duties would not constitute such impermissible control. To further ensure a fair hearing, the Department also added language to prohibit the hearing official from engaging in ex parte communications without notice to the other party, except in regard to the logistical details of the hearing.

Section 488A of the HEA gives the Secretary and guaranty agencies authority to issue a garnishment order. In the case of a guaranty agency, only a guaranty agency official, and not a contractor for the agency, can lawfully issue an order for the withholding of a borrower's wages. New paragraph (b)(9)(i)(T) reflects that restriction, and includes a non-exhaustive list of activities that may be performed by a third-party servicer or collection contractor employed by the guaranty agency. The proposed regulations reflect the Department's earlier guidance to the guaranty agencies on the limitations on the use of collection contractors or other third-party servicers to conduct administrative activities for a guaranty agency related to the wage garnishment process. The Department believes that some guaranty agencies may not be aware of the guidance or are no longer monitoring their servicers for compliance with that guidance. The Department therefore determined that this guidance should be incorporated into the proposed regulations. Most significantly, a third-party contractor may not make the determination that a withholding order is to be issued, and the order must clearly identify the guaranty agency as the holder of the debt. The order cannot expressly state or imply that the third-party agent is the holder of the loan or that the third-party agent has authority to initiate a withholding order.

A non-Federal negotiator also requested that the proposed regulations include a list of examples of the permissible activities that third-party contractors may perform in the AWG process. New paragraph (b)(9)(i)(T)(1) lists examples of such activities, which are limited to administrative tasks, such as obtaining employment information, receiving garnishment payments, and providing information to borrowers.

Amount or Rate of Wage Withholding (34 CFR 682.410(b)(9))

Statute: Section 488A(a)(1) of the HEA limits the amount of the borrower's pay that may be subject to garnishment to 15 percent of the borrower's disposable pay for any pay period. Section 1673 of Title 15 of the U.S. Code limits the amount of disposable pay that may be subject to garnishment to the lesser of 25 percent of the borrower's disposable pay for any pay period (in cases where multiple withholding orders exist) or the amount by which the borrower's disposable pay for any pay period exceeds 30 times the minimum wage.

Current Regulations: Current § 682.410(b)(9)(i)(A) describes the statutory limits to garnishment as an amount that does not exceed the lesser of 15 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. The current regulations do not describe the limitations in detail, including the limitation on the amount of garnishment in cases where there is a single withholding order compared to when multiple orders exist.

Proposed Regulations: The proposed regulations would add a new § 682.410(b)(9)(i)(K) to the Department's regulations. The proposed regulation would limit the withholding amount or percentage if a guaranty agency is garnishing pay from a borrower who is not already subject to a withholding order. Unless the individual consents to a greater percentage or amount, the guaranty agency would be required to garnish the smallest of: (1) The amount specified in the withholding order; (2) 15 percent of the borrower's pay for the pay period; or (3) the amount by which the borrower's disposable pay for the pay period exceeds 30 times the minimum wage.

The proposed regulations would also add a new § 682.410(b)(9)(i)(L) to the regulations to clarify the withholding amount or percentage and priority if a guaranty agency is garnishing the pay of a borrower who is already subject to one

or more withholding orders. Unless another Federal law dictates a different priority, the borrower's employer would be required to honor the guaranty agency's withholding order before any later-received withholding orders, except a family support withholding order. The proposed regulations clarify that the cumulative allowable amount to be withheld under the sum of all withholding orders is limited to 25 percent of the borrower's disposable pay for the pay period or the amount by which the borrower's disposable pay for the pay period exceeds 30 times the minimum wage. In a case where one or more guaranty agencies have issued wage garnishment orders with respect to the same individual borrower, no single agency would be permitted to order withholding of a total amount exceeding 15 percent of the disposable pay for the pay period of a borrower to be withheld in response to all of the withholding orders it issued for its claims.

The proposed regulations would also add a new § 682.410(b)(9)(i)(M) which would permit a greater amount or percentage to be withheld if the borrower has given the employer written consent to the higher amount or percentage.

Reasons: One non-Federal negotiator argued that current § 682.410(b)(9)(i)(A) was not sufficiently clear with regard to the limits on the amount that may be subject to wage garnishment, especially in cases in which a borrower is subject to more than one withholding order. In an effort to clarify the rules regarding wage withholding, the Department agreed to propose new paragraphs (b)(9)(i)(K) through (M) to provide more clarity as well as the statutory basis for the applicable limits in section 488A(a)(1) of the HEA and 15 U.S.C. 1673(a)(2).

Borrower Hearing Requests (34 CFR 682.410(b)(9))

Statute: Sections 488A(a)(5) and (b) of the HEA provide borrowers with the opportunity to request a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule.

Current Regulations: Current § 682.410(b)(9) requires the guaranty agency to offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule. The current regulations provide that the guaranty agency may not issue a withholding order until the hearing is provided, as long as the borrower's written request for a hearing is received by the guaranty agency within 15 days after the borrower's receipt of the

garnishment notice. The current regulations further provide that a borrower is considered to have received the garnishment notice 5 days after it was mailed by the agency. Finally, current regulations provide that if the borrower's written request for a hearing is received by the guaranty agency after the 15-day period, the guaranty agency must provide a hearing to the borrower but must still go forward with the withholding order (unless the agency determines that the filing delay was caused by factors outside the borrower's control, or receives information that justifies a delay or cancellation of the order), and that the withholding order can be rescinded by a decision from the hearing official.

Proposed Regulations: The proposed regulations would replace current § 682.410(b)(9)(i)(K) with proposed § 682.410(b)(9)(i)(G) and change the current requirement that a borrower's written request for a hearing be received on or before the 15th day following the borrower's receipt of a garnishment notice to be assured of a hearing prior to issuance of a garnishment order. The proposed regulations would require that if a borrower's written request for a hearing is received on or before the 30th day following the date the garnishment notice was sent, the borrower would be assured of a hearing prior to issuance of a garnishment order. We are also proposing to delete the rule that a borrower is considered to have received a garnishment notice five days after it was mailed by the agency.

The Department has decided to retain the requirement in current § 682.410(b)(9)(i)(L) (now proposed § 682.410(b)(9)(i)(H)) that if a borrower does not request a hearing within the 30-day time limit, the guaranty agency must go forward with the withholding unless the agency determines that the filing delay was caused by factors outside the borrower's control, or receives information that justifies a delay or cancellation of the order. If a borrower's request for a hearing is received after the 30th day, a guaranty agency is still required to provide a hearing in enough time to have a decision issued within 60 days of the date the guaranty agency received the hearing request. The Department would add to proposed § 682.410(b)(9)(i)(H) (which would replace current § 682.410(b)(9)(i)(L)) a provision specifying that if the hearing is not provided and a decision issued within 60 days following the receipt of the borrower's written request for a hearing, then the agency must suspend the order beginning on the 61st day until a decision is rendered.

Reasons: In the preamble to the final regulations issued by the Department on April 19, 1994, 59 FR 22462, 22475, we explained that we agreed with the public comments we had received stating that borrowers should be deemed to have received a garnishment notice five days after its mailing date to prevent disputes about the date the borrower received the notice. During the recent negotiated rulemaking sessions, a non-Federal negotiator requested that the time limit for when the guaranty agency must receive the borrower's written request for a hearing be measured against the date the garnishment notice was sent, rather than the date the borrower received the notice. The Department accepted this suggestion because measurement of the date the notice was sent is more readily verifiable than the date the notice was received. However, to balance this interest against the borrower's need for time to respond, the Department increased the time limit from 15 days to 30 days, consistent with a suggestion from another non-Federal negotiator.

The provision specifying suspension of the order on the 61st day was added to make explicit the consequence if a decision is not issued within the required time period.

Other Provisions Related to AWG (34 CFR 682.410(b)(9))

Statute: Section 488A of the HEA authorizes the Secretary and guaranty agencies in the FFEL Program to garnish up to 15 percent of a defaulted borrower's disposable income per pay period, unless the individual consents to a greater percentage or amount. The statute requires that a notice be sent to a borrower no less than 30 days prior to initiation of the garnishment proceedings against the borrower informing the borrower of the nature and amount of the debt, the intention of the guaranty agency or Secretary, as appropriate, to initiate garnishment, and an explanation of the rights of the borrower. The statute provides the borrower, among other rights, an opportunity for a hearing regarding the proposed garnishment.

Current Regulations: Section 682.410(b)(9) of the FFEL Program regulations includes the rules that govern the hearing notice and the conduct of the hearing in cases of administrative wage garnishment by a guaranty agency.

Current paragraph (b)(9)(i)(B) requires a guaranty agency to mail to the borrower's last known address, at least 30 days before the initiation of garnishment proceedings, a written notice of the nature and amount of the

debt, the intention of the agency to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. Current paragraphs (b)(9)(i)(C) and (b)(9)(i)(D) require a guaranty agency to offer the borrower an opportunity to inspect and copy agency records related to the debt and an opportunity to enter into a written repayment agreement.

Proposed Regulations: The proposed regulations would amend § 682.410(b)(9)(i)(B) of the FFEL Program regulations to enumerate the elements that a guaranty agency must include in the garnishment notice it sends to a defaulted borrower. Under the proposed regulations, the notice would: Describe the nature and amount of the debt; the intention of the agency to collect the debt through deductions from the borrower's disposable pay; provide an explanation of the borrower's rights; identify the deadlines by which the borrower must exercise those rights; and describe the consequences of the failure to exercise those rights in a timely manner.

The proposed regulations would add new paragraph (b)(9)(i)(J), which would specify the rules under which the hearing would be conducted, including provisions for granting continuances. Specifically, the proposed regulations would require that the hearing be conducted as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and require maintenance of a summary record of any hearing. Proposed paragraph (b)(9)(i)(J) would also allow the borrower to request a continuance of the hearing to submit additional evidence or the agency to request and receive from the hearing officer a reasonable extension of time sufficient to enable the agency to evaluate and respond to any additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(1)(ii).

The proposed regulations would also add new paragraph (b)(9)(i)(O), which would provide for the withholding order to be effective until the guaranty agency rescinds the order or the agency has fully recovered the amount owed by the borrower.

The proposed regulations would redesignate paragraphs (b)(9)(i)(F) through (b)(9)(i)(I) of § 682.410 as new paragraphs (b)(9)(i)(P) through (b)(9)(i)(S). Proposed § 682.410(b)(9)(i)(Q) would clarify that a borrower who wishes to object to the garnishment on the basis that he or she is not subject to garnishment because of involuntary separation from employment bears the burden of raising

and proving that claim. Proposed § 682.410(b)(9)(i)(S) would enumerate the information that a guaranty agency must include in the withholding order sent to the employer. The order may only include the information necessary for the employer to comply with the withholding order. Accordingly, under the proposed regulations, the order must include the borrower's name, address, and SSN, as well as instructions for the employer's withholding of the borrower's pay and information as to where the employer must send the withheld funds.

The proposed regulations would redesignate paragraph § 682.410(b)(9)(i)(O) as new paragraph (b)(9)(i)(U).

Finally, § 682.410(b)(9)(ii) of the proposed regulations would add definitions for certain terms used in paragraph (b)(9)(i). These definitions were incorporated from other sections of the existing FFEL Program regulations and other Department regulations.

Reasons: A non-Federal negotiator requested that the regulations be revised to include an expanded description of what would be permissible information to include in the garnishment notice sent to defaulted borrowers. In an effort to provide clear regulatory guidance to guaranty agencies sending such notices and to ensure that borrowers fully understand the garnishment process and its implications, the Department is proposing to list the required components of the garnishment notice in the regulations.

The Department added language in new paragraph (b)(9)(i)(J) to emphasize that the hearing official in an administrative wage garnishment hearing must conduct the hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of the hearing. The Department added this language because FFEL Program garnishment hearings and decisions, like those conducted by the Department, may be subject to judicial review. This judicial review is based on a review of the administrative record. The proposed regulatory language ensures that the guaranty agency will have a record appropriate for judicial review that includes not only the decision issued, but also a summary record of the proceedings showing the evidence considered and the procedure followed by the guaranty agency.

The Department proposes to allow a borrower to request a continuance of the hearing if the borrower needs more time to gather, prepare, and present additional evidence. Proposed paragraph (b)(9)(i)(F)(1)(ii) would allow

a borrower to raise permissible objections during the hearing even if they were not raised in the borrower's written request for a hearing. Because a borrower has a limited period of time to request a hearing, and gathering evidence in preparation for such a hearing may identify an additional basis for the borrower to object to the garnishment, the Department agreed with a negotiator's proposal to allow the borrower to raise these objections any time prior to completion of the hearing and to request a continuance if the borrower requires more time to present evidence. At the suggestion of another non-Federal negotiator, proposed paragraph (b)(9)(i)(J) would require the hearing official to grant a guaranty agency's request for a continuance to provide time for the agency to respond to such an objection. We propose this requirement to ensure that the agency has sufficient time to respond to an objection from the borrower, especially because the borrower may raise the objection without prior notice to the guaranty agency.

Proposed paragraph (b)(9)(i)(O) specifies the process by which a wage withholding order may be terminated by the guaranty agency and was drafted to reflect similar rules under 34 CFR 34.26. The proposed regulations would require a withholding order to be effective until the guaranty agency rescinds the order or the amount owed has been fully recovered. Under the proposed regulations, if the borrower does not have enough pay in a pay period to permit withholding, the employer must notify the guaranty agency and restart garnishment when the borrower's pay is sufficient. We propose this language to provide full information and clarity with regard to the withholding process for both the employer and the guaranty agency.

Proposed paragraphs (b)(9)(i)(P) through (b)(9)(i)(S) are similar to paragraphs (b)(9)(i)(F) through (b)(9)(i)(I) of the current regulations but would be reordered by this proposed rule. These provisions, and paragraph (b)(9)(i) generally, were reordered to reflect the chronological processes of garnishment notification, hearing, and withholding orders, and to provide a more logical order to the proposed regulations.

The Department proposes to add new paragraph (b)(9)(i)(Q) to clarify that a borrower bears the burden of claiming involuntary separation from employment. The Department proposes to place that burden on the borrower because such information is more easily accessible to and reportable by the borrower rather than by the guaranty agency.

At the request of a non-Federal negotiator, new paragraph (b)(9)(i)(S) specifies the contents of the withholding order, to ensure that the order reflects the information necessary for the employer to comply with the withholding order.

The proposed regulations would redesignate current paragraph (b)(9)(i)(O) as new paragraph (b)(9)(i)(U). This new paragraph would reflect the statutory provision that allows a borrower to seek judicial relief against an employer for taking adverse employment action against the borrower because of the garnishment. As with other provisions in paragraph (b)(9)(i), this paragraph was reordered to reflect the chronological processes of garnishment notification, hearing, and withholding orders, and to provide a more logical order to the proposed regulations.

Section 682.410(b)(9)(ii) of the proposed regulations would add definitions for certain terms used in paragraph (b)(9)(i). The Department incorporated these definitions from existing FFEL Program regulations to provide clarity and readily-available definitions that affect the preceding sections.

Modification of the FFEL Program Regulations (34 CFR Part 682)

Background: As noted earlier, the SAFRA Act ended the making of new FFEL Program loans as of July 1, 2010. The current FFEL Program regulations in 34 CFR part 682 contain numerous provisions that are no longer needed in light of this change. The regulations that are no longer needed include those governing: The FFEL loan application process and use of the master promissory note; interest rates for loans originated after July 1, 2010; lender loan origination, refinancing, and disbursement requirements; fees for refinanced loans; lender disclosures for newly originated loans; school loan delivery and entrance counseling requirements for first-time borrowers; and school and school-affiliated organization lender requirements. The current regulations also contain other provisions that are no longer needed, including regulations that require a guaranty agency to: provide lender-of-last-resort services to borrowers; establish regulations for eligible schools to participate in the guaranty agency's program; and guarantee loans up to specified annual and aggregate limits. Other regulations that are no longer necessary include those that: Specify a borrower's responsibility in the loan origination process; govern a guaranty agency's authority to limit and suspend

school participation in its program; govern a guaranty agency's required area of service in guaranteeing loans; prohibit guaranty agencies from offering inducements to prospective borrowers, schools and school-affiliated organizations, or to any individual or entity to secure loan applications; bar guaranty agencies from assessing additional costs or denying benefits to schools and lenders participating in the agency's program on the basis of that entity's failure to agree to participate or to provide a specified volume of loans for the agency's guarantee; and prohibit guaranty agencies from offering incentive payments or other inducements to a lender to secure additional loan guarantees.

The current FFEL Program regulations contain other provisions that the Department believes are obsolete. Subpart E of 34 CFR part 682 includes regulations governing the Federal Insured Student Loan (FISL) Program. No new FISL Program loans have been made since 1983. Accordingly, subpart E and appendix C to subpart E, which provides guidance for curing lender due diligence violations on FISL Program loans, are no longer needed. In addition, the FFEL Program regulations include some sections implementing certain time-limited provisions of the HEA, such as the regulations governing the creation of the guaranty agencies' Operating Funds and Federal Funds and the regulations governing Federal nonliquid assets held by a guaranty agency. These regulations are no longer applicable and can be eliminated from the Code of Federal Regulations. To address these issues, the Department proposes the following technical changes to the FFEL Program regulations:

- Eliminating provisions governing loan origination and disbursement and related requirements and activities except for certain school-based requirements and related activities.
- Eliminating obsolete provisions that do not reflect the current procedures in the FFEL Program.
- Making necessary conforming changes in various provisions to clarify the regulations.

The Department is retaining all of the FFEL Program definitions, the provisions and sections of the regulations that govern the servicing and collection of FFEL loans, the guaranty agency program requirements that are still applicable, and the lender participation requirements.

During the negotiated rulemaking sessions, the Department provided the non-Federal negotiators with a detailed overview of the planned technical

changes to the FFEL Program regulations that identified all the regulatory provisions and sections recommended for elimination, identified other provisions that required conforming and other clarifying technical changes or corrections, and provided the rationale for each proposed technical change.

During the negotiations, many non-Federal negotiators representing lenders, guaranty agencies, and loan servicers raised questions about the Department's plan to eliminate the regulations dealing with loan origination and disbursement, the FISL Program, and a guaranty agency's maintenance of its Federal Fund and Operating Fund in the first few years after those funds were established. These negotiators argued that the FISL provisions should be retained because there are still some outstanding FISL loans to which some of the regulations may apply and that provisions governing loan origination and disbursement are needed because they are relevant to guaranty agency oversight of lenders and the review of lender claims, and were often helpful in resolving borrower disputes. These same negotiators stated that the regulations governing a guaranty agency's maintenance of the Federal Fund and Operating Fund should be retained because there were cross-references to these sections elsewhere in the regulations. The Department indicated that it sees no basis for retaining regulatory provisions that are no longer supported in the HEA or that are obsolete. The Department pointed out that there were fewer than 500 FISL loans in repayment, many of them defaulted loans held by the Department, and also noted that lender requirements and activities that were subject to guaranty agency oversight remained enforceable even if the regulatory provisions governing them are not included in future copies of the Code of Federal Regulations. The Department agreed to eliminate and make other necessary changes to address cross-references that would be rendered obsolete by the planned technical changes.

One non-Federal negotiator representing legal assistance organizations asked the Department to retain § 682.103, which identifies the applicability of the various subparts in the regulations because the negotiator felt it was a useful index to the regulatory subparts. The same negotiator also requested that § 682.209(k), which acknowledges that a lender may be subject to any claims and defenses a borrower could assert against a school

with respect to a loan under certain circumstances, be retained to facilitate borrowers raising such defenses against repayment. The negotiating committee agreed to retain these two provisions.

A non-Federal negotiator representing the guaranty agencies asked that the Department remove provisions in current § 682.401(e) identifying guaranty agency payments and activities that do not represent prohibited incentives to secure new loan guarantees. The negotiator stated that removing provisions identifying prohibited payments and activities while retaining the related permissible activities and payments would result in misleading regulations and was unnecessary. The negotiating committee agreed to remove these provisions. The non-Federal negotiators representing lenders, guaranty agencies, and loan servicers also identified additional technical corrections and minor clarifying technical edits that the negotiating committee agreed to make.

Following the Department's review and discussion with the non-Federal negotiators of the technical changes and corrections the Department proposed to make in the FFEL Program regulations and the rationale for those changes, the negotiating committee agreed the changes should be made to update and streamline the regulations.

The more substantive technical changes to the FFEL Program regulations are discussed below. A complete summary of the proposed technical changes to 34 CFR part 682 is found in Appendix A at the end of this NPRM.

Subpart A—Purpose and Scope

§ 682.102 Obtaining and Repaying a Loan

Statute: Sections 428(a)(2)–(6), 428B (a) and (b), and 428C(b) of the HEA authorize the application process for FFEL Stafford, PLUS, and Consolidation loans.

Current Regulations: Section 682.102(a)–(d) of the current regulations provide a general description of the process by which an individual requests a Stafford, PLUS, or Consolidation loan. Current § 682.102(e) of the regulations provides a general summary of FFEL Program loan repayment.

Proposed Regulations: The proposed regulations would amend the heading of § 682.102 to read "Repaying a loan," remove § 682.102(a)–(d), which detail the application process for Stafford, PLUS, and Consolidation loans, and redesignate the paragraphs in current § 682.102(e), which describes the loan repayment process, as § 682.102(a)–(g).

Reasons: Under the SAFRA Act, no new FFEL Program loans may be made after June 30, 2010. Accordingly, the provisions that relate to the making of new FFEL Program loans are no longer needed.

Subpart B—General Provisions

§ 682.200 Definitions

Lender

Statute: Section 435(d)(7) of the HEA specifies the requirements for an eligible lender that makes or holds FFEL loans as a trustee for an institution of higher education or a school-affiliated organization. Under the HEA, the trustee lender: May not make loans to undergraduate students at the school; may only make Federal Stafford Loans to graduate and professional students at that school; and may only offer loans with an origination fee or an interest rate, or both, that are less than the fee or rate otherwise authorized for such loans in the HEA. In addition, the loans must be included in an annual compliance audit that meets the requirements in section 435(d)(8) of the HEA.

Current Regulations: Sections 682.601(a)(3), (a)(5), and (a)(7) of the current regulations and paragraphs (7) and (8) of the definition of “Lender” in § 682.200(b) reflect the requirements of section 435(d)(7) and (8) of the HEA.

Proposed Regulations: The proposed regulations would move the provisions of current § 682.601(a)(3), (a)(5), and (a)(7) to paragraph (8) of the definition of “Lender” in § 682.200(b), and remove from the regulations the remainder of § 682.601.

Reasons: We are proposing to remove § 682.601 from the regulations because (as a result of the SAFRA Act) no new loans are being made under the FFEL Program and therefore most of the provisions in that section are no longer relevant. However, the requirements governing lenders operating as trustees on behalf of a school or a school-affiliated organization that serves as a FFEL lender were retained and relocated to the definition of “Lender” consistent with section 435(d)(7) of the HEA.

Nationwide Consumer Reporting Agency

Statute: A “nationwide consumer reporting agency” is defined in 15 U.S.C. 1681a(p).

Current Regulations: The current regulations at § 682.200(b) define “nationwide consumer reporting agency” through a cross-reference to 15 U.S.C. 1681(a).

Proposed Regulations: The proposed regulations would amend the definition of “nationwide consumer reporting agency” to include a more specific statutory citation for the definition of “nationwide consumer reporting agency” at 15 U.S.C. 1681a(p), and to specify that a “nationwide consumer reporting agency” is one that compiles and maintains public record and credit account information on consumers on a nationwide basis.

Reasons: The changes would correct the statutory citation for the definition and reflect the terminology used in that statute.

Satisfactory Repayment Arrangements

Statute: Section 428F(b) of the HEA provides that a borrower with a defaulted loan may renew eligibility for title IV student financial assistance after making six consecutive monthly payments on the defaulted loan. The required monthly payment amount cannot be more than is reasonable and affordable based on the borrower’s total financial circumstances. A borrower is limited to one opportunity to regain eligibility for title IV student financial assistance under this provision.

Current Regulations: The definition of “satisfactory repayment arrangement” in current § 682.200(b) reflects the statutory requirements and specifies that the required six consecutive monthly payments must be on-time, voluntary, full monthly payments. For this purpose, “voluntary payments” are those made directly by the borrower and do not include payments obtained by income tax offset, garnishment, or income or asset execution. The regulations state that “on-time” means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date. For purposes of consolidating a defaulted loan in the FFEL Program, “satisfactory repayment arrangements” means the making of three consecutive, on-time voluntary full monthly payments on a defaulted loan.

Proposed Regulations: The proposed regulations would replace the current cross-reference to § 682.401(b)(4) in paragraph (1) of the definition of “satisfactory repayment arrangement” with language explaining that the definition applies to a borrower who is trying to regain eligibility under the title IV student financial assistance programs. The proposed regulations would also remove current paragraph (2) of the definition, which relates to FFEL Program loan consolidation, and renumber current paragraph (3) as paragraph (2).

Reasons: The change to paragraph (1) of the definition is intended to clarify that a borrower making satisfactory repayment arrangements on a defaulted loan regains eligibility for all title IV assistance programs, not just eligibility for additional title IV loans. Paragraph (2) of the definition is no longer needed because no new FFEL Consolidation loans are being made.

§ 682.204 Maximum Loan Amounts

Statute: Sections 428(b)(1)(A) and (B) and 428H(d) of the HEA specify the annual and aggregate loan limits that apply to Subsidized and Unsubsidized Stafford loans for undergraduate and graduate and professional students in the FFEL and Direct Loan programs.

Current Regulations: Section 682.204 of the current FFEL Program regulations reflects the annual and aggregate loan limits specified in the HEA. The loan limits are the combined limits for borrowing under the FFEL Stafford Loan (Subsidized and Unsubsidized) and Direct Subsidized and Unsubsidized Loan programs. The current regulations also include the Stafford Loan annual and aggregate loan limits for loans first disbursed prior to July 1, 2008 and, in § 682.204(f), the annual loan limits for loans made under the Supplemental Loans for Students (SLS) program.

Proposed Regulations: The proposed regulations would remove references throughout current § 682.204 to the annual and aggregate Stafford Loan limits that existed prior to July 1, 2008 and would also remove § 682.204(f), which includes the SLS annual loan limits. The remaining paragraphs in the section would be redesignated as paragraphs (f)–(l). All references in § 682.204 to the Federal Direct Stafford/Ford Loan Program would be replaced by references to the Direct Subsidized or Direct Unsubsidized Loan Program, as applicable. Section 682.204(a)(1)(iii), (c)(1)(iii) (current (c)(1)(ii)(C)), and (d)(1)(iii) would be amended to correct the numerator of the second fraction used to calculate the prorated annual loan limit when a student is enrolled in a program of study that is less than a full academic year in length. Specifically, the numerator would be revised to show the number of weeks that the student is enrolled in the program rather than the number of weeks in the program.

Reasons: The proposed regulations would retain only the loan limits that were in effect as of July 30, 2010, the last date that new loans were made under the FFEL Program. The pre-July 1, 2008, annual and aggregate loan limits that had ceased to be effective two years before the last new FFEL Program loans

were made would be removed from the regulations. Similarly, the SLS annual loan limits would be removed because the authority to make loans under that program ended effective July 1, 1994.

For consistency with proposed changes in the Direct Loan Program regulations, references to “Federal Direct Stafford/Ford Loans” and “Federal Direct Unsubsidized Stafford/Ford Loans” would be changed to “Direct Subsidized Loans” and “Direct Unsubsidized Loans,” respectively.

The changes in § 682.204(a)(1)(iii), (c)(1)(iii) (current (c)(1)(ii)(C)), and (d)(1)(iii) are necessary to make the numerator of the second fraction consistent with the numerator of the first fraction that appears in each of these paragraphs. In the first fraction, the numerator refers to the number of semester, trimester, quarter, or clock hours that the student is enrolled in the program.

§ 682.205 Disclosure Requirements for Lenders

Statute: Section 433(a) of the HEA requires each FFEL lender to provide a disclosure to a borrower prior to or at the time a FFEL PLUS loan, Stafford loan, or Unsubsidized Stafford loan is disbursed. The disclosure must include:

- (1) A statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid;
- (2) The name of the eligible lender, and the address to which communications and payments should be sent;
- (3) The principal amount of the loan;
- (4) The interest rate on the loan;
- (5) Any charges or fees that may be assessed on the loan;
- (6) The borrower’s option to pay accruing interest on an unsubsidized loan while the borrower is a student at an institution of higher education and the timing and frequency of capitalization if interest is not paid;
- (7) For loans made to a parent borrower on behalf of a student under section 428B, information about deferring payment on the loan;
- (8) The yearly and cumulative maximum amounts that may be borrowed;
- (9) A cumulative balance statement of all loans owed by the borrower to the lender, including the loan being disbursed, and an estimate of the projected monthly payment, given such cumulative balance;
- (10) Information on repayment of the loan; and
- (11) The definition of default and the consequences to the borrower of defaulting on the loan.

Section 433(c) of the HEA also requires the lender to provide a separate disclosure to a borrower each time a new loan is approved which summarizes, in simple and understandable terms, the rights and responsibilities of the borrower with respect to the loan. Section 428C(b)(1)(F) of the HEA requires that when a lender provides a borrower with an application for a consolidation loan, the lender must provide the borrower with information on whether consolidation would result in the loss of any loan benefits for the borrower. The lender providing the consolidation loan application must also inform the borrower that loan benefits may vary among lenders, tell the borrower that simply applying for a consolidation loan does not obligate the borrower to take out the loan, provide information on available repayment plans, and explain the consequences to the borrower of defaulting on a consolidation loan.

Current Regulations: Section 682.205(a) of the current regulations reflects the requirements of section 433(a) of the HEA. This regulatory section details the initial disclosure a FFEL lender must provide to a borrower prior to or at the time of the first disbursement of a PLUS, Stafford, or Unsubsidized Stafford loan. Consistent with section 433(c) of the HEA, § 682.205(b) and (g) of the regulations require a separate notice of borrower rights and responsibilities and a plain language disclosure each time a new PLUS, Stafford, or Unsubsidized Stafford loan is approved for a borrower. Section 682.205(i) requires that at the time a lender provides a Consolidation loan application to a borrower, the lender must disclose the information specified in section 428C(b)(1)(F) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.205(a), (b), (g), and (i) from the FFEL Program regulations and renumber the remaining provisions.

Reasons: The SAFRA Act ended the authority to make new FFEL Program loans, including new FFEL Consolidation loans. As a result, the lender disclosure requirements for new loans are no longer needed and thus should be removed from the regulations.

§ 682.206 Due Diligence in Making a Loan

Statute: Title IV, part B of the HEA includes the terms and conditions of FFEL Program loans and the requirements for lenders making FFEL Program loans.

Current Regulations: Consistent with title IV, part B of the HEA, § 682.206 of

the current regulations requires a FFEL lender to exercise due diligence in making a loan. Loan making duties include determining the borrower’s loan amount, approving the loan, explaining to the borrower his or her rights and responsibilities, and confirming that each loan is supported by an executed enforceable promissory note or master promissory note. The regulations also require a FFEL lender, prior to making a Consolidation loan, to collect from the holder of each loan being repaid through the Consolidation loan a certification that the loan is a legal, valid, and binding obligation of the borrower, that the loan was made and serviced in compliance with applicable law and regulations, and that, where applicable, the loan’s guarantee remains in full force and effect. Before making a Consolidation loan, a lender must also notify the applicant of the option to cancel the Consolidation loan before it is made and provide the deadline for the applicant to exercise this option.

Proposed Regulations: The proposed regulations would remove § 682.206 from the FFEL Program regulations.

Reasons: The SAFRA Act eliminated the authority to make new FFEL Program loans, including new FFEL Consolidation loans. As a result, the requirements governing the making of new FFEL Program loans are no longer needed and thus should be eliminated from the regulations.

§ 682.207 Due Diligence in Disbursing a Loan

Statute: Sections 428(b)(1)(N), 428B(c), and 428G of the HEA detail the disbursement requirements for FFEL Stafford and PLUS loans. Section 428G of the HEA requires that loan proceeds be disbursed in two or more installments over the course of the loan period, based on a disbursement schedule provided to the lender by the school, unless: (1) The loan period is not more than one semester, one trimester, one quarter, or four months in duration; and (2) the school has a cohort default rate below a certain specified level. Section 428G(e) of the HEA allows the proceeds of a loan to be disbursed in a single installment if the loan is made to a student to cover the cost of attendance in a study abroad program offered by a school with a cohort default rate below a certain specified level. Section 428G(a) specifies that no installment may exceed more than one-half of the loan. Under section 428G(b), loans may not be disbursed earlier than 30 days prior to the first day of the loan period and first time borrowers in undergraduate courses of study may not receive the first installment until 30

days after beginning their course of study. Under section 428G(d), second or subsequent installments of a loan cannot be disbursed if the lender is informed that the student has withdrawn from the school and a disbursement that is withheld for this reason is treated as a prepayment on the borrower's loan. Section 428(b)(1)(N) requires that funds borrowed by a student be disbursed to the school by check or other means that is payable to, and requires the endorsement of or other certification by, the student. This provision also authorizes, in certain circumstances, the direct disbursement of loan proceeds to the student if the student is enrolled in a study abroad program or is enrolled at an eligible foreign school. Section 428(b)(1)(N) of the HEA requires PLUS loans to be disbursed in accordance with the requirements of section 428G of the HEA, and to be disbursed by electronic funds transfer to the school or in the form of a check co-payable to the school and the PLUS borrower.

Current Regulations: Section 682.207 of the regulations reflects the requirements in the HEA for disbursement of Stafford and PLUS loans.

Proposed Regulations: The proposed regulations would remove § 682.207 from the FFEL Program regulations.

Reasons: The SAFRA Act ended the authority to make new FFEL Program loans. As a result, the requirements governing loan disbursement are no longer needed and thus should be removed from the regulations.

§ 682.209 *Repayment of a Loan*

Statute: Section 428(b)(7) of the HEA provides that the repayment period on a Federal Stafford loan begins the day after six months after the date the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution. Section 428B(e) of the HEA authorizes the refinancing of FFEL PLUS loans to secure a combined repayment plan or to secure a variable interest rate. Section 493C of the HEA, governing the IBR plan, provides for a borrower's loan payment to be less than the accruing interest on the loan.

Current Regulations: Section 682.209(a)(3) specifies when repayment on a Federal Stafford Loan begins. Section 682.209(e) and (f) govern the refinancing of PLUS and SLS loans, respectively, and paragraph (g) specifies the conditions under which these loans may be refinanced. Section 682.209(j) requires a lender, within 10 business days after receiving a written request for a certification of payoff information on

loans it holds in connection with a borrower's Consolidation loan application, to provide the requesting consolidation lender with either the completed certification or an explanation of the reasons it is unable to do so.

Proposed Regulations: The proposed regulations would amend § 682.209(a)(3)(i) by adding new paragraph § 682.209(a)(3)(i)(D), which specifies that borrowers with Stafford loans that have fixed interest rates of 6 percent, 5.6 percent, or 6.8 percent enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current § 682.209(e) through (g) and (j) from the regulations and redesignate the remaining paragraphs as paragraphs (e) through (g). Redesignated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the IBR plan may make a scheduled monthly payment of less than the interest that accrues on the loan.

Reasons: For consistency with the HEA, proposed new paragraph § 682.209(a)(3)(i)(D) would clarify when borrowers with certain fixed interest rate Stafford loans enter repayment on those loans. The proposed change to newly redesignated § 682.209(e) would clarify that the scheduled monthly payment amount for a Consolidation Loan borrower repaying under the income-based repayment plan may be less than the amount of accruing interest on the loan, which would otherwise be required under all other FFEL repayment plans. Current § 682.209(e), (f), (g), and (j) of the regulations are removed because no new FFEL loans are being made.

§ 682.210 *Deferment*

Statute: Section 428(b)(1)(M) of the HEA authorizes deferments to FFEL Program borrowers when they are: (1) Pursuing at least a half-time course of study at an eligible institution; (2) pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or rehabilitation training program for disabled individuals approved by the Secretary; (3) seeking but unable to find full-time employment; (4) serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency; or (5) experiencing an economic hardship as defined in section 435(o) of the HEA.

Current Regulations: Section 682.210(a) of the FFEL Program regulations contains a number of

provisions that describe the terms of and the rules for granting deferments on FFEL Program loans. Section 682.210(a)(1) of the regulations reflect the prior statutory provision that provided for a six-month post-deferment grace period for borrowers with loans made before October 1, 1981. Paragraph (b) of this section lists the authorized deferments available to borrowers who received FFEL Program loans as new borrowers prior to July 1, 1993. Paragraphs (c) through (e) and (h) of § 682.210 contain the eligibility criteria that all FFEL borrowers must meet to qualify for an in-school, graduate fellowship, rehabilitation training program, or unemployment deferment. Paragraphs (f) through (g) and (i) through (r) of § 682.210 contain the eligibility criteria for deferments that are available to individuals who borrowed as new borrowers before July 1, 1993. Paragraphs (s) through (v) contain the eligibility criteria for deferments available to new borrowers on or after July 1, 1993, military service deferments, and deferments available to PLUS loan borrowers on loans first disbursed on or after July 1, 2008. Section 682.210(t)(7) of the regulations permits the representative of a borrower who is serving in the military to request a military service deferment on the borrower's behalf.

Proposed Regulations: The proposed regulations would amend § 682.210(a)(4) of the regulations to provide, consistent with § 682.210(t)(7), that a borrower's representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language in paragraphs (b)(1) through (6) of § 682.210 would be revised to clearly identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria described in paragraphs (c) through (r) of § 682.210 that are applicable to deferments available to these borrowers. The proposed regulations would also amend § 682.210(s)(2) by removing the exception clause at the end of the provision, and would amend § 682.210(u)(5) by replacing the words "military active" with "post-active."

Reasons: The proposed regulations would amend § 682.210(a)(4) to facilitate deferment requests by borrowers serving in the military by further clarifying that a representative of the borrower may apply for the deferment on the borrower's behalf.

The proposed changes in § 682.210(b) would clearly identify the pre-July 1, 1993, cohorts of new borrowers to which the paragraph applies and would

distinguish the deferments available to these borrowers from those available to new borrowers on or after July 1, 1993. Technical changes would be made in § 682.210(b)(i) to correct a cross-reference, clarify that the deferment granted to borrowers in the specified cohort are subject to the procedural requirements described in § 682.210(c), and remove obsolete language related to borrowers attending schools operated by the Federal government and to borrowers who are not U.S. nationals attending schools that are not located in a State.

The clause at the end of § 682.210(s)(2) should be removed because no FFEL borrowers are required to take out a new Stafford or SLS loan to qualify for an in-school deferment. A technical change would be made in § 682.210(u)(5) to clarify that the provision applies to borrowers seeking a post-active duty student deferment rather than a military service deferment.

§ 682.214 Compliance With Equal Credit Opportunity Requirements

Statute: The Equal Credit Opportunity Act, 15 U.S.C. 1601 et seq., is intended to protect applicants for consumer credit, including student loans, against discrimination.

Current Regulations: Current § 682.214 provides that a lender making subsidized Federal Stafford Loans must comply with the requirements of the Equal Credit Opportunity Act regulations issued by the Board of Governors of the Federal Reserve System in Regulation B (12 CFR part 202).

Proposed Regulations: The proposed regulations would remove § 682.214 from the FFEL Program regulations.

Reasons: The SAFRA Act ended the making of new FFEL loans and therefore these requirements should be eliminated from the FFEL regulations.

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of Interest Benefits on Stafford and Consolidation Loans

Statute: Section 428(a)(3) of the HEA provides that the Secretary will pay the interest on Stafford Loans on behalf of eligible borrowers during certain periods. Section 428(a)(3)(A)(v) of the HEA specifies that a lender may not receive interest payments on a loan for a period any earlier than 10 days before the first disbursement of a loan if the loan is disbursed by check, three days before the first disbursement of the loan if the loan is disbursed by electronic funds transfer, or three days before the disbursement of the loan if the loan is

disbursed through an escrow agent on behalf of the lender. Section 428(a)(7) of the HEA specifies that a lender may not charge interest or receive interest subsidies or special allowance payments on loans for which the disbursement checks have not been cashed or for which the electronic funds transfers have not been completed.

Current Regulations: Section 682.300(c) details the circumstances under which the Secretary will not make interest payments to a loan holder. Section 682.300(c)(3) and (4) of the regulations reflect the statutory limitations on interest billing on the first disbursement of a subsidized Stafford loan and on loans for which the check has not been cashed or the electronic funds transfer has not been completed.

Proposed Regulations: The proposed regulations would remove § 682.300(c)(3) and (4) from the FFEL Program regulations.

Reasons: As a result of the SAFRA Act, no new FFEL Program loans will be made, and thus these provisions should be eliminated from the regulations.

§ 682.301 Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

Statute: Section 428(a)(2)(E) of the HEA specifies that in determining whether a student has the financial need to qualify for the interest subsidy on a FFEL Stafford loan, the expected family contribution of the student for the academic year for which financial need is being determined may be offset by Unsubsidized Stafford loans, parent PLUS loans, and loans under any State-sponsored or private loan program that are made for that same academic year.

Current Regulations: Section 682.301(c) of the regulations reflects § 428(a)(2)(E) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.301(c) from the regulations.

Reasons: As a result of the SAFRA Act, no new FFEL Program loans will be made and, thus, this provision related to determining borrower eligibility for the interest subsidy on new loans should be eliminated from the FFEL regulations.

§ 682.305 Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

Statute: Section 428(b)(1)(U)(iii)(I) of the HEA requires a lender that holds or originates more than \$5,000,000 in FFEL loans during the lender's fiscal year to submit to the Department an annual compliance audit conducted by a qualified, independent organization or

individual. Section 435(d)(2)(A)(vii) of the HEA specifies that an institution of higher education engaging in activities as an eligible lender must submit to the Secretary an annual compliance audit conducted in accordance with the requirements of section 428(b)(1)(U)(iii)(I) of the HEA.

Current Regulations: Section 682.305(c) of the regulations reflects the statutory requirement that a FFEL lender originating or holding more than \$5 million in FFEL Program loans during its fiscal year must submit an annual independent lender compliance audit. Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization for the purpose of originating FFEL loans must submit an independent compliance audit to the Department each year. Section 682.305(c)(2)(vi) and (c)(2)(vii) details the compliance review requirements for such a school or trustee lender audit.

Proposed Regulations: The proposed regulations would remove the reference in § 682.305(c)(1)(i) to FFEL lenders originating loans.

Reasons: As a result of the SAFRA Act, no new loans are being made in the FFEL Program. Therefore, we are eliminating references to the origination of loans from this regulation.

Subpart D—Administration of the Federal Family Education Loan Programs by a Guaranty Agency

§ 682.401 Basic Program Agreement

Statute: Sections 428(b) through (o) of the HEA contain the requirements that apply to a guaranty agency administering the FFEL Program under agreements with the Department.

Current Regulations: Section 682.401 of the regulations reflects the statutory requirements that apply to a guaranty agency in the FFEL Program, including the following provisions:

- Paragraphs (b)(1) and (b)(2) of the regulations require a guaranty agency to make loans available to borrowers up to the annual and aggregate loan limits specified in the HEA;
- Paragraph (b)(3) specifies the duration of the borrower's eligibility;
- Paragraph (b)(5) describes the borrower's responsibilities in the loan origination process;
- Paragraph (b)(6) details the eligibility requirements for a school to participate in a guaranty agency's program;
- Paragraphs (b)(8) and (b)(9) outline when a guaranty agency must guarantee loans for students attending out-of-state

schools and for out-of-state residents; and

- Paragraphs (b)(12) and (b)(13) authorize a guaranty agency to charge lenders an administrative fee for Consolidation loans and refinanced loans.

Section 682.401(c) of the regulations requires a guaranty agency to ensure that it, or an eligible lender described in section 435(d)(1)(D) of the HEA, serves as a lender-of-last-resort for students who are otherwise unable to secure Federal Stafford loans. Section 682.401(d)(4) authorizes the multi-year use of the Master Promissory Note (MPN). Section 682.401(e) specifies certain prohibited and allowed activities by guaranty agencies.

Proposed Regulations: The proposed regulations would remove from § 682.401(b) paragraphs (1), (2), (3), (5), (6), (8), (9), (12), and (13) and renumber the remaining provisions. The proposed regulations would also remove § 682.401(c), (d)(4), and (e) and redesignate current paragraphs (d), (f), and (g) as paragraphs (c), (d), and (e), respectively. In newly redesignated § 682.401(c) (currently § 682.401(d)), paragraphs § 682.401(c)(5) and (6) would be redesignated as (c)(4) and (5), respectively.

Reasons: The regulatory provisions that we are proposing to remove from § 682.401 address new FFEL loan originations, the process supporting these originations, and a guaranty agency's efforts to secure new FFEL loan volume. These provisions should be eliminated from the regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs will be undertaken by the Department under 34 CFR part 668, subpart G. Therefore, § 682.401(b)(6) should also be eliminated from the FFEL regulations.

§ 682.403 Federal Advances for Claim Payments

Statute: Sections 422(a) through (c) of the HEA authorize the Secretary to provide Federal advances to guaranty agencies for various purposes spelled out in the HEA.

Current Regulations: Section 682.403 of the FFEL regulations reflects the Department's authority to provide advances under certain circumstances to

a State guaranty agency or to one or more private, nonprofit guaranty agencies in a State in certain circumstances and specifies the conditions under which the Department will provide such advances.

Proposed Regulations: The proposed regulations would remove § 682.403 from the FFEL Program regulations.

Reasons: Congress has not appropriated funds for advances to guaranty agencies for many years, and such funding is unnecessary as a result of the end of new loan originations in the FFEL Program. The Department notes that most of the advances made to the guaranty agencies were returned to the Secretary in accordance with sections 422(d), (h), and (i) of the HEA.

§ 682.408 Loan Disbursement Through an Escrow Agent

Statute: Section 428(i) of the HEA authorizes a guaranty agency or a FFEL lender to act as an escrow agent by entering into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State for the purpose of disbursing FFEL Program loans to students.

Current Regulations: Section 682.408 of the FFEL Program regulations contains provisions governing the use of an escrow agent to make Federal Stafford and PLUS loan disbursements, including the nature of the agreement that must be established between the lender and the escrow agent, the escrow agent's authority, and the requirements for the transmittal and disbursement of the loan funds.

Proposed Regulations: The proposed regulations would remove § 682.408 from the FFEL regulations.

Reasons: As a result of the SAFRA Act, no new loan disbursements are being made in the FFEL Program. Therefore, this section is no longer needed and should be eliminated.

§ 682.418 Prohibited Uses of the Assets of the Operating Fund During Periods in Which the Operating Fund Contains Transferred Funds Owed to the Federal Fund

§ 682.420 Federal Nonliquid Assets

§ 682.421 Funds Transferred From the Federal Fund to the Operating Fund by a Guaranty Agency

§ 682.422 Guaranty Agency Repayment of Funds Transferred From the Federal Fund

Statute: We have grouped our discussion of §§ 682.418, 682.420, 682.421, and 682.422 together. Sections 422A and 422B of the HEA direct a guaranty agency to establish a Federal

Student Loan Reserve Fund (referred to as the Federal Fund) and an Operating Fund to manage the funds it receives as a guaranty agency.

Section 422A(e) of the HEA provides that the Federal Fund and any nonliquid assets (such as a building or equipment) developed or purchased by a guaranty agency in whole or in part with Federal reserve funds are the property of the United States. The Federal interest in nonliquid assets is prorated based on the percentage of the asset developed or purchased with Federal reserve funds. The Secretary is authorized to restrict or regulate the use of such assets to the extent necessary to protect the Federal share of the asset.

Section 422A(f) of the HEA authorized a guaranty agency to transfer funds from its Federal Fund to establish the agency's Operating Fund for a period not to exceed three years following the establishment of the Operating Fund. The law also allowed a limited number of agencies, with the approval of the Secretary, to transfer interest earned on the Federal Fund to their Operating Fund for a three-year period. The HEA specifies that the agencies had to repay the transferred funds no later than five years from the date the Operating Fund was established, but also authorized the Secretary to waive that requirement for repayment of transferred amounts of earned interest for up to five additional years under certain circumstances.

Section 422B(e)(3) of the HEA specifies that during any period in which a guaranty agency owes transferred funds back to the Federal Fund, the guaranty agency is limited to using the Operating Fund only for expenses related to the FFEL Program.

Current Regulations: Section 682.418 of the FFEL regulations reflects the statutory limits on a guaranty agency's use of the Operating Fund while it contains funds transferred from the agency's Federal Fund. Section 682.420 reflects section 422A(e) of the HEA and specifies the permitted uses of the Federal portion of a nonliquid asset and the treatment of any revenue derived from the asset. Section 682.421 reflects the statutory authority for transferring funds and earned interest from a guaranty agency's Federal Fund to its Operating Fund and the requirements for requesting such a transfer. Section 682.422 reflects the timelines and requirements in section 422A(f) of the HEA for repayment of transferred funds back to the agency's Federal Fund.

Proposed Regulations: The proposed regulations would remove §§ 682.418, 682.420, 682.421, and 682.422 from the FFEL Program regulations.

Reasons: The Higher Education Amendments of 1998 required the financial restructuring of the guaranty agencies, including the requirement that each guaranty agency establish a Federal Fund and an Operating Fund. Under the terms of that law, the period during which an agency could transfer funds from the Federal Fund to its Operating Fund and the deadline for repayment of transferred funds back to the Federal Fund lapsed many years ago. Therefore, the regulations governing this process in §§ 682.418, 682.421, and 682.422 are obsolete and should be eliminated from the FFEL regulations. Similarly, the Department and the guaranty agencies have worked together to resolve each instance of nonliquid assets that were purchased or developed in whole or in part with Federal Reserve Funds and from which revenue could have resulted. Those guaranty agencies have reimbursed their Federal Funds for the value of the Federal interest. As a result, the requirements of § 682.420 are also obsolete and should be eliminated.

Subpart E—Federal Guaranteed Student Loan Programs

§§ 682.500–515 and Appendix C to the Regulations

Statute: Sections 423–425, 427, and 429–430 of the HEA authorize and establish the FISL Program, a Federal program of loan insurance for lenders that do not have reasonable access to State or private nonprofit guaranty agency loan programs.

Current Regulations: Subpart E of 34 CFR part 682 contains the regulations that govern the FISL Program. Appendix C to part 682 includes certain required procedures for FISL lenders for curing due diligence and timely filing violations.

Proposed Regulations: The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart. The proposed regulations would also remove Appendix C to part 682 from the regulations.

Reasons: No new loans have been made in the FISL Program since 1983. There are fewer than 500 outstanding FISL loans, and many of those loans are in default and are held by the Department. Under these conditions, there is no need to retain the FISL Program regulations.

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.601 Rules for a School That Makes or Originates Loans

§ 682.602 Rules for a School or School-Affiliated Organization That Makes or Originates Loans Through an Eligible Lender Trustee

§ 682.608 Termination of a School's Lending Eligibility

Statute: We have grouped our discussion of §§ 682.601, 682.602, and 682.608 together. Section 435(d)(1)(E) of the HEA authorizes an institution of higher education to participate as an eligible lender in the FFEL Program if it meets the requirements in section 435(d)(2) through (d)(5) of the HEA. Section 435(d)(2)(A)(ix) of the HEA limits this eligibility to those schools that met the requirements on February 7, 2006, and that made loans on or before April 1, 2006. Section 435(d)(7) of the HEA limits the ability of an eligible lender to make or hold loans as a trustee for a school or a school-affiliated organization to eligible lenders serving in that capacity on September 29, 2006, based on a contract that was in effect before that date. Section 435(d)(7) also applies most of the requirements of section 435(d)(2) of the HEA (which apply to school lenders) to trustee arrangements between an eligible lender and a school or a school-affiliated organization for the purpose of originating loans. Section 435(d)(3) of the HEA provides that a school will be disqualified as an eligible lender if the default rate on the loans made by the school for each of two consecutive years is 15 percent or more of the total amount of the loans made by the school lender. Section 435(d)(4) of the HEA authorizes the Department to waive a determination that a school is disqualified as an eligible lender if the school can reasonably be expected to improve loan collections within one year after the determination is made or the termination would represent a hardship to the school's present or prospective students.

Current Regulations: Section 682.601 includes rules for schools that make or originate loans and reflects the requirements of section 435(d)(2) through (5) of the HEA. Section 682.602 reflects section 435(d)(7) of the HEA and provides the regulations for schools or school-affiliated organizations that make or originate loans through an eligible lender trustee. Section 682.608 details the procedures for terminating a school lender from the program.

Proposed Regulations: The proposed regulations would remove §§ 682.601,

682.602, and 682.608 from the FFEL Program regulations.

Reasons: The proposed regulations would remove §§ 682.601, 682.602, and 682.608 from the FFEL regulations because they are no longer needed. There are 12 school lenders that hold FFEL Program loans previously made to their students, and this number cannot increase. Under § 435(d)(2)(A)(ix) of the HEA no new school lenders could begin to participate after February 8, 2006. Additionally, no new loans are authorized to be made under the FFEL program by any lender after June 30, 2010.

§ 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

Statute: Sections 428(b)(1)(N), 428B(c), and 428G of the HEA detail the disbursement and school delivery requirements for FFEL Stafford and PLUS loan funds. Section 428G(a) of the HEA requires that loan proceeds be delivered to students in two or more installments over the course of the loan period unless: (1) The loan period is not more than one semester, one trimester, one quarter, or four months in duration, and (2) the school has a cohort default rate of less than 10 percent for each of the three most recent fiscal years for which data is available. Section 428G(e) provides that loan proceeds may be delivered in a single installment if the loan is made to a student to cover the cost of attendance in a study abroad program offered by an eligible home institution that has a cohort default rate of less than five percent, as calculated under section 435(m) of the HEA. Under section 428G(a)(1), no installment may exceed more than one-half of the loan. Section 428G(b) of the HEA provides that the first installment of a loan made to a new borrower who is entering the first year of a program of undergraduate study cannot be presented to the student for endorsement until 30 days after the borrower begins a course of study unless the school's cohort default rate is less than 10 percent for each of the three most recent fiscal years for which data is available. Section 428G(d)(2) of the HEA provides that the school must return a portion or all of an installment to the lender if the sum of a disbursement and the student's other financial aid exceeds the amount for which the student is eligible. Section 428(b)(1)(N) of the HEA requires that funds borrowed by the student must be disbursed by check or other means that is payable to the student and requires the endorsement or other certification by the student. Section 428B(c) of the HEA requires that PLUS loan proceeds

be disbursed in accordance with the requirements of section 428G of the HEA and be transmitted to the school through an electronic transfer of funds or in the form of a co-payable check to the school and the PLUS borrower. Section 485(b) of the HEA requires a school to conduct exit counseling with its FFEL Stafford and student PLUS borrowers, prior to the borrower's completion of his or her course of study or at the time the borrower leaves the school, and details the information that must be included in the exit counseling. Section 485(l) of the HEA requires the school to conduct entrance counseling with its first-time Stafford and student PLUS borrowers, at or prior to the school's delivery of the first disbursement of a loan. Section 485(l)(2) of the HEA details the information that must be included in the entrance counseling.

Current Regulations: Consistent with sections 428(b)(1)(N), 428B(c), 428G, and 485(l)(2), the current FFEL Program regulations in § 682.604 govern delivery of Stafford or PLUS loan proceeds to borrowers and counseling for borrowers. The school must confirm the student's enrollment, secure the student's endorsement or confirm the borrower's authorization for funds to be delivered and credited electronically. The current regulations also require the school to comply with the notification requirements of 34 CFR 668.165 prior to delivering loan proceeds to a borrower and authorize the school to deliver a late disbursement to a borrower under the conditions and using the procedures specified in 34 CFR 668.164(g).

Current § 682.604(f) requires a school to provide entrance counseling to its student borrowers during an in-person session, on a separate written form provided to the borrower that the borrower signs and returns to the school, or by online or interactive electronic means with the borrower acknowledging receipt of the information. The counseling must include the information specified in section 485(l) of the HEA. If the entrance counseling is conducted online or through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the counseling. The school must also maintain documentation that shows it provided the entrance counseling for each borrower.

Current § 682.604(g) requires a school to conduct exit counseling with its Stafford and PLUS loan student borrowers shortly before the borrower ceases at least half-time study at the

school through an in-person session, by audiovisual presentation, or by interactive electronic means.

Alternatively, the school may provide written counseling materials through the mail to borrowers who complete correspondence programs or study-abroad programs approved for credit by the school. For borrowers who withdraw from the school without the school's prior knowledge or who fail to complete the required exit counseling session, the regulations require the school to ensure that exit counseling is provided to the student borrower through interactive means or by mailing written counseling materials to the borrower at the student's last known address within 30 days of the school learning that the borrower withdrew from the school or failed to complete the exit counseling. Exit counseling must include the information specified in section 485(b) of the HEA, regardless of the form in which it is provided.

Proposed Regulations: The proposed regulations would change the heading of § 682.604 to "Required exit counseling for borrowers." The proposed regulations would remove current paragraph (a), remove and reserve paragraph (b), and remove paragraphs (c) through (f) and (h). The proposed regulations would also redesignate current paragraph (g) as paragraph (a). Newly redesignated § 682.604(a)(1) would be amended to include another option for providing exit counseling to a student borrower who withdraws without the school's knowledge or fails to complete required exit counseling. In addition to the existing options described above under "Current Regulations," a school could also send written counseling materials electronically to an email address provided by the student borrower. Newly redesignated § 682.604(a)(2) would be amended by replacing cross-references to current paragraph (a), which we are proposing to remove, with the substantive information contained in the cross-referenced provision that must be included in the counseling. A new paragraph (a)(5) would also be added to newly redesignated § 682.604(a) to clarify that: (1) A school's compliance with the Direct Loan Program exit counseling requirements in 34 CFR 685.304(b) satisfies the FFEL Program regulatory exit counseling requirements for student borrowers who received both FFEL and Direct Loan program loans for attendance at the school if the school provides the information required by redesignated § 682.604(a)(2)(i) and (a)(2)(ii); and (2) a student's completion

of interactive exit counseling offered by the Secretary meets both the FFEL exit counseling requirements and the Direct Loan exit counseling requirements in 34 CFR 685.304(b).

Reasons: The provisions in current § 682.604 that govern school delivery of FFEL loan proceeds, required entrance counseling with new FFEL Program borrowers, and handling of excess loan proceeds that result from a borrower receiving an overaward are no longer needed in the regulations since no new loans are being made in the FFEL Program. The proposed change to redesignated § 682.604(a)(1) would incorporate into the regulations existing guidance that is in the Department's Federal Student Aid Handbook. Similarly, the addition of new paragraph (a)(5) would incorporate in the regulations guidance that the Department has previously provided in response to questions from schools about options for providing exit counseling to borrowers who have received loans through both the FFEL and Direct Loan programs for attendance at the same school. Because the FFEL and Direct Loan exit requirements are generally the same, the Department has previously permitted schools to provide a single exit counseling session to satisfy the exit counseling requirements for students who have received both FFEL and Direct Loan program loans for attendance at the school, provided that the counseling includes separate loan information for the loans made under each program. The Department has also previously clarified that the optional interactive electronic exit counseling offered by the Secretary is designed to satisfy the exit counseling requirements for borrowers who received only Direct Loans or those who receive both Direct Loans and FFEL Program loans.

Subpart G—Limitation, Suspension, or Termination of Lender or Third-Party Servicer Eligibility and Disqualification of Lenders and Schools

§ 682.702 *Effect on Participation.*

§ 682.704 *Emergency Action*

§ 682.705 *Suspension Proceedings*

§ 682.706 *Limitation or Termination Proceedings*

§ 682.709 *Reimbursements, Refunds, and Offsets*

Statute: We have grouped our discussions of §§ 682.702, 682.704, 682.705, 682.706, and 682.709 together. Section 432(h)(1) of the HEA authorizes the Department to initiate and impose limitation, suspension, and termination actions against lenders participating in

the FFEL Program if, after reasonable notice and opportunity for a hearing, the Department finds that the lender has substantially failed to: (1) Exercise care and diligence in the making and collecting of FFEL loans, (2) make reports or statements that support interest and special allowance payments to the lender, or (3) pay required loan insurance premiums to a guaranty agency, or the lender has engaged in fraudulent or misleading advertising or solicitations that resulted in loans being made to ineligible borrowers or made in violation of the certification requirements of section 428 of the HEA.

Current Regulations: Section 682.702 details the effects on a lender of the Department's action to limit, suspend, or terminate the lender from participation in the FFEL Program. Section 682.704 states that the Department or a guaranty agency may take an emergency action against a lender to stop new loan guarantees being issued to the lender and to withhold payment of interest and special allowance payments to the lender under conditions identified in the regulations. Sections 682.705 and 682.706 detail the procedures for a suspension action or a limitation or termination action against a lender or third-party servicer. Sections 682.705(c) and 682.706(d) of the regulations both provide that if an action to suspend, limit, or terminate a lender is based on a violation of section 435(d)(5) of the HEA, and the Secretary, a designated Departmental official, or a hearing official finds that the lender provided prohibited payments or engaged in prohibited activities, the Secretary or official will apply a rebuttable presumption that the payments or activities were offered to secure applications for FFEL loans or to secure new FFEL loan volume. Section 682.709 provides that as part of a limitation or termination proceeding, the Department may require a lender or third-party servicer to take reasonable corrective action, which may include payments to the Department or other designated parties in the form of a refund, reimbursement, or offset.

Proposed Regulations: Section 682.702(b)(1) would be revised to remove the reference to a lender making loans and current paragraphs (b)(2) and (d) would be removed. Section 682.702(b)(3) would be redesignated as § 682.702(b)(2). Section 682.704(a) would be amended to remove the reference to stopping the issuance of guarantee commitments by the Secretary and guaranty agencies. Section 682.705(a)(1) would be amended to remove the reference to new loans made

by a lender and § 682.705(c) would be removed. Section 682.706 would be amended to remove paragraph (d). Section 682.709 would be amended to add new paragraph (d) that provides for the application of a rebuttable presumption related to future limitation and termination actions that may involve findings of violations of section 435(d)(5) of the HEA.

Reasons: Since no new FFEL loans are being made, the regulations on possible sanctions on lenders for violations of FFEL Program requirements no longer should include limits on new loan volume or loan guarantee commitments. The application of a rebuttable presumption as part of a suspension proceeding or limitation or termination action against a lender will apply to existing loans and past lender activities during the period when the potential for new loan applicants and increased loan volume existed in the FFEL Program. As a result, references to the application of a rebuttable presumption would be removed from §§ 682.705 and 682.706 and incorporated as new paragraph (d) in § 682.709 of the regulations.

§ 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against a School

Statute: Section 432(h)(3) of the HEA requires the Department to review any limitation, suspension, or termination imposed on an eligible school by a guaranty agency under its authority in section 428(b)(1)(T) of the HEA within 60 days of the guaranty agency's notification that the agency has imposed such a sanction, unless the school waives its right to a review in writing. The Department must uphold the guaranty agency's imposition of the sanction and notify the agency if the review is waived by the school. If the review is not waived, the Department must determine whether the agency's sanction was imposed in accordance with the requirements of section 428(b)(1)(T) of the HEA. The Department's review of the agency's sanction of the school is limited to a review of the written record of the proceedings in which the agency imposed the sanction.

Current Regulations: Section 682.713 of the regulations reflects the statutory requirements of section 432(h)(3) of the HEA.

Proposed Regulations: The proposed regulations would remove § 682.713 from the FFEL regulations.

Reasons: As a result of the SAFRA Act, all schools now participate in the Direct Loan Program and are subject to oversight by the Department. The

Department is the only party that will take any limitation, suspension, or termination action taken against a school that participates in the Direct Loan Program.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

§ 682.800 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

Statute: Section 438(e) of the HEA states that for the holder of loans made or purchased with funds from an Authority issuing tax-exempt obligations to receive special allowance payments, the Authority cannot engage in any pattern or practice which results in a denial of borrower access to FFEL Program loans on the basis of a borrower's race, sex, color, religion, national origin, age, disability status, income, attendance at a particular eligible institution within the area served by the Authority, the length of the borrower's educational program, or the borrower's academic year in school.

Current Regulations: Section 682.800 of the regulations reflects the statutory requirements of section 428(e) of the HEA and provides that if an Authority makes or acquires loans made or guaranteed by an organization that discriminates on one or more of the grounds listed, the Department will consider the Authority to have adopted a discriminatory practice on that basis unless the Authority provides for making loans to the excluded borrowers using other resources.

Proposed Regulations: The proposed regulations would remove subpart F of part 682, which consists of § 682.800, from the FFEL regulations.

Reasons: As a result of the SAFRA Act, no new FFEL loans are being made with tax-exempt or other funds and this provision of the FFEL regulations is no longer needed.

Direct Loan Program Issues

Minimum Loan Period for Transfer Students in Non-Term and Certain Non-Standard Term Programs (34 CFR 685.301)

Statute: The HEA does not specify the minimum period for which a school may originate a Direct Loan for a student who transfers from one school into a non-term or non-standard term program at another school.

Current Regulations: (**Note:** The regulatory citations in the discussion that follows refer to § 685.301(a)(9) as set forth in the second Editorial Note at the end of § 685.301 in 34 CFR Part 685,

revised as of July 1, 2012.) Under § 685.301(a)(9)(i)(A), for a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or that has terms substantially equal in length, with no term less than nine weeks in length, the minimum period for which the school may originate a Direct Loan is a single academic term (e.g., a semester or quarter).

Under current § 685.301(a)(9)(i)(B), for a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the minimum period for which a school may originate a Direct Loan is the lesser of: (1) The length of the student's program at the school (or the remaining portion of the program); or (2) the academic year as defined by the school in accordance with 34 CFR 668.3. Current § 685.301(a)(9)(ii) provides an exception to this requirement in the case of a student who transfers into a school with credit or clock hours from another school, and the loan period at the prior school overlaps the loan period at the new school. In this circumstance, the new school may originate a loan for the remaining balance of the program or the academic year that started at the prior school, in an amount up to the remaining balance of the borrower's annual loan limit (as determined in accordance with § 685.203) after subtracting the amount borrowed for attendance at the prior school. After this initial loan period, the student becomes eligible for a new annual loan limit, with a new loan period corresponding to the lesser of the program (or the remaining portion of the program) or academic year at the new school. If the new school does not accept any transfer hours from the prior school, the exception does not apply and the transfer student is limited to receiving no more than the remaining balance under the applicable annual loan limit for the entire program or academic year at the new school, whichever is less.

The following example illustrates the application of the current regulation: A student who received \$2,750 in a combination of Direct Subsidized and Direct Unsubsidized Loan funds (out of a maximum annual loan limit of \$5,500) for a loan period from October 31, 2011, to June 8, 2012, at School A transfers into a 1500-clock hour program at School B that begins on March 5, 2012. School B defines the academic year for

the program as 900 clock hours and 26 weeks of instructional time.

If School B accepts credit or clock hours from School A, current § 685.301(a)(9)(ii) allows School B to originate an initial loan for a loan period that begins on March 5, 2012, and ends on June 8, 2012, the ending date of the original loan period at School A. For this initial loan period, the student could receive a loan of up to \$2,750, the difference between the \$5,500 annual loan limit and the loan amount the student received for the overlapping loan period at School A. After the balance of the loan period from School A ends (i.e., starting on June 9, 2012), the student could receive a new loan for a new academic year or, if there is less than an academic year remaining in the program at School B, for the remainder of the program.

However, if School B does not accept any transfer hours from School A, in accordance with current § 685.301(a)(9)(i)(B), the initial loan period for the program at School B would be March 5, 2012, to August 31, 2012, corresponding to the period in which the student is expected to complete the first academic year of the program (900 clock hours and 26 weeks of instructional time). In addition, the student's maximum loan eligibility for that loan period would be \$2,750 (the difference between the annual loan limit of \$5,500 and the \$2,750 previously received for the overlapping loan period at School A).

Proposed Regulations: The proposed regulations would redesignate current § 685.301(a)(9)(ii) as § 685.301(a)(10)(ii) and modify the exception to the minimum loan period requirement discussed under "Current Regulations" by removing the provision that limits the exception to situations where the school the student transfers to accepts credit or clock hours from the prior school. Under proposed § 685.301(a)(10)(ii), if a student transfers into a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, and the prior school originated a loan for a loan period that overlaps the loan period at the new school, the new school may originate a Direct Loan for the remaining portion of the program or academic year that began at the prior school, regardless of whether the new school accepts credit or clock hours from the prior school. For this loan period, the student would be eligible to receive up to the difference between the

applicable annual loan limit and the loan amount the student received at the prior school for the overlapping loan period. Using the example presented above under "Current Regulations," the proposed regulations would allow School B in all cases to originate a Direct Loan of up to \$2,750 for the loan period from March 5, 2012, to June 8, 2012.

Reasons: The exception to the minimum loan period rule in current § 685.301(a)(9)(ii) applies only if the new school accepts credit or clock hours from the school that the student previously attended. If the new school does not accept any transfer hours from the prior school, the exception does not apply and the transfer student is limited to receiving no more than the remaining balance under the applicable annual loan limit for the entire program or academic year at the new school, whichever is less. Thus, in some cases a student may be eligible to receive loans only up to one full annual loan limit for a combined period of enrollment at the two schools that is significantly longer than one academic year. The Department believes that the limited scope of the current regulatory exception to the minimum loan period rule provides a benefit to only a minority of transfer students (since many schools do not accept credit or clock hours from other schools) and may in some cases discourage students from transferring to different schools. Therefore, the Department proposes to modify the current regulations by removing the provision that allows the exception to be applied only if the new school accepts credit or clock hours from the prior school. The non-Federal negotiators supported this proposal.

Modification of the Direct Loan Program Regulations (34 CFR Part 685)

Background: The current Direct Loan Program regulations in 34 CFR Part 685 include numerous cross-references to the FFEL Program regulations in 34 CFR Part 682 for provisions that apply in both loan programs, such as the definitions of certain terms and the eligibility requirements for certain types of loan deferments. For certain provisions that apply in both the FFEL and Direct Loan programs, the Direct Loan Program regulations do not include language that is currently only in the corresponding FFEL Program regulations. The Direct Loan Program regulations also include a number of provisions that are outdated and do not reflect current procedures. To address these issues, the Department proposes to make technical changes to the Direct

Loan Program regulations that would include:

- Adding provisions to 34 CFR Part 685 that apply in the Direct Loan Program, but are currently included only in 34 CFR Part 682, so that it will no longer be necessary to refer to the FFEL Program regulations for certain terms and conditions of Direct Loan Program loans;

- Where necessary, modifying existing Direct Loan Program regulations for consistency with the corresponding FFEL Program regulations; and
- Removing obsolete provisions that do not reflect current procedures used in the Direct Loan Program.

The proposed changes to the Direct Loan Program regulations also include minor technical and conforming changes in various regulations to correct errors and present information more clearly. In addition, the proposed changes reflect: (1) The provisions of the SAFRA Act that eliminate new loans under the FFEL Program after June 30, 2010; (2) the provisions of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) that eliminate the grace period interest subsidy on Direct Subsidized Loans with a first disbursement date on or after July 1, 2012, and before July 1, 2014, and that eliminate Federal student aid eligibility for students without a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate; (3) the provision of the Budget Control Act of 2011 (Pub. L. 112–25) that eliminates Direct Subsidized Loan eligibility for graduate or professional students effective for loan periods beginning on or after July 1, 2012; and (4) the provision of the Higher Education Opportunity Act (Pub. L. 110–315) that replaced the term “credit bureau” with the term “consumer reporting agency.”

During the public negotiating sessions, the Department provided the non-Federal negotiators with a comprehensive overview of the proposed technical changes to the Direct Loan Program regulations and explained the rationale for each proposed technical change. Following the Department’s review and discussion of these proposed changes with the non-Federal negotiators, the negotiating committee agreed that the changes should be made. During the negotiations, the non-Federal negotiators also recommended additional minor technical changes throughout 34 CFR part 685 for clarity and consistency. The proposed regulations incorporate many of these

additional recommended technical changes.

A complete summary of all of the proposed technical changes to 34 CFR part 685 may be found in Appendix B at the end of this NPRM. A discussion of the more significant proposed technical changes follows.

Modification of Direct Loan Program Regulations: Definitions (34 CFR 685.102)

Statute: The definitions included in this section reflect definitions and the use of terms in various sections of the HEA, including provisions of parts B, D, and G. The Department has already placed some of these definitions in our regulations.

Current Regulations: Current § 685.102(a)(3) refers to the FFEL Program regulations in 34 CFR part 682 for the definitions of the following terms: “Act,” “endorser,” “Federal Insured Student Loan (FISL) Program,” “Federal Stafford Loan Program,” “guaranty agency,” “holder,” “legal guardian,” “lender,” and “totally and permanently disabled.” Current § 685.102(b) contains definitions of the following terms: “alternative originator,” “consortium,” “default,” “estimated financial assistance,” “Federal Direct Consolidation Loan Program,” “Federal Direct PLUS Program,” “Federal Direct Stafford/Ford Loan Program,” “Federal Direct Unsubsidized Stafford/Ford Loan Program,” “grace period,” “interest rate,” “loan fee,” “Master Promissory Note,” “payment data,” “period of enrollment,” “satisfactory repayment arrangement,” “school origination option 1,” “school origination option 2,” “servicer,” and “standard origination.”

Proposed Regulations: The proposed regulations would remove § 685.102(a)(3) and add all of its definitions, except “legal guardian,” to § 685.102(b). The regulations would also add a definition of “substantial gainful activity” to § 685.102(b).

The definitions currently included only in the FFEL Program regulations at § 682.200 would be added to § 685.102(b) without any changes, except for the definitions of “holder” and “lender.” The regulations propose a new definition of “holder” as the entity that owns a loan. The regulations would further specify that for a FFEL Program loan, the term “holder” refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender. The

proposed definition of “lender” would state that this term has the meaning specified in section 435(d) of the HEA for purposes of the FFEL Program.

The proposed regulations would further amend § 685.102(b) by removing the definitions of “alternative originator,” “consortium,” “school origination option 1,” “school origination option 2,” “servicer,” and “standard origination,” and by revising the definitions of “Master Promissory Note (MPN)” and “satisfactory repayment arrangement.”

The proposed regulations would add a new paragraph (4) to the definition of “Master Promissory Note (MPN)” stating that unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent for attendance at that school. Proposed new paragraph (4) would further provide that if a school is not authorized for multi-year use of the MPN, a borrower must sign a new MPN for each academic year.

The definition of “satisfactory repayment arrangement” would be revised by adding a new paragraph (2)(ii) providing that, for the purpose of consolidating a defaulted loan into a Direct Consolidation Loan, a borrower may make satisfactory repayment arrangements by agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221. Additional proposed changes to the definition of “satisfactory repayment arrangement” are discussed earlier in the “Significant Proposed Regulations” section of this preamble under the heading “Satisfactory Repayment Arrangements.”

Reasons: The Department is proposing to expand § 685.102(b) to include definitions that apply in the Direct Loan Program but that are currently included only in the FFEL Program regulations. Readers will not have to refer to 34 CFR part 682 for these definitions.

The definition of “legal guardian,” currently listed in § 685.102(a)(3), would not be added to § 685.102(b) because that term is not used in 34 CFR part 685.

Although it is not currently listed in § 685.102(a)(3), a definition of “substantial gainful activity” would also be added to § 685.102(b). This term is defined in § 682.200(b) of the FFEL Program regulations and also applies in the Direct Loan Program.

The definitions of “holder” and “lender” would be modified to fit the Direct Loan Program. The current definition of “holder” in § 682.200(b)

applies only to holders of FFEL Program loans. However, the term “holder” as used in the Direct Loan Program regulations also covers holders of other types of loans. The current definition of “lender” in § 682.200(b) includes numerous provisions relevant for purposes of the FFEL Program that would not be included in the definition in § 685.102(a)(3) because they are not needed for the Direct Loan Program.

The definitions of “alternative originator,” “consortium,” “school origination option 1,” “school origination option 2,” and “standard origination” would be removed from § 685.102(b) because they describe options for school participation in the Direct Loan Program that have not been used by schools or reflect obsolete provisions that are no longer used in the administration of the program.

The term “servicer” would be removed because the Department is proposing to replace all uses of the term “servicer” elsewhere in the Direct Loan Program regulations with “Secretary” to ensure consistent terminology throughout 34 CFR part 685.

The proposed change to the definition of “Master Promissory Note (MPN)” would simplify the regulations by incorporating a provision governing multi-year use of the MPN that is in current § 685.402(f) into the definition of MPN in § 685.102(b). This provision would also be updated to reflect the Secretary’s policy on the authority of schools to use the MPN as a multi-year promissory note.

Similarly, the proposed change to the definition of “satisfactory repayment arrangement” would provide greater clarity by incorporating in that definition, with minor technical changes, a provision for making satisfactory repayment arrangements that is currently in § 685.220(d)(1)(ii)(D).

Modification of Direct Loan Program Regulations: Deferment (34 CFR 685.204)

Statute: Section 455(f)(2) of the HEA provides that a Direct Loan borrower is eligible for a deferment during any period when the borrower is: enrolled at least half-time at an eligible institution; pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary; seeking and unable to find full-time employment (for not more than three years); serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency, and for the 180-day period following the

demobilization date for such service; or experiencing (for not more than three years) an economic hardship as determined in accordance with regulations prescribed under section 435(o) of the HEA.

Section 455(f)(4) of the HEA provides that a Direct Loan borrower who has an outstanding balance on a FFEL Program loan made before July 1, 1993, at the time the borrower applies for a Direct Loan, is eligible for deferments under section 427(a)(2)(C) or section 428(b)(1)(M) of the HEA as those sections were in effect on July 22, 1992.

Section 428B(d)(1) of the HEA, which applies to Direct Loan borrowers through section 455(a)(1) of the HEA, provides that a parent Direct PLUS Loan borrower may defer repayment of a Direct PLUS Loan that was first disbursed on or after July 1, 2008, during any period when the student on whose behalf the loan was obtained is enrolled at least half-time at an eligible school and during the six-month period after the student ceases to be enrolled at least half-time.

Finally, section 493D of the HEA authorizes a deferment for the 13-month period following the conclusion of active duty service for a Direct Loan borrower who is a member of the National Guard or other reserve component of the U.S. Armed Forces and who is called or ordered to active duty while he or she is enrolled at least half-time at an eligible school or within six months of having been enrolled at least half-time.

Current Regulations: Current § 685.204(a) provides that interest does not accrue on a subsidized Direct Loan during periods of deferment.

Current § 685.204(b) provides that a Direct Loan borrower is eligible to receive a deferment while he or she is—

- enrolled at least half-time at an eligible school (in-school deferment);
- pursuing a course of study in a graduate fellowship program approved by the Secretary (graduate fellowship deferment);
- pursuing an approved rehabilitation training program for individuals with disabilities that is approved by the Secretary (rehabilitation training program deferment);
- seeking but unable to find full-time employment (unemployment deferment); or
- experiencing an economic hardship (economic hardship deferment).

This section also sets forth the eligibility requirements for a borrower to receive an in-school deferment.

Current § 685.204(b) does not specify the requirements for a graduate fellowship program or rehabilitation

training program to be approved by the Secretary. For the graduate fellowship and rehabilitation training program deferments, the Direct Loan Program regulations rely on the eligibility criteria in §§ 682.210(d) and 682.210(e) of the FFEL Program regulations. For the unemployment and economic hardship deferments, current § 685.204(b) refers to the FFEL Program regulations in §§ 682.210(h) and 682.210(s)(6), respectively, for eligibility requirements and procedures.

Current § 685.204(c) states that a period of deferment based on unemployment or economic hardship may not exceed three years.

Current § 685.204(d) states that a Direct Loan borrower who had an outstanding balance on a FFEL Program loan that was made prior to July 1, 1993, at the time the borrower applied for his or her first Direct Loan Program loan is eligible for all of the deferments described in § 685.204 and the deferments described in § 682.210(b), including deferments that apply to a “new borrower” as that term is defined in § 682.210(b)(7). The latter deferments include deferments based on: Having a temporary total disability, caring for a disabled dependent, serving in the military, serving in the United States Public Health Service, serving as a Peace Corps volunteer, performing volunteer service in the ACTION programs, performing volunteer service for a tax-exempt organization, serving in an internship or residency program, caring for a newborn or newly adopted child, serving in the National Oceanic and Atmospheric Administration Corps, teaching in a teacher-shortage area, and being a full-time working mother of a preschool-age child.

Current §§ 685.204(e) and 685.204(f) specify the eligibility requirements for a deferment based on active-duty military service (military service deferment) and the 13-month post-active-duty deferment authorized by section 493D of the HEA (post-active-duty student deferment), respectively.

Current § 685.204(g) contains the eligibility criteria for deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008, as authorized under section 428B(d)(1) of the HEA (in-school PLUS deferment).

Current § 685.204(h) specifies that a borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

Current § 685.204(i) describes the Secretary’s procedures for granting deferments and the Secretary’s actions after a deferment has been granted.

Proposed Regulations: The proposed regulations would significantly restructure current § 685.204 without changing any of the deferment eligibility requirements.

Proposed § 685.204(a) would include general deferment provisions. Specifically, proposed § 685.204(a)(1) and (a)(2) would include, with only minor technical changes, the same provisions related to interest subsidy during deferment periods that are in current § 685.204(a)(1) and (a)(2). In addition, proposed § 685.204(a)(2) would be expanded to include the last sentence of § 685.204(b)(1)(iii)(B)(2), which notes that the Secretary provides borrowers with information about the effect of interest capitalization at or before the time a deferment is granted.

Proposed § 685.204(a)(3) would contain the provision currently in § 685.204(h) stating that a borrower whose loan is in default is not eligible for a deferment unless the borrower has made payment arrangements satisfactory to the Secretary.

Proposed § 685.204(a)(4) would contain, with minor technical changes, the procedures for requesting a deferment that are in current §§ 685.204(i)(1) and 685.204(i)(5).

Proposed § 685.204(a)(5) would include, with minor technical changes, provisions currently in §§ 685.204(i)(2), 685.204(i)(3), and 685.204(i)(4) describing the Secretary's procedures for granting a deferment and the actions taken by the Secretary after granting a deferment.

Reasons: To improve the clarity of the regulations, general deferment requirements that are currently in §§ 685.204(a), 685.204(b), 685.204(h), and § 685.204(i) would be consolidated in § 685.204(a), followed by individual sections, designated §§ 685.204(b) through (j), containing the requirements for the various deferment categories.

Proposed Regulations: Proposed § 685.204(b) would include the eligibility requirements and procedures for the in-school deferment that are in current §§ 685.204(b)(1)(i)(A) and 685.204(b)(1)(iii).

Reasons: To make the deferment regulations easier to read, the graduate fellowship, rehabilitation training program, unemployment, and economic hardship requirements that are in current § 685.204(b) would be moved to separate paragraphs within § 685.204, leaving only the in-school deferment requirements and procedures in § 685.204(b).

Proposed Regulations: Proposed § 685.204(c) would include the eligibility requirements for the in-school

PLUS deferment that are in current § 685.204(g).

Reasons: Because the in-school PLUS deferment requirements are similar to the requirements for a student's in-school deferment, they would be moved to proposed § 685.204(c), immediately following the in-school deferment requirements in proposed § 685.204(b).

Proposed Regulations: Proposed § 685.204(d) would include the eligibility requirements for the graduate fellowship deferment that are in current § 685.204(b)(1)(i)(B) and (b)(1)(ii), as well as the eligibility criteria for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements for the graduate fellowship deferment would be placed in § 685.204(d).

Proposed Regulations: Proposed § 685.204(e) would include the eligibility requirements for the rehabilitation training program deferment that are in current § 685.204(b)(1)(i)(C), as well as the eligibility criteria for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements for the rehabilitation training program deferment would be placed in § 684.204(e).

Proposed Regulations: Proposed § 685.204(f) would include the eligibility requirements for the unemployment deferment that are in current § 685.204(b)(2), as well as the eligibility criteria and procedures for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations. Proposed § 685.204(f)(1) would include the provision, currently in § 685.204(c), that an unemployment deferment may not exceed three years.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements and procedures for the unemployment deferment would be included in § 685.204(f). For greater clarity, proposed § 685.204(f) would also incorporate the three-year limit that is currently in § 685.204(c) so that this provision will be included with all of the other requirements of the deferments to which it applies instead of in a separate stand-alone section of the deferment regulations.

Proposed Regulations: Proposed § 685.204(g) would include the eligibility requirements for the economic hardship deferment that are in current § 685.204(b)(3), as well as the eligibility requirements and procedures for this deferment that apply in the Direct Loan Program but that are currently only in the FFEL Program regulations. Proposed § 685.204(g)(1) would include the provision, currently in § 685.204(c), that an economic hardship deferment may not exceed three years.

Reasons: To make the Direct Loan Program regulations comprehensive and eliminate the need to refer to the FFEL Program regulations, all requirements and procedures for the economic hardship deferment would be placed in § 685.204(g). For greater clarity, proposed § 685.204(g) would incorporate the three-year limit that is currently in § 685.204(c) so that this provision will be included with all of the other requirements of the deferments to which it applies instead of in a separate stand-alone section of the deferment regulations.

Proposed Regulations: Proposed § 685.204(h) would include the eligibility requirements for the military service deferment that are in current § 685.204(e).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(e) would be redesignated as § 685.204(h).

Proposed Regulations: Proposed § 685.204(i) would include the requirements for the post-active-duty student deferment that are in current § 685.204(f).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(f) would be redesignated as § 685.204(i).

Proposed Regulations: Proposed § 685.204(j) would contain the provisions currently in § 685.204(d) stating that a Direct Loan program borrower who had an outstanding balance on a FFEL Program loan that was made prior to July 1, 1993, at the time the borrower applied for his or her first Direct Loan Program loan is eligible for all of the deferments described in § 685.204 and the additional deferments described in § 682.210(b) of the FFEL Program regulations, including deferments that apply to a "new borrower" as that term is defined in § 682.210(b)(7).

Reasons: Because of the restructuring of § 685.204, just described, current § 685.204(d) would be redesignated as § 685.204(j). Proposed § 685.204(j) would continue to refer to the FFEL Program regulations, as under current

§ 685.204(d). Because relatively few Direct Loan borrowers qualify for these deferments, the Department believes it is preferable to retain the current cross-reference to the FFEL Program regulations in this one case rather than to significantly expand § 685.204 by adding eligibility criteria for deferment types that are not available to the great majority of Direct Loan borrowers.

Modification of Direct Loan Program Regulations: Consolidation (34 CFR 685.220)

Statute: Section 455(a)(1) of the HEA provides that unless otherwise specified under part D of the HEA, loans made under part D have the same terms, conditions, and benefits as loans made, and first disbursed before July 1, 2010, under sections 428, 428B, 428C, and 428H in part B of the HEA.

Section 428C(a)(3)(B)(i)(I) provides that, in general, a borrower who receives a consolidation loan may not repay the consolidation loan with a subsequent consolidation loan unless the borrower receives eligible loans after the consolidation loan is made. However, under section 428C(a)(3)(B)(i)(V) a borrower may consolidate a FFEL consolidation loan into the Direct Loan Program without including an additional loan if the borrower is consolidating for the purpose of—

- obtaining an income-contingent or income-based repayment plan, and the FFEL consolidation loan is in default or has been submitted to the guaranty agency for default aversion;
- using the Public Service Loan Forgiveness program under section 455(m) of the HEA; or
- using the no accrual of interest benefit for active duty service members under section 455(o) of the HEA.

Section 428C(a)(3)(A)(i) of the HEA provides that for the purpose of receiving a Federal Consolidation Loan, the term “eligible borrower” means a borrower who is not subject to a judgment secured through litigation with respect to a loan under title IV of the HEA or to an order for wage garnishment under section 488A of the HEA.

Current Regulations: Current § 685.220(d)(1)(i) provides that to obtain a Direct Consolidation Loan, a borrower must either have an outstanding balance on a Direct Loan or have an outstanding balance on a FFEL Program loan. If a borrower does not have an outstanding balance on a Direct Loan but has an outstanding balance on a FFEL Program loan, current § 685.220(d)(1)(i)(B) provides that the borrower must:

(1) be unable to obtain a FFEL consolidation loan;

(2) be unable to obtain a FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower;

(3) wish to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members;

(4) have a FFEL consolidation loan that is in default or that has been submitted to the guaranty agency for default aversion and want to consolidate the FFEL consolidation loan into the Direct Loan Program to obtain an income contingent repayment plan or an income-based repayment plan; or

(5) have a FFEL consolidation loan and want to consolidate that loan into the Direct Loan Program for the purpose of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members.

Current § 685.220(d)(1)(ii)(E) and (F) provide that at the time a borrower applies for a Direct Consolidation Loan, the borrower must not be subject to a judgment secured through litigation, unless the judgment has been vacated or to an order for wage garnishment under section 488A of the HEA, unless the order has been lifted.

Current § 685.220(d)(1)(iii)(A) and (B) provide that on the loans being consolidated into a Direct Consolidation Loan, the borrower must not be subject to a judgment secured through litigation, unless the judgment has been vacated, or subject to an order for wage garnishment under section 488A of the HEA, unless the order has been lifted.

Current § 685.220(d)(1)(iv) provides that to obtain a Direct Consolidation Loan, a borrower must certify that no other application to obtain a consolidation loan is pending with another lender.

Current § 685.220(d)(2) states that a borrower may not consolidate a Direct Consolidation Loan into a new Direct Consolidation Loan unless at least one additional eligible loan is included in the consolidation.

Current § 685.220(f)(1)(iii) provides that if a borrower consolidates a FFEL or Direct Loan program loan that is in default, the Secretary limits collection charges to the borrower to no more than the costs authorized under the FFEL Program.

Proposed Regulations: The proposed regulations would remove the provisions in current § 685.220(d)(1)(i)(B)(1), (2) and (3) that allow a borrower who has FFEL Program loans, but no Direct Loans, to obtain a Direct Consolidation Loan only if the borrower is unable to obtain a FFEL consolidation loan, is unable to

obtain a FFEL consolidation loan with income-sensitive repayment terms that are acceptable to the borrower, or if the borrower wishes to use the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service members. Current § 685.220(d)(1)(i) would be revised to simply state that a borrower must consolidate at least one Direct Loan Program or FFEL Program loan to obtain a Direct Consolidation Loan.

Reasons: Because the SAFRA Act ended the making of new FFEL Program loans (including FFEL Consolidation Loans) as of July 1, 2010, the current restrictions on consolidation into the Direct Loan Program for borrowers who have only FFEL Program loans are no longer relevant and can be removed from the regulations.

Proposed Regulations: The provisions in current § 685.220(d)(1)(i)(B)(4) and (5) related to the conditions under which a borrower may consolidate a single FFEL Consolidation Loan into the Direct Loan Program would be moved to proposed revised § 685.220(d)(2).

Reasons: For greater clarity, the proposed regulations would incorporate all regulations governing the consolidation of an existing consolidation loan in the same paragraph.

Proposed Regulations: Current § 685.220(d)(1)(ii) would be revised to incorporate the requirements currently in § 685.220(d)(1)(iii) that, on the loans being consolidated, a borrower must not be subject to a judgment secured through litigation or to an order for wage garnishment. Current § 685.220(d)(1)(iii) would be removed.

Reasons: Some of the non-Federal negotiators noted that current § 685.220(d)(1)(ii) is ambiguous and could be read to suggest that a borrower would be ineligible to receive a Direct Consolidation Loan if, at the time the borrower applies for a consolidation loan, the borrower is subject to a judgment or to an order for wage garnishment for any reason, even if it is unrelated to any of the loans that the borrower wishes to consolidate. These negotiators did not believe that this was the intent of the regulations. Rather, the negotiators believed that these limitations should apply only to judgments or orders for wage garnishment that are related to the loans being consolidated, and only at the time of consolidation. They noted that there are separate provisions in current § 685.220(d)(1)(iii) stating that a borrower is not eligible for a Direct Consolidation Loan if the borrower is subject to a judgment secured through litigation or to an order for wage

garnishment under section 488A of the HEA “on the loans being consolidated,” unless the judgment has been vacated or the wage garnishment order has been lifted. The Department agreed with the non-Federal negotiators. Because proposed revised § 685.220(d)(1)(ii) would incorporate the provisions that are currently in § 685.220(d)(1)(iii), current § 685.220(d)(1)(iii) would no longer be needed.

Proposed Regulations: Current § 685.220(d)(1)(iv), which requires a Direct Consolidation Loan applicant to certify that no other application to consolidate the borrower’s loans with another lender is pending, would be removed.

Reasons: This regulation is no longer needed because, as a result of the SAFRA Act, FFEL Program lenders are no longer authorized to make consolidation loans, and a borrower cannot have more than one application for a Direct Consolidation Loan.

Proposed Regulations: Current § 685.220(d)(2) states that a borrower may not consolidate a Direct Consolidation Loan into a new consolidation loan unless at least one additional loan is included in the consolidation. We would revise this section to provide that the same limitation applies to a borrower who wishes to consolidate a FFEL Consolidation Loan into a new Direct Consolidation Loan. The section would also be expanded to incorporate provisions currently in §§ 685.220(d)(1)(i)(B)(4) and (5) that allow a borrower, under certain conditions, to consolidate a single FFEL consolidation loan into the Direct Loan Program without including an additional eligible loan in the consolidation.

Reasons: For greater clarity, all rules governing the conditions under which an existing consolidation loan may be consolidated into a new Direct Consolidation Loan would be placed in the same section of the regulations.

Proposed Regulations: Current § 685.220(f)(1)(iii) would be revised to provide that if a borrower consolidates a Direct Loan or FFEL program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.

Reasons: Some of the non-Federal negotiators asked the Department to expand § 685.220 of the Direct Loan regulations to include some of the

disclosure provisions that apply under § 682.205(i) of the FFEL Program regulations to lenders that made FFEL Consolidation Loans. In particular, these negotiators asked the Department to include the provision in current § 682.205(i)(7), which requires a lender to inform a borrower that applying for a consolidation loan does not obligate the borrower to accept it, and to explain the process and deadline by which the borrower may cancel the consolidation loan. The negotiators noted that these requirements are in the HEA and also apply in the Direct Loan Program. These non-Federal negotiators also recommended that the Department revise current § 685.220(f)(1)(iii) to specify the actual maximum amount of collection costs that may be charged to a borrower who consolidates a defaulted Direct Loan or FFEL program loan.

The Department declined to expand § 685.220 to include the consolidation disclosure provisions that are in current § 682.205(i) of the FFEL Program regulations. The FFEL Program regulations govern the activities of third parties; the Direct Loan Program regulations in this area would govern the Department. In general, the Secretary does not issue regulations to control the Department’s activities. Moreover, the disclosures discussed by the negotiators are already provided by the Department in the Direct Consolidation Loan Application and Promissory Note that a borrower must complete before receiving a Direct Consolidation Loan. The promissory note explains that before the Department pays off the loans the borrower has selected for consolidation, the Department will send the borrower a notice that provides information about the loans and payoff amounts that have been verified, and tells the borrower the deadline by which the Department must be notified if the borrower wants to cancel the consolidation loan. The notice also specifies the timeframe during which the borrower may cancel the entire consolidation loan or notify the Department that he or she does not want to consolidate one or more of the loans listed in the notice that is sent to the borrower.

However, the Department agreed that for greater clarity, current § 685.220(f)(1)(iii) should be revised to include the specific maximum amount of collection costs that may be charged to a borrower who consolidates a defaulted loan. The Department noted that the 18.5 percent limit on the amount of collection costs that may be charged to a borrower is also included on the Direct Consolidation Loan Application and Promissory Note.

Modification of Direct Loan Program Regulations: Counseling Borrowers (34 CFR 685.304)

Statute: Section 485(b) of the HEA requires that schools provide FFEL and Direct Loan program borrowers (except for consolidation loan borrowers and parent PLUS loan borrowers) with exit counseling prior to the borrower’s completion of his or her course of study at the school or at the time of the borrower’s departure from a school. This section of the HEA also specifies the information that must be included in the exit counseling. Exit counseling may be provided through a school’s financial aid office or by other means. Section 485(b)(2)(C) allows for exit counseling to be provided electronically.

Current Regulations: For the Direct Loan Program, current § 685.304(b)(1) requires a school to ensure that exit counseling is conducted with each borrower of a Direct Subsidized Loan or a Direct Unsubsidized Loan and with any graduate or professional student Direct PLUS Loan borrower shortly before the borrower ceases at least half-time study at the school.

Current § 685.304(b)(2) provides that exit counseling must be in person, by audiovisual presentation, or by interactive electronic means.

Current § 685.304(b)(3) states that if a borrower withdraws from school without the school’s knowledge or fails to complete required exit counseling, exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the borrower at the borrower’s last known address. The school must provide the counseling materials to the borrower within 30 days after the school learns that the student has withdrawn or failed to complete exit counseling.

Current § 685.304(b)(4) specifies the information that must be included in exit counseling.

Proposed Regulations: We propose to revise current § 685.304(b)(3) to include another option for providing exit counseling to a student borrower who withdraws without the school’s knowledge or fails to complete required exit counseling. Under proposed § 685.304(b)(3), a school could send written counseling materials to an email address provided by the student borrower.

The proposed regulations would also add a new § 685.304(b)(8)(i). For students who have received both FFEL and Direct Loan program loans for attendance at a school, the school’s compliance with the Direct Loan Program exit counseling requirements in

§ 685.304(b) satisfies the FFEL Program exit counseling requirements in proposed redesignated § 682.604(a), if the school ensures that the exit counseling includes the information related to a borrower's FFEL indebtedness as described in proposed § 682.604(a)(2)(i) and (ii).

Finally, proposed § 685.304(b)(8)(ii) would state that a student's completion of electronic interactive exit counseling offered by the Secretary satisfies the Direct Loan exit counseling requirements in § 685.304(b) and, for students who have also received FFEL Program loans for attendance at the school, the FFEL Program exit counseling requirements in proposed § 682.604(a).

Reasons: The proposed revision of § 685.304(b)(3) reflects the Department's existing guidance to schools included in the Department's Federal Student Aid Handbook. Similarly, proposed new § 685.304(b)(8)(i) and (ii) would incorporate guidance that the Department has previously provided in response to questions from schools about options for providing exit counseling to borrowers who have received loans through both the FFEL and Direct Loan programs for attendance at the same school. Because the Direct Loan and FFEL exit counseling requirements are generally the same, the Department has previously allowed schools to use a single exit counseling session to satisfy the exit counseling requirements for these students, provided that the counseling includes the separate loan debt information for the loans made under each program. The Department has also previously advised schools that the optional interactive electronic exit counseling offered by the Secretary satisfies the exit counseling requirements for borrowers who have received only Direct Loans or who have received both Direct Loans and FFEL Program loans.

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or

communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action raises novel policy issues relating to the Department's efforts in support of the President's initiative to increase college attendance and completion. Therefore, this proposed action is subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that

might result from technological innovation or anticipated behavioral changes."

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Elsewhere in this section under the heading *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

The Need for Regulatory Action

The Department is responsible for administering the Federal student loan programs authorized by title IV of the HEA. Federal student loans are a crucial element in providing important opportunities for Americans seeking to expand their skills and earn postsecondary degrees and certificates.

With these proposed regulations, the Department seeks to clarify the rehabilitation process for borrowers with defaulted student loans. The Department is addressing concerns raised by advocates and borrowers about that rehabilitation process. The Department wants to ensure that borrowers who wish to rehabilitate their defaulted loans are properly informed about their rights to "reasonable and affordable" payments and how a reasonable and affordable payment is determined.

In addition to the changes made to improve program administration, statutory revisions or administration priorities sometimes require the Department to revise its policies and regulations.

In the case of these regulations, the passage of the SAFRA Act ended the origination of new loans under the FFEL Program. Now, new Federal subsidized and unsubsidized student loans and PLUS loans are made through the Direct Loan Program. The Department therefore also seeks to remove regulations governing the FFEL Program that are no longer needed and to make the Direct Loan Program regulations comprehensive. Finally, the Department seeks to add consistency and clarity to all regulations governing student loans.

Beyond those details, Executive Order 12866 emphasizes that “Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.” In this case, there is indeed a compelling public need for regulation.

The Secretary recognizes the growth in the number of students enrolled in college and the resulting increased need for student loans. The Secretary’s goal in regulating is to promote viable Federal student loan programs by ensuring that the regulations that govern the origination and servicing of student loans are clear and concise so that borrowers can make informed decisions about borrowing and repayment.

Current regulations allow a borrower with defaulted student loans to rehabilitate those loans by making 9 full, on-time payments (within 20 days of the due date) over a 10-month period in an amount agreed to by the borrower and the loan holder (the Department for a defaulted Direct Loan, a guaranty agency or the Department for a defaulted FFEL Program loan). These regulations provide that the payment amount required by the guaranty agency and the Secretary must be reasonable and affordable. However, there have been complaints that guaranty agencies, the Department, and the debt collection agencies that collect Federal student loans require payments that exceed this standard.

During the negotiated rulemaking sessions, non-Federal negotiators representing consumer advocacy groups expressed concern that the payments requested by the collection agencies often are not reasonable and affordable and that borrowers are not informed of their right to object to these requested payment amounts. They stated that, as a result, many borrowers attempt to rehabilitate their loans but are unable to do so because the payments are too high

or because they are discouraged by the process. Similar complaints have been made regularly to the Department at public hearings and other venues.

Under current practices, many collection agencies first try to get the defaulted borrower to pay the total amount of the defaulted debt because by law, the full amount of the loan is due and payable at the time of default. If a borrower is unable to pay the full amount, collection agencies then attempt to negotiate a payment with the borrower that is as close to the 10-year standard payment amount as the borrower can afford to pay. These amounts are generally based on the borrower’s income and expenses. This approach assumes that borrowers who pay an amount comparable to the 10-year standard will have an easier transition into regular payments after rehabilitating their loans. Generally, for collection agencies to receive a commission on successful loan rehabilitation, the total amount collected must be equivalent to a certain percentage of the total loan amount owed.

While defaulters represent a small portion of the total borrower population, the number of defaults has been on the rise.¹ The Department has sought to reduce the number of defaulters by improving borrowers’ payment management options through the implementation of the President’s Pay As You Earn initiative and other changes to the Federal student loan programs. The changes to the loan rehabilitation process included in this NPRM are another part of this overall effort. Even with these efforts, the Department cannot gauge whether or not the default rate will increase, decrease, or remain steady.

Some defaulted borrowers who may be interested in rehabilitating their defaulted loans are also subject to AWG. Those borrowers may be discouraged from trying to fully rehabilitate their loans because they fear that they will not be able to make loan payments in addition to the amount garnished. Through the proposed regulations, the Department aims to add clarity to the AWG process so that affected borrowers will understand what is required for AWG to be suspended.

While defaulted borrowers are subject to immediate collection of their total loan debt, the Secretary believes that providing them with an improved process to rehabilitate the defaulted

loan is in the best interests of the taxpayers and the borrower. Defaulted borrowers continue to accrue interest on the debt and are charged collection costs. In addition, the default harms their credit scores, and the borrowers may have trouble purchasing homes or obtaining auto loans or other types of consumer credit. By improving the opportunities for defaulted borrowers to rehabilitate their student loans, the Department will not only improve its chances for full collection of the debt but also help some defaulted borrowers return to full economic participation.

The Secretary is also proposing other changes to the FFEL and Direct Loan program regulations. The elimination of new loan originations in the FFEL Program means that many of the current FFEL Program regulations are no longer necessary. In addition, this change presented the Secretary with an opportunity to improve consistency across the FFEL, Direct and Perkins loan programs. Currently the different Title IV loan programs are regulated and administered differently in areas where they could be consistent. The Secretary is proposing to eliminate these differences where appropriate.

The Secretary proposes to revise the Direct Loan regulations to incorporate provisions from the FFEL regulations that are currently only cross-referenced in the Direct Loan regulations. By incorporating the substantive provisions in the Direct Loan regulations instead of simply cross-referencing to the FFEL regulations, the Direct Loan regulations will be comprehensive. This step is appropriate since the Direct Loan Program is now the predominant Federal student loan program.

By proposing revisions to the regulations, the Secretary aims to provide clarity and transparency to the administration of the loans programs. Over the years there have been consistent concerns that borrowers are unable to properly manage their Federal student loans because of confusion over their rights and options. This is particularly true for borrowers who are delinquent on their loans and borrowers who experience personal hardship. The revised regulations would clarify the rules for borrowers and provide them with a better understanding of their rights and responsibilities. Also, the revised rules would provide better and clearer guidance to lenders and guaranty agencies about their roles and responsibilities in servicing Federal student loans.

¹ U.S. Department of Education, First Official Three-Year Student Loan Default Rates published, September 28, 2012, www.ed.gov/news/press-releases/first-official-three-year-student-loan-default-rates-published.

Discussion of Costs, Benefits and Transfers

Adding clarity to the loan rehabilitation process offers many benefits. The Department believes that rehabilitation offers benefits for students, the Department, and the Nation. Defaulted borrowers may be more willing to complete the rehabilitation process. Defaulted borrowers may see significant improvements in their credit scores and purchasing power. As these borrowers become bigger participants in the economy, an improved rehabilitation process should support positive growth.

Improved loan rehabilitation rates will also allow the Department and collection agencies to concentrate their collection efforts on non-paying borrowers. In general, the more student loan accounts that are active and current, the better for the programs. The Department believes these proposed regulatory changes will help ensure that the Federal student loan programs remain strong and support maximum access to higher education for American students.

Over the past decade, the Department has steadily increased the number of loans it rehabilitates annually. As Chart 1 shows, in FY 2001 the Department and guaranty agencies rehabilitated just

over \$223 million in defaulted Federal student loan debt. By FY 2011, this number had jumped to \$5 billion. The Department and guaranty agencies also recovered \$12 billion worth of defaulted loan debt in FY 2011 compared to \$5 billion in FY 2001. Part of the increase in loan rehabilitation can be linked to growing enrollment, rising tuition, and two economic slowdowns, which led to more borrowing. However, the higher percentage of total collections that comes from loan rehabilitation shows that the Department and guaranty agencies are working with borrowers to help them take advantage of the opportunity for loan rehabilitation.

[Smns]

	2001	2005	2008	2009	2010	2011
Total Rehabilitations	224	1,606	3,722	3,504	4,332	5,165
Total Collections ..	5,124	5,809	8,580	8,820	10,214	12,006
Rehabilitations as % of Collections	4.4%	27.6%	43.4%	39.7%	42.4%	43.0%

Even though the proposed regulations could possibly result in lower payment amounts for borrowers while they are rehabilitating their defaulted loans, the borrowers would still be responsible for ultimately paying their entire debt. Furthermore, even if rehabilitation payments are lowered on average across the board, the Department believes that the overall benefits of having more borrowers current in their debt payments will outweigh any short-term cost of reduced payments.

Overall, the true monetary effect of the proposed regulations would depend heavily on various factors. The Department is currently implementing changes to its income driven repayment options and expects these changes to help slow down a rising default rate by offering improved payment management options to borrowers. Also, as the economy continues to improve, the default rate may drop as more borrowers find employment.

The proposed regulations would provide many additional benefits to borrowers and promote a more efficient and transparent Federal student loan program.

By expanding from 90 to 120 days the window during which a borrower may qualify for a closed school loan discharge after withdrawing from a school that eventually closes, the number of borrowers who qualify for the discharge may increase. However, school closures are a relatively rare occurrence. In 2007, 43 Title IV participating schools closed. This number dropped to 30 in 2008 and to

18 in 2011. Unlike two decades ago, when fraudulent institutions would quickly shut their doors without any notification to students or regulators, most closures these days are due to a loss of accreditation. In most cases, students who attend schools that lose accreditation are given ample warning about a possible closure and can make educated decisions about continuing their programs beforehand. While the extended window may mean that more borrowers qualify under the proposed closed school regulations, we do not believe it will present a significant cost. In 2011, 214 borrowers received closed school loan discharges for loans valued at approximately \$870,000. This was an increase from the 2010 numbers of 50 borrowers with a loan value of \$467,000 but still represents a very small portion of the student loan portfolio.

The proposed revisions to the forbearance process in the different loan programs will offer many benefits to borrowers. By expanding the circumstances in which lenders may grant administrative forbearance, borrowers who had difficulty making payments but who are trying to rectify the situation, will receive relief. The regulations would give the Department and FFEL lenders more flexibility in dealing with defaulted borrowers. These revisions would also clarify the eligibility for forbearance and promote a more transparent loan program.

The proposed revisions to § 685.301 would offer benefits for certain borrowers in non-traditional programs.

Under the proposed regulations, students who transfer from one school into non-term or certain standard non-term programs at a different school during the middle of an academic year would initially be eligible for a Direct Loan to cover the remainder of the academic year that began at the prior school (up to their remaining eligibility under the annual loan limits), regardless of whether the new school accepts credits from the prior school. The current regulation only allows this result if the new school accepts transfer credits from the prior school.

Eligible borrowers would also be able to receive an initial loan at the new school for an amount up to the difference between the annual loan limit and the amount received at the prior school, with a loan period covering the remainder of the academic year that began at the prior school, followed by a second loan for up to the full annual loan limit for the next academic year at the new school. Under the current regulations, if the new school does not accept transfer credits from the prior school, the initial loan at the new school must be for the lesser of a full academic year or for the remainder of the program at the new school. The maximum loan amount the student may receive for that entire period is the difference between the annual loan limit and the loan amount received at the prior school. While the ability of these transfer students to receive additional loan funds will result in a cost to the

government, the Department believes it will be minimal since these borrowers will repay those loans.

Borrowers would see other benefits under the proposed regulations as well. The proposed revisions to the Administrative Wage Garnishment (AWG) hearing process would ensure that borrowers have a better understanding of their rights and responsibilities in that process and ensure that borrowers are treated consistently by guaranty agencies and the Department.

Overall, the proposed regulations would strengthen the Federal student loan programs and help support the American postsecondary education system. As more and more students now depend on student loans to pay for their college education, it is essential that borrowers fully understand the rights and responsibilities that are a part of their student loan obligations. It is also essential that the student loan programs operate as efficiently as possible. These revisions are part of the Department's commitment to running efficient loan programs that support more than ten million students per year. This number will grow as the country pursues the President's 2020 goal of leading the world in college degree attainment. Keeping a strong higher education system will be essential to America maintaining its economic advantage in the world.

Net Budget Impacts

The regulations are estimated to have a net budget impact of \$2.8 to \$3.4 million over ten years from 2013–2022 driven by the expansion of the time period for eligibility for a closed school discharge. Consistent with the

requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

In general, these estimates were developed using the Office of Management and Budget's (OMB's) credit subsidy calculator. The calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used Government wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

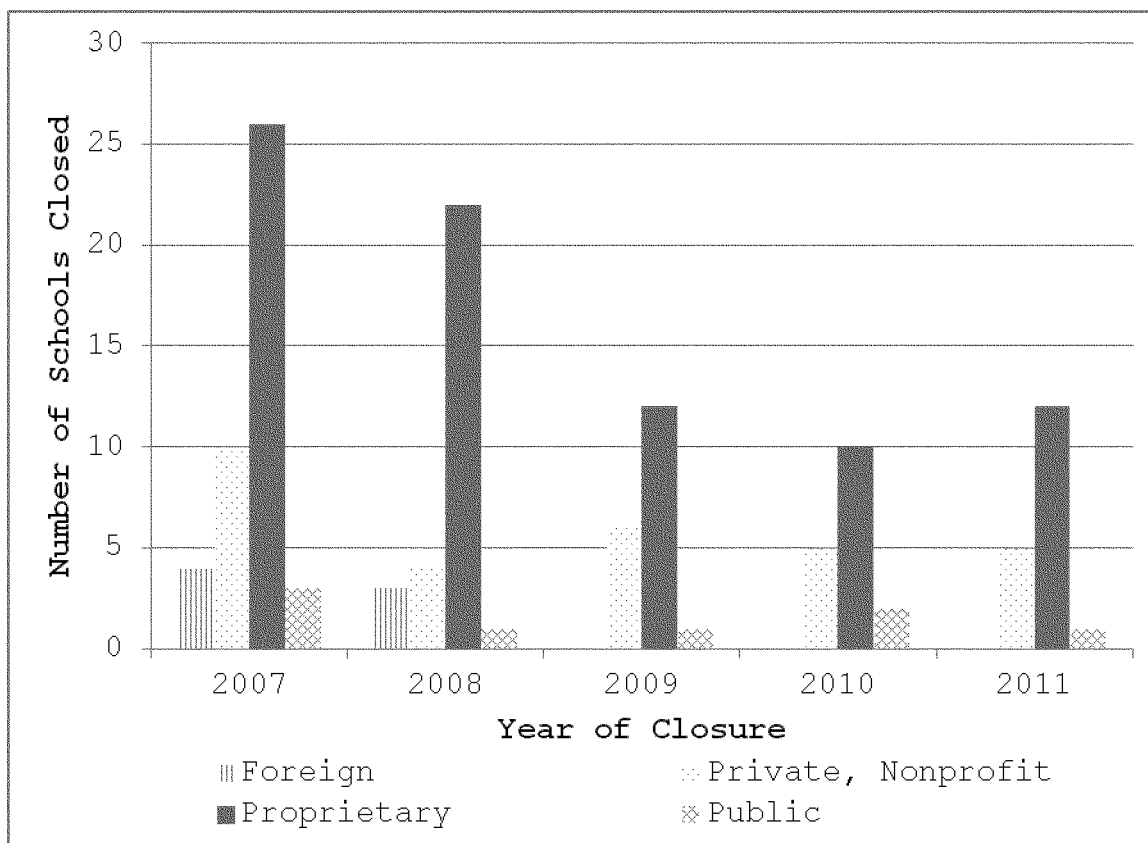
Absent evidence of the effect of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed

under *Assumptions, Limitations, and Data Sources*. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Students at less than four-year for-profit institutions, students at less than four-year public and non-profit institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

Closed School Discharge

Under current regulations §§ 674.33, 682.404, and 685.214, student borrowers may qualify for a loan discharge if they are unable to complete a program of study because a school closes or if they withdraw no more than 90 days before school closure. The Secretary could extend the 90-day window based on exceptional circumstances. The proposed regulations would extend the 90-day period to a 120-day period and provide examples of what qualifies as an exceptional circumstance. We estimate these changes to have a cost of approximately \$3.1 million over 10 years as the pool of borrowers eligible for discharge will increase. The costs are limited by the small number of closed schools, the availability of teach-outs, and the assignment of recoveries to the Department. Chart 2 shows the 128 closed schools since 2007 by year and institutional category.

Chart 2: Annual School Closures by Institutional Control



Source: U.S. Department of Education

Since 2007, closed school discharges totaling \$5.9 million have been granted to approximately 1,600 borrowers, representing approximately 3.4 percent of borrowers estimated to be eligible for discharge under the existing 90-day window. Some borrowers did not receive a discharge because the institution arranged a teach-out or students completed their educational program with credit for the work at the closed school. By extending the window to 120 days, the Department estimates that an additional 100 students would receive closed school discharges totaling approximately \$400,000 annually.

This projected amount was determined by estimating that the almost 1,600 borrowers with discharges over five years were evenly distributed, resulting in approximately 320 borrowers with closed school discharges annually. The Department then assumed that extending the window to 120 days would increase the number of borrowers receiving discharges by about a third since some students would already have qualified under the 90-day window and we are adding 30 days, about a third of the original 90-day window. As the discharge amounts involved are small,

no subsidy impact is estimated. On a cash basis, the estimated budget impact of expanding closed school discharge is \$2.8 to \$3.4 million over 10 years when discounted at 7 percent or 3 percent. The Department welcomes comments about these assumptions and estimates and will consider them in drafting the final rule.

Loan Rehabilitation

Two areas related to loan rehabilitation affected by the proposed regulations are the determination of the reasonable and affordable payment for loan rehabilitation and the limitations on the use of administrative wage garnishment while a borrower is attempting to rehabilitate a defaulted loan. While the proposed regulatory changes in both areas would change the period of time and sources of payments the Department receives, the Department does not estimate that the proposed regulations would have any significant budget impact.

The proposed regulations refine the process for determining the reasonable and affordable payment for loan rehabilitation to improve consistency across loan programs. The current

regulations for the FFEL Program require guaranty agencies and their collection agents to negotiate a reasonable and affordable payment for loan rehabilitation with the borrower that takes into account all of the borrower's financial circumstances. The Direct Loan Program currently does not have similar regulatory language describing how the Department determines a reasonable and affordable payment amount, but the program does have a similar process for receiving income and expense information and negotiating a payment with the borrower.

Borrower advocates have claimed that this process results in inconsistent treatment across guaranty agencies and payments that may not be reasonable and affordable for borrowers. Borrower advocates have suggested that the Department require the use of the IBR formula to establish the reasonable and affordable payment for loan rehabilitation to improve consistency and potentially reduce the borrower's rehabilitation payment amount. Guaranty agencies and the Department wanted to preserve the flexibility to work with borrowers, but agreed to have

the IBR formula as a second option if the borrower objected to the reasonable and affordable payment initially determined by the Department or the guaranty agency. The Department and several negotiators agreed to the use of the IBR formula with the caveat that an IBR formula calculation of \$0 would result in a monthly rehabilitation payment of \$5 (not \$0), since a key part of the rehabilitation process is getting borrowers in the habit of making payments. Additionally, to make the Direct Loan Program regulations more comprehensive and informative for borrowers, the Department agreed to incorporate the regulations governing the determination of a reasonable and affordable payment amount into the Direct Loan Program regulations.

With approximately \$1.49 billion in defaulted loan balances rehabilitated by the Department in FY 2011, loan rehabilitation is a valuable collections tool that also allows borrowers to improve their credit history and regain eligibility for title IV, HEA Federal student aid. The Department and guaranty agencies have emphasized keeping the rehabilitation payment amount close to the payment the borrower will have to make following rehabilitation to avoid sharp increases in the required payment. The availability of IBR or ICR payment plans after rehabilitation expands the range of payments possible during rehabilitation that would be in line with post-rehabilitation payments. This new standard may also help decrease the number of rehabilitation borrowers who re-default, as their required rehabilitation plan payment amount will be very similar to the payment amount they will make when they return to regular repayment. The proposed regulations would retain the current FFEL Program regulations requiring consideration of the borrower's income and expenses while clarifying the types of incomes and expenses to consider, require the use of a standardized form, and allow borrowers to object to the payment determined based on the individual's income and expenses and included in the written rehabilitation agreement offered to the borrower. A borrower who objected to the amount required under that method would be able to obtain an alternative amount determined using

the IBR formula. A borrower could choose between the two proposed payment amounts. As the negotiation process and factors considered in determining the reasonable and affordable payments will largely remain the same for FFEL Program loans, the Department does not estimate a budget impact from the proposed changes.

With respect to the Direct Loan portfolio, the Department would be required to consider the same income and expense factors, with the same possibility of the IBR formula as a fallback calculation for borrowers who object to the first payment amount that the Department offers to the borrower. For individual borrowers, the payment offered as an alternative rehabilitation amount based on IBR might be less than what the Department would determine to be appropriate based on an assessment of the borrower's income and expenses. If this is the case, the Department would collect less money during the months the borrower attempts loan rehabilitation, but the borrower would still owe the remaining balance after rehabilitation. In addition, to the extent lower payments encourage borrowers to complete a loan rehabilitation and continue payments they otherwise would not make, the proposed regulations may increase total payments over the life of the loan for some borrowers. The likelihood of borrowers paying less, the same, or more over the life of a loan over time as a result of the proposed changes in defining a reasonable and affordable payment is uncertain, but the Department does not expect it to have an appreciable budget impact.

Perkins Loans Provisions

The proposed regulations address a few areas related to the Perkins Loan Program including: Revising cancellation progression rates; modifying the treatment of health-related breaks in service for certain loan cancellations; making the eligibility for a graduate fellowship deferment consistent with FFEL and Direct Loan program criteria; making a technical correction to eliminate the debt-to-income economic hardship deferment category for borrowers working less than full-time; defining "on-time" for rehabilitation payments; and allowing assignment to the Department of Perkins Loans made before September 13, 1982,

without the borrower's SSN. The Department does not estimate a significant budget impact from these provisions. No appropriations have been made to support the Perkins Loan Program since 2008, and institutions make loans from payments made on their portfolios of existing loans. The effect on the Federal budget of increased costs in the Perkins Loan Program is a possible reduction of Federal Perkins assets available to be recalled in future years.

The technical changes to make the debt-to-income economic hardship deferment, graduate deferment eligibility, and on-time payment standard for rehabilitation payments in the Perkins Loan Program more consistent with the FFEL and Direct Loan programs are not expected to have any budget impact. Students with graduate fellowships are already eligible for deferments in the Perkins Loan Program, and the Department estimates that aligning the definition of a graduate fellowship in the Perkins Loan Program with that used in the FFEL and Direct Loan programs will not expand the pool of graduate fellows allowed a deferment. For the on-time payments standards for loan rehabilitation purposes, the Perkins Loan Program does not currently have a regulatory standard, but the discretion institutions have in setting their own standard is constrained by the requirement that nine monthly payments be made for rehabilitation.

The slight changes in timing associated with defining the on-time payment standard at 20 days is not expected to change the number of borrowers successfully rehabilitating their Perkins loans or the ultimate amount collected from those borrowers, so no budget impact is expected. The ability to assign loans to the Department without the borrower's SSN may facilitate some institutions leaving the program and, if the Department is able to collect on those loans, result in some small additional revenues.

As shown in Table 1, the proposed regulations related to Perkins Loan cancellation do involve some substantial cancellation amounts (e.g. Teacher Service), but the limited scope of the changes and the reduction of Federal funding in the Perkins Loan Program limits the net budget impact on the Federal government.

TABLE 1—PERKINS LOAN CANCELLATIONS BY CANCELLATION TYPE
[IN \$mn]

Cancellation type	2007	2008	2009	2010	2011	Grand total
Nurse/Medical Tech	26.3	29.6	32.9	35.2	33.7	157.6

TABLE 1—PERKINS LOAN CANCELLATIONS BY CANCELLATION TYPE—Continued
[IN \$mn]

Cancellation type	2007	2008	2009	2010	2011	Grand total
Teacher Service	20.4	21.1	21.4	22.4	19.9	105.3
Teaching in Teacher Shortage Field	5.8	5.5	5.6	5.8	5.0	27.6
Law Enforcement	4.4	4.4	4.8	5.4	5.7	24.6
Early Intervention	4.4	4.2	4.1	4.5	4.1	21.2
Volunteer Service	3.0	3.1	3.4	3.5	3.7	16.7
Death, Disability, and Bankruptcy	2.8	3.1	3.2	2.9	2.9	14.8
Defense Teacher/Military prior to 1972 ...	0.2	0.1	0.1	0.1	0.0	0.5
Military Service	0.1	0.1	0.1	0.1	0.1	0.5
Speech Pathologist			0.0	0.1	0.2	0.4
Firefighter				0.1	0.1	0.2
Librarian			0.0	0.0	0.1	0.1
Other	0.00	0.02	0.0	0.01	0.01	0.1
Tribal College				0.0	0.0	0.0
Total	67.4	71.1	75.5	80.0	75.4	369.5

Source: NSLDS.

As detailed in the *Summary of Proposed Regulations* section of this preamble, proposed § 674.52(g)(1) would change the Department’s longstanding policy that switching cancellation categories results in a borrower falling back to the first-year cancellation rate. Instead, the proposed regulations would allow borrowers who switch between cancellation categories with the same rate of progression to continue the progression from the last year under the prior category; however,

the borrower would fall back to the first-year cancellation rate if the borrower switches to a category with a different progression rate.

The three Perkins Loan cancellation progression rates are summarized in Table 2, and all categories except early childhood education, Peace Corps volunteer, or voluntary service have a 15/15/20/20/30 percent cancellation progression. After a Perkins Loan borrower receives cancellations for five years at these rates, 100 percent of the original principal balance of the

borrower’s loan is canceled. While some borrowers may be able to accelerate their cancellation or achieve full cancellation, the nature of the categories affected by the policy change would limit the likelihood of borrowers switching between them. To the extent a small number of borrowers do switch and are allowed to maintain their progression rate instead of falling back to year one, the primary effect would be on the timing of cancellation received, not the amount.

TABLE 2—PERKINS LOAN CANCELLATION PROGRESSION RATES

Firefighter, Law Enforcement, Teacher, Teacher in Shortage Area, Librarian, Military Service, Defense Teacher/Military prior to 1972, Nurse/Medical Tech, Speech Pathologist, Early intervention, and Tribal College.	§ 674.53, § 674.56, § 674.57, § 674.59.	15%	15%	20%	20%	30%	100%.
Early Childhood Education	§ 674.58	15% for each year of service; Up to 100% can be cancelled if service extends to 7 years					up to 100%.
Peace Corps or Volunteer Service	§ 674.60	15%	15%	20%	20%	70%.

Additionally, proposed § 674.52(c) would replace the current Perkins Loan treatment of a break in teaching service for pregnancy or illness. Currently teachers must complete the first half of the academic year, begin the second half, and have the employer agree that the teacher fulfilled that year of the contract. In the FFEL and Direct Loan programs, if a borrower is unable to complete the second half of the year of teaching for reasons covered by the FMLA, the service could count towards cancellation if the employer agrees the contract has been fulfilled for the year.

The proposed regulations would apply the FMLA-related break-in-service exception to all Perkins Loan

cancellation categories, not just teachers. As Perkins loan cancellation does not require consecutive service, the Department expects this provision may allow some borrowers to receive credit for a year that would not otherwise have counted as service and speed up the ultimate cancellation of the loan, but it will not significantly expand the number of borrowers who achieve loan cancellation as their next year of service could qualify instead. These cancellation provisions may affect the timing of when borrowers achieve cancellation, but the Department does not estimate that they will significantly increase the overall amount cancelled.

Additional Provisions

Many of the proposed regulations have no impact on the Federal budget as they reflect statutory changes already incorporated into the budget baseline or clarify existing practices. Several areas of the current regulations that are proposed for removal from the regulations by this NPRM relate to origination and administration of FFEL Program loans. Those regulations became irrelevant when new FFEL Program loan originations ended as of July 1, 2010. Any costs or savings resulting from the end of FFEL Program loan originations were attributed to the SAFRA Act, so there is no estimated

budget impact from these provisions. The budget impact of these changes was already incorporated into the budget baseline.

Updates were also made to the Direct Loan regulations to incorporate specific provisions that previously were included in the Direct Loan regulations by cross-reference to the FFEL regulations. The restructuring of the Direct Loan regulations to remove references to the FFEL Program regulations or to reflect current practices is not estimated to have a budget impact.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2008 National Postsecondary Student Aid Survey and the 2004 Beginning Postsecondary Student Survey. Data from other

sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf>), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES
[in millions]

Category	Benefits	
	7%	3%
Greater consistency between the title IV loan programs	Not Quantified	
Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements	-\$93.8	-\$94.4
Category	Transfers	
	7%	3%
Reduced payments to Federal Government from additional borrowers receiving closed school discharges	\$0.40	\$0.40

Alternatives Considered

In the spirit of good governance, the Department carefully considers any regulatory action or revision to ensure that the final decision represents what the Department believes is the best feasible option. First and foremost, the Department considered whether or not negotiated rulemaking was necessary in this instance and concluded that the magnitude of the statutory and regulatory revisions to these rules would require stakeholder input. Many of the regulatory alternatives proposed by non-Federal negotiators were ultimately rejected by the Department because of statutory limitations.

For example, some non-Federal negotiators raised questions about the Department’s implementation of the statutory requirement that a school must close in order for the borrower to receive a loan discharge. The non-Federal negotiators asked the Department to clarify whether students would be eligible for a closed school discharge in the event an online school closed one of its locations or ceased to operate one of its programs.

In response to the negotiators’ questions, the Department noted that, for purposes of the discharge, the terms “school” and “location” are defined by the HEA. If a school (distance education or traditional) closes one of its programs, a borrower does not qualify for a closed school discharge because the school itself did not close. The entire school has to close for online distance education students to receive a discharge. The Department also noted that, under the regulations, for students attending an online school that operates at many different locations, the main campus or main location of the online school would have to close in order for the online distance education student to receive the discharge. Although this topic engendered much discussion, the provisions governing what constitutes a school and location in the current regulations at §§ 674.33(g), 682.402(d), and 685.214(c) are based on statutory requirements.

The Department proposed amending regulations so that a borrower’s reasonable and affordable payment amount for loan rehabilitation would be calculated using the IBR formula.

However, there was strong disagreement among the non-Federal negotiators about the merits of this proposal. Negotiators representing guaranty agencies argued that requiring the use of the IBR formula would reduce their ability to work with borrowers to arrive at a rehabilitation payment amount acceptable to both the guaranty agency and to the borrower. Negotiators representing borrower advocacy groups strongly disagreed with the argument that the use of IBR would reduce the agencies’ ability to work with borrowers. After careful deliberation, the Department decided to allow guaranty agencies to keep their flexibility in negotiating reasonable and affordable rehabilitation payments, but it ensured that borrowers would be made aware of their right to ask for a recalculation of the payment amount.

The Department considered other smaller proposals and alternatives as discussed in the preamble but believes that these proposed regulations represent the best possible and most feasible outcomes.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of the preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section of this preamble.

Regulatory Flexibility Act Certification

Initial Regulatory Flexibility Analysis

These proposed regulations would affect institutions that participate in the title IV, HEA programs, including alternative certification programs not housed at institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as “small businesses” if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. The SBA Size Standards define nonprofit institutions as small organizations if

they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector affected by these regulations, and the concentration of ownership of institutions by private owners or public systems means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the nonprofit entities fit within the definition of a small organization regardless of revenue. Given the definitions above, several of the entities subject to the proposed regulations are small, leading to the preparation of the following Initial Regulatory Flexibility Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

With these proposed regulations, the Department seeks to remove certain regulations governing the FFEL Program that are no longer needed and to revise Direct Loan Program regulations to ensure that they are comprehensive and to add consistency and clarity to all regulations governing student loans by revising where applicable. The Department also seeks to provide clarity to the loan rehabilitation process for borrowers with defaulted student loans by developing clear guidance and regulations.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

The proposed regulations amend the FFEL and Direct Loan program regulations to: Reflect changes made to the HEA by the SAFRA Act; incorporate other statutory changes in the Direct Loan Program regulations; update, strengthen, and clarify various areas of the Student Assistance General Provisions, Perkins Loan, FFEL, and Direct Loan program regulations; and provide for greater consistency in the regulations governing title IV, HEA student loan programs.

In addition, On January 21, 2011, President Obama issued Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821).

The order requires all Federal agencies to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Accordingly, on August 22, 2011, the Department issued its Plan for Retrospective Analysis of Existing Regulations. (See ed.gov/policy/gen/reg/retrospective-analysis/index.html).

Our plan identified a number of regulatory initiatives for retrospective review and analysis. One of those initiatives was transitioning from the FFEL Program, under which new loans ceased on July 1, 2010, to the Direct Loan Program. This proposed rule would remove obsolete FFEL Program regulations.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The proposed regulations would affect several categories of entities involved in the administration and servicing of Federal student loans. Many of the proposed regulations relate to notifications, servicing, or collection activities done by loan servicers or entities acting for the Federal government. The Department does not expect these entities to meet the applicable definition of “small entity.” The proposed regulations related to Perkins Loans will affect the institutions that participate in the program, some of which would be classified as small entities. As discussed above, private non-profit institutions that do not dominate in their field are defined as small entities and a few other institutions that participate in the Perkins Loan Program do not have revenues above \$7 million and are also categorized as small entities. Table 4 summarizes AY 2010–11 Perkins loan disbursements by institutions that qualify as small entities. Based on the definition of non-profit institutions as small entities, approximately 59 percent of institutions that disbursed Perkins loans in AY2010–11 were small entities.

TABLE 4—AY2010–11 PERKINS LOAN DISBURSEMENT SUMMARY

Perkins Loan Institutions with disbursements	545	874	107	1526
Small entities with Perkins disbursements	2	874	25	901
% of small entities by control	0.4%	100.0%	23.4%	59.0%
Overall Disbursements	387,694,908	448,589,990	20,332,961	856,617,859
% by control	45.26%	52.37%	2.37%	100%
Amounts at Small Entities	53,467	448,589,990	1,012,596	2,808,851

The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the proposed regulations would modify or increase the paperwork burden on entities participating in the FFEL, Direct Loan, or Perkins Loan programs, as described in the *Paperwork Reduction Act* section of this NPRM. Much of this burden would be associated with

borrowers or the Department and its agents and therefore does not affect small entities. Table 5 summarizes the estimated burden on small entities, primarily institutions and guaranty agencies, from the paperwork requirements associated with the proposed regulations. As discussed in the Paperwork Reduction Act section of this NPRM, several of the provisions reduce the estimated burden on institutions, lenders, and guaranty agencies from the elimination of regulatory provisions or changes to requirements and this is reflected by the negative numbers in the table.

Description	OMB Control No.	Small entity hours	Cost(\$)	Cost per small entity
FFEL forbearance	1845-0020	264	6,497	650
Reasonable and Affordable loan rehab	1845-0020	69,161	1,702,052	154,732
Suspension of AWG for rehab borrowers	1845-0020	1,257	30,935	2,812
School Enrollment Status Reporting	1845-0019	24,342	599,068	54,461
Deferment of repayment—Federal Perkins Loans—definition of eligible graduate fellowship programs	1845-0019	175	4,316	22
AWG 3rd party contractors; hearing requests, and hearing administration ...	1845-0020	57,568	1,416,748	128,795
Lender disclosure	1845-0020	(20,461)	(503,556)	(50,356)
Due diligence in making a loan	1845-0020	(40,923)	(1,007,112)	(100,711)
Equal credit—removal of provision	1845-0020	(40,923)	(1,007,112)	(100,711)
Eligibility for interest benefits	1845-0020	(40,923)	(1,007,112)	(100,711)
Basic program agreement	1845-0020	(11,174)	(274,982)	(27,498)
Records, reports, inspection requirements for GA programs	1845-0020	(5,587)	(137,495)	(12,500)
Prohibited use of Operating Fund when it contains Federal Fund assets—removal of provision	1845-0020	(111,739)	(2,749,889)	(249,990)
Funds transferred to Operating Fund by a GA—removal of provision	1845-0020	(111,739)	(2,749,889)	(249,990)
FISL loan related—removal of provisions	1845-0020	(163,692)	(4,028,450)	(884.40)
School as lender—removal of provision	1845-0020	(206,534)	(5,082,791)	(1,115.87)
Exit counseling	1845-0020	(134,247)	(3,303,819)	(725.32)
Disqualification review of limitation, suspension, and termination actions taken by GA against a school—removal of provision	1845-0020	(111,739)	(2,749,889)	(249,990)

Identification, to the Extent Practicable, of all Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulation

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking in developing the proposed regulations and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

Sections 674.19, 674.33, 674.34, 682.102, 682.200, 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.212, 682.214, 682.216, 682.301, 682.305, 682.401, 682.402, 682.404, 682.405, 682.406, 682.409, 682.410, 682.411, 682.412, 682.414, 682.417, 682.418, 682.421, 682.507, 682.508, 682.511, 682.515, 682.602, 682.603,

682.604, 682.605, 682.610, 682.711, 682.712, 682.713, 685.205, 685.211, 685.214, contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections, related forms, and Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) for its review.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the Department can properly assess the impact of collection requirements on respondents.

The forms that would be used to collect the information related to these proposed regulations and the ICRs related to the proposed regulations and forms are available for comment on Regulations.gov under the same Docket number as the proposed regulations. We ask that commenters submit a separate set of comments on the paperwork burdens that would be imposed under the proposed regulations and associated forms. The OMB Control numbers associated with the proposed regulations and related forms are 1845-0015, 1845-0019, 1845-0020, 1845-NEW1, and 1845-NEW2.

Please note that the comment period regarding paperwork burden runs concurrently with the comment period for the proposed regulations. We have asked OMB for emergency review because the Department needs to start collecting this information before the start of the next academic year, as soon

as the regulations become final. The comment period for the burden associated with these regulations is 30 days. See the DATES section of this preamble for the deadline to submit PRA comments.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control number assigned by OMB to any information collection requirement proposed in this NPRM and adopted in the final regulations.

Sections 682.211 and 685.205— Forbearance

The proposed regulations amend the current FFEL Program regulations to authorize a lender, prior to resolving a default claim payment, to grant forbearance to a borrower or endorser who is in default on a loan based on the borrower's or endorser's oral request. The current regulations require borrowers to submit a written request for forbearance. The burden calculations address only the added burden created by accepting oral requests for forbearance. The proposed regulations provide that a forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser (as required under the current regulations), or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations define "affirmation" for this purpose to be an acknowledgment of the loan by the borrower or endorser in a legally binding manner that can take the form of: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt (as under current regulations); (2) an oral acknowledgment and agreement to repay the debt that is documented by the lender in the borrower's or endorser's file and confirmed by the lender in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser. The proposed regulations also specify that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation, the lender must orally review with the borrower the terms and conditions of the forbearance. The

lender must also send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to make the first payment under the forbearance agreement within 30 days after entering into that agreement. The proposed regulations require the lender to retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file.

For the 2011 calendar year, the last year for which data are available, we estimate that 172,915 FFEL borrowers requested forbearance after defaulting on a loan. Of that number, 49,350 borrowers have FFEL program loans held by lenders. Of those borrowers, we estimate that 25 percent (12,338 borrowers) would exercise the option in these proposed regulations to orally acknowledge the debt and agree to repay the debt. The remaining 123,565 loans for which we estimate borrowers will request forbearance after defaulting will be held by the Department. We estimate that 25 percent of those borrowers (30,891 borrowers) who request forbearance from the Department will exercise the option to orally acknowledge the debt and agree to repay the debt, as would be authorized under these proposed regulations. Because OMB requires Federal agencies to account for burden imposed on non-Federal entities separately by type, i.e. public, not-for-profit, and for-profit, the following analysis of the burden imposed on lenders other than the Department is broken down by the types of entities. Note that State guaranty agencies are covered under the "public" type of entities.

Of the FFEL Program loans held by lenders, we estimate that public holders (State guaranty agencies) will have 2 FFEL borrowers who seek to orally acknowledge a defaulted FFEL Program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. For public holders, we estimate that burden would increase by 0.34 hours (2 borrowers multiplied by 0.17 hours per oral forbearance request).

Of the FFEL Program loans, we estimate that not-for-profit holders will have 1,551 FFEL borrowers who seek an oral forbearance on a defaulted FFEL program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the

terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. For not-for-profit holders, we estimate that burden would increase by 264 hours (1,551 borrowers multiplied by 0.17 hours per oral forbearance request).

Of the FFEL Program loans, we estimate that for-profit holders would have 10,785 FFEL borrowers who seek an oral forbearance on a defaulted FFEL Program loan. On average, we estimate that it would take the lender 0.17 hours (10 minutes) per oral acknowledgment to orally review with the borrower the terms and conditions of the forbearance and document the conversation and place that documentation in the borrower's or endorser's file. We estimate that burden would increase by 1,833 hours (10,785 borrowers multiplied by 0.17 hours per oral forbearance request) at for-profit holders.

We estimate there would be an equal amount of burden on the borrower engaged in the oral acknowledgement and agreement to repay the debt request with the lender. The oral acknowledgment process would increase burden by 7,349 hours for all FFEL borrowers (12,338 held by lenders and 30,891 ED-held = 43,229 borrowers multiplied by 0.17 hours per oral forbearance request). Since there is no FFEL general forbearance form approved by OMB, the proposed regulations would impose new burden.

Collectively, we estimate that these proposed FFEL forbearance regulations would increase burden by 9,446 hours under OMB Control Number 1845-0020.

The proposed regulations would amend the current Direct Loan Program regulations to authorize the Secretary, prior to the loan being transferred to the Department's default collections office, to grant forbearance to a borrower or endorser who is in default on a loan based on the borrower's or endorser's oral request. The proposed regulations provide that a forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser (as required under the current regulations), or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt. The proposed regulations define "affirmation" for this purpose to be an acknowledgment of the loan by the borrower or endorser in a legally binding manner that can take the form of: (1) A new signed repayment agreement or schedule, or another form of signed agreement to repay the debt (as under current regulations); (2) an oral acknowledgment and agreement to

repay the debt that is documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or (3) a payment made on the loan by the borrower or endorser. The proposed regulations also specify that if a forbearance in this situation is based on the borrower's or endorser's oral request and affirmation, the Secretary must orally review with the borrower the terms and conditions of the forbearance, and that the Secretary must send the borrower or endorser a notice that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to make the first payment under the agreement within 30 days after entering into that agreement. The proposed regulations require the Secretary to retain a record of the terms and conditions of the forbearance and affirmation in the borrower's or endorser's file.

For the 2011 calendar year, 62,905 Direct Loan borrowers requested forbearance after defaulting on a loan. Of that number, we estimate that 25 percent (15,726 borrowers) would have exercised an option to orally acknowledge the debt and agree to repay the debt. On average, we estimate that it would take a borrower 0.17 hours (10 minutes) per oral acknowledgment to listen to the list of terms and conditions of the forbearance as they are reviewed with the borrower. The burden associated with the completion of the General Forbearance Request form, OMB 1845-0031, is estimated to average 0.2 hours (12 minutes). Therefore, the net reduction in burden to provide an oral acknowledgement rather than complete the form is the difference of the two or 0.03 hours (0.20 hours minus 0.17 hours or 2 minutes) per oral forbearance.

We estimate that burden would decrease by 472 hours (15,726 borrowers multiplied by 0.03 hours per oral forbearance) under OMB Control Number 1845-NEW2.

Sections 682.405(b) and 685.211(f)—Reasonable and Affordable Loan Rehabilitation Agreement

The proposed regulations would add new §§ 682.405(b)(1)(iii) and 685.211(f)(1)(i), requiring a guaranty agency and the Secretary, respectively, to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and, if requested, supporting documentation.

Proposed §§ 682.405(b)(1)(iii)(A) and 685.211(f)(1)(i)(A) would require a guaranty agency and the Secretary to

consider the borrower's, and if applicable, the borrower's spouse's current disposable income in determining a reasonable and affordable rehabilitation payment amount on a defaulted loan. Under proposed §§ 682.405(b)(1)(iii)(A) and 685.211(f)(1)(i)(A), spousal income would not be considered if the spouse does not contribute to the borrower's household income.

Proposed §§ 682.405(b)(1)(iii)(B) and 685.211(f)(1)(i)(B) would require a guaranty agency and the Secretary to consider the borrower's family size, as defined in § 682.215(a)(3) in determining the borrower's loan rehabilitation payment amount.

In calendar year 2011, there were approximately 299,159 FFEL borrowers (192,029 borrowers whose FFEL program loans are held by lenders and 107,130 FFEL program borrowers whose loans are held by the Department) that requested and received a loan rehabilitation agreement for their defaulted loans. We estimate that on average it would take a borrower 1.5 hours (90 minutes) to complete and submit the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 448,739 hours (299,159 borrowers requesting loan rehabilitation multiplied by 1.5 hours per loan rehabilitation request) under OMB Control Number 1845-NEW1.

In calendar year 2011, there were approximately 92,870 Direct Loan borrowers that requested and received a loan rehabilitation agreement for their defaulted loans. We estimate that it would take a borrower on average 1.5 hours (90 minutes) to complete and submit the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 139,305 hours (92,870 borrowers requesting loan rehabilitation multiplied by 1.5 hours per loan rehabilitation request) under OMB Control Number 1845-NEW1. Collectively, the proposed changes in §§ 682.405 and 685.211 associated with the completion and submission of the reasonable and affordable form would increase burden by 588,044 hours (448,739 hours plus 139,305 hours) under OMB 1845-NEW1.

We estimate that of the 192,029 FFEL loans held by lenders, 66,283 loans are held by state guaranty agencies and 125,746 loans are held by not-for-profit guaranty agencies, with the remaining 107,130 loans (299,159 minus 192,029) held by the Department. Under the proposed regulations, 66,283 FFEL borrowers whose loans are held by state guaranty agencies will request

rehabilitation of their defaulted loans and complete the loan rehabilitation form. We estimate that for each loan rehabilitation form submitted it would take the guaranty agency on average 0.5 hours (30 minutes) to review and process the loan rehabilitation form. Under these proposed regulations, we estimate that burden would increase by 33,142 hours (66,283 borrowers requesting loan rehabilitation multiplied by 0.5 hours per loan rehabilitation request) under OMB Control Number 1845-0020.

Under the proposed regulations, we estimate that of the 192,029 FFEL loans held by non-Federal entities, 125,746 FFEL borrowers whose loans are held by not-for-profit guaranty agencies will request rehabilitation and complete the loan rehabilitation form. We estimate that for each loan rehabilitation form submitted it would take the guaranty agency on average 0.5 hours (30 minutes) to review and process the loan rehabilitation form. Under these proposed regulations, we estimate that burden will increase by 62,873 hours (125,746 borrowers requesting loan rehabilitation multiplied by 0.5 hours per loan rehabilitation request) under OMB Control Number 1845-0020.

Proposed §§ 682.405(b)(1)(vi) and 685.211(f)(3) would require a guaranty agency and the Secretary to recalculate the borrower's rehabilitation payment amount if the borrower objects to the payment amount contained in the written repayment agreement that the guaranty agency or the Secretary sent to the borrower.

Of the 299,159 FFEL borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 35,899 borrowers would raise an objection to the initial determination of the reasonable and affordable monthly payment amount by the guaranty agency or the Secretary. We estimate that each objection will entail a phone conversation or email that would span on average 0.17 hours (10 minutes). This would increase burden to the borrowers for a total of 6,103 hours (35,899 borrowers objecting to the initial determination of the reasonable and affordable payment amount multiplied by 0.17 hours per loan rehabilitation request) under OMB Control Number 1845-0020.

Of the 92,870 Direct Loan borrowers in calendar year 2011 that requested loan rehabilitation of their defaulted loans, we estimate that 11,144 Direct Loan borrowers would raise an objection to the initial determination of the reasonable and affordable monthly payment amount. We estimate that each

objection will entail a phone conversation or email that would span on average 0.17 hours (10 minutes). This would increase burden to the borrowers for a total of 1,894 hours (11,144 borrowers objecting to the initial determination of the reasonable and affordable payment amount multiplied by 0.17 hours per loan rehabilitation request) under OMB Control Number 1845–NEW2.

Proposed §§ 682.405(b)(1)(vii) and 685.211(f)(5) would require a borrower who objects to the monthly repayment amount contained in the written repayment agreement to provide the guaranty agency or the Secretary the documentation needed to calculate a monthly payment amount under the income-based repayment plan formula. If the borrower does not provide this information to the guaranty agency or the Secretary, no rehabilitation agreement would exist with the borrower, and the guaranty agency or the Secretary would not proceed with the rehabilitation.

Of the 299,159 FFEL borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 35,899 borrowers would choose to submit documentation for a monthly payment amount to be calculated using the income-based repayment plan formula. We estimate that on average, each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 11,847 hours (35,899 borrowers required to submit documentation multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Of the 92,870 Direct Loan borrowers in calendar year 2011 that requested rehabilitation of their defaulted loans, we estimate that 12 percent or 11,144 borrowers would choose to submit documentation for a monthly payment amount to be calculated using the income-based repayment plan formula. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 3,678 hours (11,144 borrowers required to submit documentation multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–NEW2.

Proposed §§ 682.405(b)(1)(ix) and 685.211(f)(7) would require the Secretary or the guaranty agency, upon the borrower's request, to adjust the borrower's monthly rehabilitation payment due to a change in the

borrower's financial circumstances. The borrower would be required to provide documentation supporting the request.

We estimate that 10 percent of the 299,159 FFEL borrowers who requested rehabilitation of their defaulted loans (29,916 FFEL borrowers, 19,203 of whom have FFEL program loans that are held by lenders and 10,713 of whom have FFEL program loans that are held by the Department) would have a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 9,872 hours (29,916 borrowers with changes in financial circumstances multiplied by 0.33 hours per loan rehabilitation request) under OMB Control Number 1845–0020.

Of the 19,203 borrowers with FFEL loans held by lenders, 6,628 are held by public guaranty agencies and 12,575 are held by not-for-profit guaranty agencies. Under the proposed regulations, we estimate 6,628 FFEL borrowers whose loans are held by public guaranty agencies would have a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that for each request submitted it would take on average the guaranty agency 0.5 hours (30 minutes) to review and process the request. Under these proposed regulations, we estimate that burden would increase by 3,314 hours (6,628 borrowers requesting loan rehabilitation multiplied 0.5 hours per loan rehabilitation request equals 3,314 hours) under OMB Control Number 1845–0020.

Under the proposed regulations, we estimate that 12,575 FFEL borrowers whose loans are held by not-for-profit guaranty agencies would request a change in their reasonable and affordable payment amount due to changed financial circumstances in the initial year the proposed regulation is implemented. We estimate that for each request submitted it would take on average the guaranty agency 0.5 hours (30 minutes) to review and process the request for a change in the payment amount. Under these proposed regulations, we estimate that burden will increase by 6,288 hours (12,575 borrowers requesting a change in the loan rehabilitation payment amount multiplied by 0.5 hours per request) under OMB Control Number 1845–0020.

We estimate that 10 percent of Direct Loan borrowers who are rehabilitating their defaulted loans (9,287 Direct Loan

borrowers) would request a change in the reasonable and affordable payment amount due to a change in their financial circumstances in the initial year the proposed regulation is implemented. We estimate that on average each borrower would take 0.33 hours (20 minutes) to collect, copy, and submit the required documentation. We estimate that burden would increase by 3,065 hours (9,287 borrowers requesting a change in the reasonable and affordable payment amount multiplied by 0.33 hours per payment change request equals 3,065 hours) under OMB Control Number 1845–NEW2.

Sections 682.405(a) and 685.211(f)— Suspension of Administrative Wage Garnishment for Borrowers Rehabilitating Defaulted Loans

The proposed regulations would add new §§ 682.405(a)(3)(i) and 685.211(f)(12)(i) to the FFEL and Direct Loan Program regulations requiring a guaranty agency or the Secretary, respectively, to suspend collecting on a defaulted loan through Administrative Wage Garnishment (AWG) after the borrower makes five qualifying payments under a loan rehabilitation agreement. The guaranty agency or the Secretary would not be permitted to suspend AWG prior to the fifth payment, and, after the fifth payment, the borrower would have the option to request that the guaranty agency or the Secretary continue collecting on the loan through AWG while the borrower makes voluntary payments under the rehabilitation agreement.

Under proposed § 682.405(a)(3)(ii), we estimate that state guaranty agencies will have 663 FFEL borrowers from whom they will be collecting payments through AWG while the borrower is also making voluntary repayments to rehabilitate the loan. After the borrower has made five qualifying voluntary loan payments (in addition to the AWG payments), the holder would suspend AWG. We estimate that on average each suspension of AWG would take one hour (60 minutes). We estimate that burden would increase by 663 hours (663 borrower requests multiplied by 1 hour per AWG suspension equals 663 hours) under OMB Control Number 1845–0020.

Under proposed § 682.405(a)(3)(ii), we estimate that not-for-profit guaranty agencies will have 1,257 FFEL borrowers from whom they will be collecting payments using AWG while the borrower is also making voluntary repayments to rehabilitate the loan. After the borrower has made five qualifying voluntary loan payments (in addition to the AWG payments) the

holder would suspend AWG. We estimate that on average each suspension of AWG would take 1 hour (60 minutes). We estimate that burden would increase by 1,257 hours (1,257 borrower requests multiplied by 1 hour per AWG suspension equals 1,257 hours) under OMB Control Number 1845-0020.

Any burden under proposed § 685.211(f)(12)(i) is attributable to the Department and therefore not a part of this burden assessment of affected entities.

Collectively, the proposed changes in § 682.405(a) and (b) would increase burden by 135,359 hours in OMB Control Number 1845-0020.

Collectively, the proposed changes in § 685.211(f) would increase burden by 8,637 hours in OMB Control Number 1845-NEW2.

Sections 674.33(g), 682.402(d), and 685.214—Closed School Discharge

The proposed regulations at §§ 674.33(a)(4)(i)(B), 682.402(d)(1), and 685.214(c)(1)(iii) would extend, for purposes of the closed school discharge, the current 90-day period to 120-days for students who leave before a school closes and add examples of the types of exceptional circumstances under which the Department may extend the 120-day window.

During the 2011 calendar year, 0 Perkins Loan borrowers received closed school loan discharges. We estimate that 15 Perkins Loan borrowers submitted applications for closed school discharges. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent. As a result there would be an estimated 18 applications under the proposed regulation for a total increase in burden of 2 hours (18 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 15 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845-0015.

During the 2011 calendar year, 163 FFEL borrowers received closed school loan discharges. We estimate that 230 FFEL borrowers submitted applications for discharge. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for

students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent. As a result there would be 276 applications under the proposed regulation for a total increase in burden of 23 hours (276 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 230 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845-0015.

During the 2011 calendar year, 128 Direct Loan borrowers received closed school loan discharges. We estimate that 295 Direct Loan borrowers submitted applications for discharge. We estimate that the average burden per response is 0.5 hours (30 minutes) for each loan discharge application and that by expanding the period from 90 days to 120 days prior to school closure for students who had withdrawn to apply for a closed school loan discharge would increase the number of applicants by 20 percent, thus totaling 354 applications under the proposed regulation for a total increase in burden of 29 hours (354 borrowers applying for loan discharge multiplied by 0.5 hours per application minus 295 borrowers applying for loan discharge under current regulations multiplied by 0.5 hours per application) under OMB Control Number 1845-0015.

Collectively, the total increase in burden is 54 hours under OMB Control Number 1845-0015.

Sections 674.19, 682.610, and 685.309—School Enrollment Status Reporting Requirements

For the Federal Perkins Loan program, the proposed regulations would add a new § 674.19(f) with the heading “enrollment reporting process.” Proposed § 674.19(f)(1) would provide that, upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary in the manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Proposed § 674.19(f)(2) would provide that, unless it expects to submit its subsequent updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after: (1) The date the school discovers that a loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis, or has failed to enroll on at least a half-time basis for the period for which the loan was

intended; or (2) the date the school discovers that a student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address. Because the Secretary already receives enrollment information on Federal Perkins Loan borrowers who also have a FFEL loan or a Direct Loan, the additional burden associated with sending enrollment reports to institutions for the Federal Perkins Loan program is only associated with those Federal Perkins Loan borrowers whose only loan received under title IV of the HEA is a Federal Perkins Loan and who are enrolled on at least a half-time basis or who had recently changed enrollment status.

In the 2011 calendar year, there were 2,070,514 Federal Perkins Loan borrowers. Of the 2,070,514 Federal Perkins Loan borrowers, 240,959 borrowers have a Federal Perkins Loan as the only loan received under title IV of the HEA. Of the 240,959 borrowers, 53 percent (127,708 borrowers) were enrolled at least half-time or had recently changed enrollment status. The Secretary will be sending enrollment reports to each of the institutions approximately every 60 days or 6 reports per year. We estimate that on average the completion and submission of an enrollment report would take 0.05 hours (3 minutes) per borrower. Burden would increase by 38,312 hours (127,708 borrowers multiplied by 0.05 hours per borrower multiplied by 6 reports per year) under OMB Control Number 1845-0019.

For the 2011 calendar year 51 percent of the Federal Perkins loan borrowers or 65,131 affected borrowers were at public institutions, therefore we estimate that burden would increase for public institutions by 19,539 hours (38,312 hours multiplied by 0.51) under OMB 1845-0019.

For the 2011 calendar year 45 percent of the Federal Perkins loan borrowers or 57,469 affected borrowers were at private not-for-profit institutions, therefore we estimate that burden would increase for private not-for-profit institutions by 17,240 hours (38,312 hours multiplied by 0.45) under OMB 1845-0019.

For the 2011 calendar year 4 percent of the Federal Perkins loan borrowers or 5,108 affected borrowers were at proprietary institutions, therefore we estimate that burden would increase for proprietary institutions by 1,533 hours (38,312 hours multiplied by 0.04) under OMB 1845-0019.

Collectively, the proposed regulatory changes to § 674.19 would increase burden by 38,312 hours for 127,708

affected borrowers under OMB 1845–0019.

For the FFEL Program, the proposed regulations would replace the term “student status confirmation reports” in § 682.610(c) with the term “enrollment reporting process,” and would revise § 682.610(c)(1) to provide that upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary in the manner and format prescribed by the Secretary and within the timeframe specified by the Secretary. Institutions currently participating in the FFEL or Direct Loan programs would continue to report enrollment to the Secretary and the lender. Because the only change regarding the FFEL Program reporting is in the definition of the reporting requirement, there is no change in burden for institutions participating in the FFEL and Direct Loan programs.

Section 674.34—Deferment of Repayment—Federal Perkins Loans

The proposed regulations in § 674.34(f)(1) would require schools that participate in the Perkins Loan Program to use the same eligibility criteria to define an eligible graduate fellowship program and to establish the eligibility of a borrower for a graduate fellowship deferment that lenders and the Department use in the FFEL and Direct Loan programs, respectively. The proposed regulations would require that a borrower provide the institution with a statement from an authorized official of the borrower’s graduate fellowship program certifying: (1) That the borrower holds at least a bachelor’s degree; and (2) the borrower’s anticipated completion date of the program. In calendar year 2011 there were 1,104 Perkins borrowers who applied for a graduate fellowship deferment. We estimate that on average it would take the borrower 0.25 hours (15 minutes) to obtain the certification from an authorized official of the graduate fellowship program and to complete and submit the Perkins loan deferment form multiplied by an estimated 1,104 deferment applications equals 276 hours of increased burden to borrowers under OMB Control Number 1845–0019.

For the 2011 calendar year 51 percent of the Federal Perkins Loan borrowers or 563 affected borrowers were at public institutions, therefore we estimate that burden would increase for authorizing officials at public institutions by 141 hours (1,104 applications multiplied by 0.51 multiplied by 0.25 hours per certification) under OMB 1845–0019.

For the 2011 calendar year 45 percent of the Federal Perkins Loan borrowers or 497 affected borrowers were at private not-for-profit institutions, therefore we estimate that burden would increase authorizing officials at for private not-for-profit institutions by 124 hours (1,104 applications multiplied by 0.45 multiplied by 0.25 hours per certification) under OMB 1845–0019.

For the 2011 calendar year 4 percent of the Federal Perkins Loan borrowers or 44 affected borrowers were at proprietary institutions, therefore we estimate that burden would increase for private not-for-profit institutions by 11 hours (1,104 applications multiplied by 0.04 multiplied by 0.25 hours per certification) under OMB 1845–0019.

Collectively, the proposed regulatory changes to § 674.34 would increase burden by 552 hours under OMB 1845–0019.

Section 682.410(b)(9)(i)(T)(2)—Administrative Wage Garnishment (AWG)—Use of Third-Party Contractors

The proposed regulations would also add a new § 682.410(b)(9)(i)(T) to the regulations, which specifies the functions that may be performed by a third-party servicer or collection contractor employed by the guaranty agency for services needed in the AWG process. The proposed regulations would make clear that the guaranty agency may not delegate to any third party the decision to order withholding of an individual borrower’s wages, and must create and retain records to demonstrate that each order issued has been individually authorized by an appropriate official of the guaranty agency. The proposed regulations would also specify the manner by which a withholding order may be sent to employers and the permissible activities that may be performed by a third-party servicer or collection contractor employed by the guaranty agency with respect to withholding orders. Only an authorized official of the guaranty agency may determine that an individual withholding order is to be issued. The guarantor must record the official’s determination for each order it issues by either including the official’s signature on the order, or, by retaining in the agency’s records, the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued and the debt for which the order was issued.

In calendar year 2011, we estimate there were 84,293 FFEL Program borrowers whose loans were held by state guaranty agencies and for which

the guaranty agency had initiated AWG. We estimate that on average the guaranty agency would take 0.25 hours (15 minutes) to meet the recordkeeping requirements specified above. Total burden hours would increase by 21,073 hours (84,293 multiplied by 0.25 hours) under OMB 1845–0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans were held by not-for-profit guaranty agencies and for which the guaranty agency had initiated AWG. We estimate that on average the guaranty agency would take 0.25 hours (15 minutes) to meet the recordkeeping requirements specified above. Total burden hours would increase by 39,978 hours (159,912 multiplied by 0.25 hours) under OMB 1845–0020.

The proposed changes in § 682.410(b)(9)(i)(T)(2) would increase burden by 61,051 hours under OMB Control Number 1845–0020.

Section 682.410(b)(9)(i)(H) Administrative Wage Garnishment (AWG)—Borrower Hearing Requests

The proposed regulations would also replace § 682.410(b)(9)(i)(L) of the FFEL Program regulations with § 682.410(b)(9)(i)(H) to provide that if a borrower’s written request for a hearing is received by the guaranty agency after the 30th day following the date of the garnishment notice and a decision is not rendered within 60 days following receipt of the borrower’s written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

If a borrower does not request a hearing within the 30-day time limit, the guaranty agency must go forward with the AWG. However, if a borrower does eventually request a hearing, a guaranty agency would still be required to provide one in sufficient time to have a decision issued within 60 days of the request. The Department added a provision specifying that if this hearing is not provided and a decision issued within 60 days, then the agency must suspend the AWG order beginning on the 61st day until a decision is issued.

In calendar year 2011, we estimate there were 84,293 FFEL borrowers whose loans were held by state guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (8,429) would request a hearing and that in 10 percent of those cases (843) a decision would not be rendered until after 60 days following the receipt of the borrower’s request. On average, we estimate that it would take one hour (60

minutes) to suspend an administrative wage garnishment order. The total increase in burden would be 843 hours (843 FFEL borrowers undergoing AWG who requested a hearing where a decision was not rendered until after 60 days following the receipt of the borrower's request multiplied by one hour per suspension) under OMB 1845-0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans were held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (15,991) would request a hearing and that in 10 percent of those cases (1,599) a decision would not be rendered until after 60 days following the receipt of the borrower's request. On average, we estimate that it would take one hour (60 minutes) to suspend an administrative wage garnishment order. The total increase in burden would be 1,599 hours (1,599 FFEL borrowers undergoing AWG who requested a hearing where a decision was not rendered until after 60 days following the receipt of the borrower's request multiplied by one hour per suspension) under OMB 1845-0020.

Collectively, the proposed changes in § 682.410(b)(9)(i)(H) would increase burden by 2,442 hours in OMB Control Number 1845-0020.

**Section 682.410(b)(9)(i)(J)—
Administrative Wage Garnishment
(AWG)—Hearing Administration**

The proposed regulations would add new paragraph (b)(9)(i)(J) and would provide for the manner by which the hearing is administered and certain provisions relating to bringing forth additional evidence and continuances. Specifically, the proposed regulations would require that the hearing be conducted as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and require maintenance of a summary record of the hearing. The proposed regulations would also allow the borrower to request a continuance to submit additional evidence.

In calendar year 2011, we estimate there were 84,293 FFEL borrowers whose loans were held by state guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (8,429) would request a hearing. We estimate that on average each summary record would take 1 hour (60 minutes). The total burden increase for this recordkeeping would be 8,429 hours (8,429 hearings multiplied by one

hour per hearing) under OMB 1845-0020.

In calendar year 2011, we estimate there were 159,912 FFEL borrowers whose loans were held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. We estimate that 10 percent of these borrowers (15,991) would request a hearing. We estimate that on average each summary record would take one hour (60 minutes). The total burden increase for this recordkeeping would be 15,991 hours (15,991 hearings multiplied by one hour per hearing) under OMB 1845-0020.

Collectively, the proposed changes in § 682.410(b)(9)(i)(J) would increase burden by 24,420 hours in OMB Control Number 1845-0020.

**Section 682.410(b)(9)(i)(Q)—
Administrative Wage Garnishment
(AWG)—Recent Reemployment After
Involuntary Unemployment**

Proposed § 682.410(b)(9)(i)(Q) would clarify that a borrower who wishes to object to AWG on the basis that he or she is not subject to garnishment because of recent reemployment after involuntary separation, bears the burden of raising and proving that claim.

In calendar year 2011, we estimate that there were 84,293 FFEL borrowers whose loans were held by state guaranty agencies and for which the agencies had initiated AWG. Of that number, we estimate that 8 percent (6,743) became unemployed involuntarily. Furthermore, we estimate that a sub-group of those who became unemployed involuntarily, 5 percent (337) gained subsequent reemployment. We estimate that the average amount of time for each borrower subject to AWG in this sub-group to provide documentation that supports their claim to not be subject to AWG due to their recent reemployment to be 0.5 hours. The increased burden to provide documentation that would support the borrower's claim that he not be subject to AWG due to recent reemployment is 169 hours (337 borrowers whose student loans were being collected by AWG, who became unemployed involuntarily, but subsequently gained reemployment multiplied by 0.5 hours per claim) under OMB 1845-0020.

In calendar year 2011, we estimate that there were 159,912 FFEL borrowers whose loans were held by not-for-profit guaranty agencies and for which the agencies had initiated AWG. Of that number, we estimate that 8 percent (12,793) became unemployed involuntarily. Furthermore, we estimate that a sub-group of those who became unemployed involuntarily, 5 percent

(640) gained subsequent reemployment. We estimate that the average amount of time for each borrower subject to AWG in this sub-group to provide documentation that supports their claim to not be subject to AWG due to their recent reemployment to be 0.5 hours. The total amount of increased burden to provide documentation that would support the borrower's claim that he not be subject to AWG due to recent reemployment is 320 hours (640 borrowers whose loans were being collected by AWG, who became employed involuntarily, but subsequently gained reemployment multiplied by 0.5 hours per claim) under OMB 1845-0020.

The proposed changes in § 682.410(b)(9)(i)(Q) would collectively increase burden by 489 hours in OMB Control Number 1845-0020.

Collectively, the proposed changes in all subparagraphs of § 682.410(b)(9) would increase burden by 88,402 hours in OMB Control Number 1845-0020.

**Repeal of Unnecessary FFEL Program
Regulations**

The proposed regulatory language removes provisions from 34 CFR part 682 that are no longer required as a result of the SAFRA Act included in the Health Care and Reconciliation Act of 2010. One of the provisions of the SAFRA Act was the termination, as of July 1, 2010, of the authority for lenders to make new loans under the FFEL program. These proposed regulations would remove the FFEL provisions that are now unnecessary in light of this change and would also make technical and conforming changes. A number of the proposed technical and conforming changes in 34 CFR Part 682 are for clarity, others are due to the elimination of cross-references.

Typically, the results of negotiated rulemaking produce some regulatory changes that correspond to reporting or recordkeeping burden on affected entities such as borrowers, lenders, or guaranty agencies. The primary information collection associated with 34 CFR Part 682 is the currently approved OMB 1845-0020. Unlike other newly proposed regulations where the resultant proposed regulation would either increase or decrease burden as a result of the change in a regulation, this expansive effort to eliminate unneeded regulations includes more wholesale changes being proposed to 34 CFR Part 682. As a result, the entire history of burden associated with OMB 1845-0020 was examined. While the burden assessments for OMB 1845-0020 stretch back over 13 years, the necessary level of detail does not exist to disaggregate

the amount of the currently approved amount of burden in this collection into its corresponding subsections of 34 CFR Part 682.

Therefore, a new methodology to calculate burden is required. We are able to establish that there are 38 subsections of 34 CFR Part 682 that have burden under OMB 1845–0020. We propose to divide the total of the currently approved burden hours of 12,352,197 hours by the 38 affected subsections which on average yields 325,058 hours per affected subsection.

Each of the proposed subsections listed below will use this number of burden hours as a starting point. The proposed changes as provided below explain the burden impact.

The specific number of respondents from the affected entities is similarly unavailable, so we have established a percentage based on the number of borrowers per loan type to distribute the number of respondents across the affected entities.

Section 682.102—Repaying a Loan

The proposed regulations would amend the section heading, remove § 682.102(a) through (d), which describe the application process for Stafford, PLUS, and Consolidation loans, and redesignate the paragraphs in current § 682.102(e), which describes the loan repayment process, as § 682.102(a)–(g).

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.200—Definitions—Lender

The proposed regulations would remove the provisions of current § 682.601(a)(3), (a)(5), and (a)(7), and place these provisions into paragraph (8) of the definition of “Lender” in § 682.200(b).

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.205—Disclosure Requirements for Lenders

The proposed regulations would remove § 682.205(a) (the initial disclosure statement), (b) (statement of borrower rights and responsibilities), (g) (plain language disclosure), and (i) (separate disclosure for Consolidation loans) from the FFEL Program regulations and renumber the remaining provisions. The remaining provisions include providing repayment information, providing required disclosures during the repayment period, and providing required

disclosures for borrowers having difficulty making payments.

The proposed changes would decrease the required burden by 162,529 hours, and therefore the current burden hours would decrease from 325,058 hours to 162,529 hours under OMB Control Number 1845–0020.

Section 682.206—Due Diligence in Making a Loan

The proposed regulations would remove § 682.206 from the FFEL regulations. The SAFRA Act eliminated the authority to make new FFEL Program loans, including FFEL Consolidation loans. As a result, the requirements governing the making of new FFEL Program loans are no longer needed and the previous burden associated with the making of a loan by a lender would be removed.

The proposed change would remove all of the prior assessment of 325,058 hours of burden associated under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.208—Due Diligence in Servicing a Loan

The proposed regulations would replace the term “national credit bureau(s)” with “nationwide consumer reporting agency(ies)” to more accurately reflect the reporting requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.209—Repayment of a Loan

The proposed regulations would amend § 682.209(a)(3)(i) by adding a new paragraph that specifies that borrowers with fixed interest rates on their Stafford loans enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current § 682.209(e) through (g) and (j) from the regulations and redesignate the remaining paragraphs as paragraphs (e)–(g). Redesignated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the IBR plan may make a scheduled monthly payment of less than the interest that accrues on the loan.

The proposed changes would decrease the burden by 65,012 hours, and therefore the current burden assessment would decrease from 325,058 to 260,046 hours under OMB Control Number 1845–0020.

Section 682.210—Deferment

The proposed regulations would amend § 682.210(a)(4) of the regulations to provide that a borrower’s representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language in paragraphs (b)(1) through (6) of § 682.210 would be revised to identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria that are applicable to deferments available to these borrowers. The proposed regulations also amend § 682.210(s)(2) by removing the exception clause at the end of the provision, and amend § 682.210(u)(5) by replacing the words “military active” with “post-active”.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.211—Forbearance

Substantive changes in this section have been identified earlier which added 9,446 hours of burden to OMB Control Number 1845–0020. There were no further changes to this section that would alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Collectively, the proposed changes would increase the burden assessment from 325,058 by 9,446 hours (as identified earlier) for a total of 334,504 hours under OMB Control Number 1845–0020.

Section 682.212—Prohibited Transactions

There is no change to the current language in this section of the regulations, however the current burden referenced in OMB Control Number 1845–0020 is incorrectly calculated.

This section primarily defines “prohibited transactions,” but does not impose recordkeeping or reporting requirements upon entities and thus does not impose burden. Therefore, these proposed regulations remove the 325,058 hours of burden that was previously incorrectly attributed to this section of the regulations. While subsection 34 CFR 682.212(h) provides that an institution, at its option, may make available a list of recommended or suggested lenders, the burden associated with that reporting is accounted for in §§ 601.10 and 668.14.

We propose removal of the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.214—Compliance With Equal Credit Opportunity Requirements

The proposed regulations would remove § 682.214 from the FFEL regulations. The SAFRA Act ended the making of new FFEL loans and therefore these requirements can be eliminated from the FFEL regulations.

The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours.

Section 682.216—Teacher Loan Forgiveness Program

The proposed regulations provide for minor language changes.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.301—Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans

The proposed regulations would remove § 682.301(c) from the regulations. The SAFRA Act ended the making of new FFEL Program loans and this provision related to determining borrower eligibility for the interest subsidy on new loans would be eliminated.

The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours under this section.

Section 682.305—Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization originating FFEL Program loans as a lender must submit an independent compliance audit to the Department each year. The proposed regulations would remove the reference to FFEL lenders originating loans. The proposed regulations would also remove the language specifying that a school and lender serving as a trustee for a school must submit an independent compliance audit to the Department each year.

The number of school lenders or lenders serving as a trustee on behalf of a school or a school affiliated organization whose purpose is to originate loans for which the proposed regulations would provide relief is so

small as to not be substantive. As a result, these proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.401—Basic Program Agreement

The proposed regulations would remove from § 682.401 language that addresses new loan originations, the process supporting loan origination, and a guaranty agency's efforts to secure new loan volume. These provisions can be eliminated from the FFEL Program regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs would be undertaken by the Department under 34 CFR part 668, subpart G. Therefore, § 682.401(b)(6) can also be eliminated from the FFEL Program regulations.

The proposed changes would decrease the burden related to FFEL processes by 32,506 hours, and therefore the current burden hours would decrease from 325,058 hours by 32,506 hours to 292,552 hours under OMB Control Number 1845–0020.

Section 682.402—Death, Disability, Closed School, False Certification, Unpaid Refunds, and Bankruptcy Payments

Substantive changes in this section have been identified earlier under OMB 1845–0015. There were no further changes to this section that impacted the burden under OMB 1845–0020.

As a result, the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020 would not be altered.

Section 682.404—Federal Reinsurance Agreement

The proposed regulations would make conforming language changes required due to the elimination of previous cross-references or obsolete requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.405—Loan Rehabilitation Agreement

Substantive changes in this section have been identified earlier. There were no further changes to this section.

The substantive changes would be in addition to the previous burden assessment of 325,058 hours under OMB Control Number 1845–0020 and the earlier assessment increases burden by 135,359 hours in OMB 1845–0020 for a total burden of 460,417 hours.

Section 682.406—Conditions for Claim Payments From the Federal Fund and for Reinsurance Coverage

The proposed regulations would make a minor wording change due to the elimination of previous cross-references and add an ending date coinciding with the implementation of the SAFRA Act, which ended the making of new FFEL Program loans.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.409—Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations would make no changes to this section of the regulations.

These proposed regulations would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.410—Fiscal, Administrative, and Enforcement Requirements

Apart from the earlier discussion of the changes made to the administrative wage garnishment provisions in this section of the regulations, the proposed regulations would only make minor wording changes to correct cross-references and delete obsolete references.

Substantive changes in this section have been identified earlier. There are no further changes to this section. These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020 and the earlier assessment that increased burden by 88,402 hours in OMB 1845–0020 for a total of 413,460 hours.

Section 682.411—Lender Due Diligence in Collecting Guaranty Agency Loans

The proposed regulations would make a minor wording change.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.412—Consequences of the Failure of a Borrower or Student To Establish Eligibility

The proposed regulations would make a minor wording change.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.414—Records, Reports, and Inspection Requirements for Guaranty Agency Programs

The proposed regulations would make minor wording changes. One of the minor wording changes would eliminate a reporting category from annual guaranty agency reporting requirement. Under proposed § 682.414, annually, for each State in which it operates, a guaranty agency report of the total guaranteed loan volume, default volume, and default rate does not have to be categorized by schools for all loans guaranteed after December 31, 1980. We estimate that this reduction in reporting categories would decrease the previous burden assessment by 16,253 hours, and therefore the current burden of 325,058 would decrease to 308,805 hours under OMB Control Number 1845–0020.

Section 682.417—Determination of Federal Funds or Assets To Be Returned

The proposed regulations make no changes to this section of the regulations. These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.418—Prohibited Uses of the Assets of the Operating Fund During Periods in Which the Operating Fund Contains Transferred Funds Owed to the Federal Fund

The proposed regulations would remove § 682.418 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would be decreased by 325,058 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.421—Funds Transferred From the Federal Fund to the Operating Fund by a Guaranty Agency

The proposed regulations would remove § 682.421 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours

based on the elimination of the prior FFEL requirements.

Section 682.507—Due Diligence in Collecting a Loan

Section 682.508—Assignment of a Loan

Section 682.511—Procedures for Filing a Claim

Section 682.515—Records, Reports, and Inspection Requirements for Federal GSL Program Lenders

The proposed regulations would remove all of the regulations under Part 682, subpart E (§§ 682.500 through 682.515) and reserve the subpart. The proposed regulations would also remove FISL-related Appendix C to part 682 from the regulations.

The proposed change would remove the prior burden assessment of 1,300,232 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for each of these four sections and decrease burden by 1,300,232 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.602—Rules for a School or School-Affiliated Organization That Makes or Originates Loans Through an Eligible Lender Trustee

The proposed regulations would remove § 682.602 from the FFEL regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, and therefore burden would decrease by 325,058 hours for a total of 0 hours based on the elimination of the prior FFEL requirements.

Section 682.603—Certification by a School That Participated in Connection With a Loan Application

The proposed regulations would make conforming language changes required due to the elimination of a cross-reference and reorganization due to a deletion of previous requirements.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.604—Processing the Borrower's Loan Proceeds and Counseling Borrowers (Required Exit Counseling for Borrowers)

The proposed regulations would change the heading of § 682.604, remove current paragraph (a), remove and reserve paragraph (b), and remove paragraphs (c) through (f) and (h). The proposed regulations would also redesignate current paragraph (g) as

paragraph (a). Newly redesignated § 682.604(a)(1) would be amended to include another option for providing exit counseling to a student borrower who withdraws without the school's knowledge or fails to complete required exit counseling. In addition to the existing options described under "Current Regulations," a school could also send written counseling materials to an email address provided by the student borrower. Newly redesignated § 682.604(a)(2) would be amended by replacing cross-references to current paragraph (a), which we are proposing to remove, with the substantive information contained in the cross-referenced provision that must be included in the counseling. A new paragraph (a)(5) would also be added to newly redesignated § 682.604(a) to clarify that: (1) A school's compliance with the Direct Loan Program exit counseling requirements in 34 CFR 685.304(b) satisfies the FFEL exit counseling requirements for student borrowers who received both FFEL and Direct Loan program loans for attendance at the school if the school provides the information required by § 682.604(a)(2)(i) and (a)(2)(ii); and (2) a student's completion of interactive exit counseling offered by the Secretary meets both the FFEL exit counseling requirements and the Direct Loan exit counseling requirements in 34 CFR 685.304(b).

The proposed changes would decrease the previous burden assessment of 325,058 hours by 211,288 hours, and therefore the current burden of 325,058 hours would decrease to 113,770 hours under OMB Control Number 1845–0020 because the burden associated with new FFEL Program loans would be eliminated.

Section 682.605—Determining the Date of a Student's Withdrawal

The proposed regulations would not make any changes to this section. These proposed regulations would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.610—Administrative and Fiscal Requirements for Schools That Participated

Apart from the earlier discussion of the changes made to this section, the proposed regulations would only make minor wording changes.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.711—Reinstatement After Termination

The proposed regulations would remove the language regarding the loss of a school lender’s participation upon the loss of the school’s eligibility to participate in the Title IV, Federal student financial aid programs.

These proposed changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.712—Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against Lenders

The proposed regulations would remove a cross-reference to a section proposed for deletion. These proposed

changes would not alter the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020.

Section 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guaranty Agencies Against a School

The proposed regulations would remove § 682.713 from the FFEL Program regulations. The proposed change would remove the prior burden assessment of 325,058 hours under OMB Control Number 1845–0020, therefore burden would decrease by 325,058 hours for a total of 0 hours based upon the elimination of the prior FFEL requirements.

Consistent with the discussion above, the following chart describes the

sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act, and the estimated costs associated with the information collections. The monetized net savings from of the reduced burden on lender/guaranty agencies, institutions, and borrowers using wage data developed using BLS data, available at <http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf>, is –\$86,625,970 as shown in the chart below. This cost was based on an hourly rate of \$24.61.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§682.211 Forbearance	These proposed regulations amend the current FFEL regulations to authorize a lender to grant forbearance to a borrower who is in default on a loan, but prior to a default claim payment based on the borrower’s oral request. The lender must orally review with the borrower the terms and conditions of the forbearance and send a notice confirming the terms within 30 days of the oral agreement.	OMB 1845–0020 The Department estimates that the burden would increase by 9,446 hours.	\$232,466.
§685.205 ;Forbearance	These proposed regulations amend the current Direct Loan regulations to authorize the Secretary to grant forbearance to a borrower who is in default on a loan, but prior to a default claim payment based on the borrower’s oral request. The Secretary must orally review with the borrower the terms and conditions of the forbearance and send a notice confirming the terms within 30 days of the oral agreement.	OMB 1845–NEW2 The Department estimates that the burden would decrease by 472 hours.	– 11,616.
§§ 682.405 and 685.211 Reasonable and affordable rehabilitation payments form.	This is the form that the new regulations require to be used by the Secretary and a guaranty agency to determine a borrower’s request for a reasonable and affordable monthly rehabilitation payment of a defaulted loan.	OMB 1845–NEW1 This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on the proposed form. The Department estimates that the burden would increase by 588,044 hours.	14,471,763.
§ 682.405(b) Loan rehabilitation agreement.	The proposed regulations would require the guaranty agency to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and if requested, supporting documentation.	OMB 1845–0020 The Department estimates that the burden would increase by 135,359 hours.	3,331,185.
§ 685.211(f) Loan rehabilitation agreement.	The proposed regulations would require the Secretary to base determinations of reasonable and affordable rehabilitation payment amounts of defaulted loans on information provided on an OMB-approved form, and if requested, supporting documentation.	OMB 1845–NEW2 The Department estimates that the burden would increase by 8,637 hours.	212,557.
§§§ 674.33, 682.402, 685.214 Closed school discharge form.	The proposed regulations would extend the current 90-day window to 120-days for students who leave before a school closes may apply for a discharge of a title IV, HEA loan.	OMB 1845–0015 The Department estimates that the burden would increase by 54 hours.	1,329.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 674.19 School enrollment status reporting.	The proposed regulations would add a new section requiring institutions that participate in the Federal Perkins Loan program to, upon receipt of an enrollment report from the Secretary, update all information included in the report and return it to the Secretary in the manner and format and within the timeframe prescribed by the Secretary.	OMB 1845-0019 The Department estimates that the burden would increase by 38,312 hours.	942,858.
§ 674.34 Deferment of repayment—Federal Perkins Loans.	The proposed regulations would require schools that participate in the Perkins Loan Program to use the same eligibility criteria that FFEL lenders and the Department use to define an eligible graduate fellowship program and to establish the eligibility of a Perkins Loan borrower for a graduate fellowship deferment.	OMB 1845-0019 The Department estimates that the burden would increase by 276 hours.	13,585.
§ 682.410 Fiscal, administrative and enforcement requirements.	The proposed regulations would add a new section to specify the functions that may be performed by a third-party servicer or collection contractor employed by a guaranty agency (GA) for administrative wage garnishment (AWG) purposes; replace a section of the regulations with a new section to provide that if a borrower's written request for a hearing is received by the GA after the 30th day following the date of the garnishment notice and a decision is not rendered within 60 days following receipt of a borrower's written request the GA must suspend the AWG order beginning on the 61st day after the request was received until the hearing is provided and a decision rendered; provide for the manner by which the hearing is administered and certain provisions relating to bringing forth additional evidence and continuances; clarify that a borrower who wishes to object that they are not subject to garnishment because of recent reemployment after involuntary separation bears the burden of raising and proving the claim.	OMB 1845-0020 The Department estimates that the burden would increase by 88,402 hours.	2,175,573.
§ 682.102 Obtaining and repaying a loan.	The proposed regulations would amend the section heading, remove the section of the regulations that describes the application process for FFEL loans, and re-designates the paragraphs describing the loan repayment process.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.200 Definitions—Lender.	The proposed regulations make a conforming change to the definition of "Lender" due to the elimination of § 682.601.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.205 Disclosure Requirements for Lenders.	Removes regulations governing required lender disclosures to borrowers that are provided when new loans are made. The remaining provisions include providing repayment information, providing required disclosures during the repayment period, and providing required disclosures for borrowers having difficulty making payments.	OMB 1845-0020 The Department estimates that the burden would decrease by 162,529 hours to 162,529 hours.	- 3,999,839.
§ 682.206 Due Diligence in making a loan.	The proposed regulations would remove § 682.206 from the FFEL regulations. The SAFRA Act eliminated the authority to make new FFEL Program loans, including FFEL consolidation loans.	OMB 1845-0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	- 7,999,677.
§ 682.208 Due diligence in servicing a loan.	The proposed regulations would replace the term "national credit bureau(s)" with "nationwide consumer reporting agency(ies)" to more accurately reflect the appropriate legal terms.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.209 Repayment of a loan.	The proposed regulations would amend § 682.209(a)(3)(i) by adding a new paragraph which specifies that borrowers with fixed interest rates on their Stafford loans enter repayment on those loans the day after six months following the date the borrower was no longer enrolled on at least a half-time basis. The proposed regulations would remove current §§ 682.209(e)–(g) and (j) from the regulations and re-designate the remaining paragraphs as paragraphs (e)–(g). Re-designated § 682.209(e) (current paragraph (h)) would be amended to specify that a FFEL Consolidation loan borrower repaying under the income-based repayment plan may make a scheduled monthly payment of less than the interest that accrues on the loan.	OMB 1845–0020 The Department estimates that the burden would decrease from 325,058 by 65,012 hours to 260,046 hours.	– 1,599,945.
§ 682.210 Deferment ...	The proposed regulations would amend the deferment regulations to provide that a borrower’s representative may request a military service deferment on behalf of the borrower. In § 682.210(b), the introductory language would be revised to identify the cohort of borrowers to which each paragraph applies. Throughout § 682.210(b) cross-references would be added to the eligibility criteria that are applicable to deferments available to these borrowers. The proposed regulations would remove the exception clause at the end of the provision, and by replacing the words “military active” with the word “post-active”.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.211 Forbearance	Substantive changes in this section have been identified earlier. The additional proposed amendments to the regulations would allow a lender to grant forbearance to a borrower who is delinquent at the beginning of a period of non-mandatory authorized forbearance.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours. (NOTE: Other earlier proposed changes increased burden by 9,446 hours for a total of 334,504 hours.)	No change.
§ 682.212 Prohibited transactions.	There is no change to the current language in this section of the regulations however the current burden referenced in OMB Control Number 1845–0020 is incorrect.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.214 Compliance with equal credit opportunity requirements.	The proposed regulations would remove § 682.214 from the FFEL regulations. The SAFRA Act ended the making of new FFEL loans and therefore these requirements can be eliminated from the FFEL regulations.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.216 Teacher loan forgiveness program.	The proposed regulations provide for minor language changes.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation Loans.	The proposed regulations would remove § 682.301(c) from the regulations. The SAFRA Act ended the making of new FFEL loans and this provision related to determining borrower eligibility for the interest subsidy on new loans would be eliminated.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.	Section 682.305(c)(1)(ii) specifies that, regardless of the dollar volume of loans originated or held, a school lender or an eligible lender serving as trustee for a school or school-affiliated organization originating FFEL loans as a lender must submit an independent compliance audit to the Department each year. The proposed regulations would remove the reference to FFEL lenders originating loans.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.401 Basic Program Agreement.	The proposed regulations would remove from § 682.401 language addressing new loan originations, the process for loan origination, and a guaranty agency's efforts to secure new loan volume. These provisions can be eliminated from the FFEL regulations because no new FFEL loans are being made. The remaining provisions proposed for elimination relate to school eligibility to participate in a guaranty agency's program and the authority of an agency to limit, suspend, or terminate a school from its program. For purposes of new loans, schools now participate only in the Direct Loan Program. Any future actions to limit, suspend, or terminate a school's participation in the student loan programs will be undertaken by the Department under 34 CFR part 668, subpart G.	OMB 1845-0020 The Department estimates that the burden of 325,058 hours would decrease by 32,506 to 292,552 hours.	- 799,973.
§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.	Substantive changes in this section have been identified earlier. There were no further changes to this section.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.404 Federal reinsurance agreement.	The proposed regulations would make conforming language changes required due to the elimination of previous cross references or obsolete requirements.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.405 Loan rehabilitation agreement.	Substantive changes in this section have been identified earlier. There were no further changes to this section.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.	The proposed regulations would make a minor wording change due to the elimination of previous cross-references and add an ending date coinciding with the implementation of the SAFRA Act, which ended the making of new FFEL loans.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.	The proposed regulations make no changes to this section of the regulations.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.410 Fiscal, administrative, and enforcement requirements.	Apart from the earlier discussion of the changes made to the administrative wage garnishment provisions of this section of the regulations, the proposed regulations would only make minor wording changes to conform to cross reference changes and delete obsolete references.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours. (NOTE: Other earlier proposed changes to the Administrative Wage Garnishment regulations increase burden by 88,402 hours for a total of 413,460 hours.)	No change.
§ 682.411 Lender due diligence in collecting guaranty agency loans.	The proposed regulations would make a minor wording change.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.	The proposed regulations would make a minor wording change.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.	The proposed regulations would make a minor wording change.	OMB 1845-0020 The Department estimates that the burden would decrease from 325,058 hours by 16,253 hours for a total of 308,805 hours.	- 399,986.
§ 682.417 Determination of Federal funds or assets to be returned.	The proposed regulations would make a minor wording change.	OMB 1845-0020 The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.	The proposed regulations would remove § 682.418 from the FFEL regulations.	The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.	The proposed regulations would remove § 682.421 from the FFEL regulations.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.507 Due diligence in collecting a loan.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.508 Assignment of a loan.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.511 Procedures for filing a claim.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.	The proposed regulations would remove all of the regulations under subpart E (§§ 682.500 through 682.515) and reserve the subpart.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.	The proposed regulations would remove § 682.602 from the FFEL regulations.	OMB 1845–0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	– 7,999,677.
§ 682.603 Certification by a school that participated in connection with a loan application.	The proposed regulations would make conforming language changes required due to the elimination of a cross reference and reorganization due to a deletion of previous requirements.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.604 Processing the borrower’s loan proceeds and counseling borrowers (Required exit counseling for borrowers).	The proposed regulations would remove, reserve, and redesignate paragraphs to illustrate the counseling requirements, specifically the exit counseling requirements.	OMB 1845–0020 The Department estimates that the burden would decrease from 325,058 by 211,288 hours for a total of 113,770 hours.	– 5,199,798.
§ 682.605 Determining the date of a student’s withdrawal.	The Secretary is not proposing to change the language in this section.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.610 Administrative and fiscal requirements for schools that participated.	The proposed regulations would only make minor wording changes.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.711 Reinstatement after termination.	The proposed regulations remove the language regarding the loss of a school lender’s participation upon the loss of the school’s eligibility to participate in the Title IV, Federal student financial assistance programs.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.
§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guaranty agencies against lenders.	The proposed regulations would remove a cross-reference to a section proposed for deletion.	OMB 1845–0020 The Department estimates that the burden would remain 325,058 hours.	No change.

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guaranty agencies against a school.	The proposed regulations would remove § 682.713 from the FFEL regulations.	OMB 1845-0020 The Department estimates that the burden would decrease by 325,058 hours to 0 hours of burden.	- 7,999,677.

The total burden hours and change in burden hours associated with each OMB Control number affected by these proposed regulations follows:

Control number	Total proposed burden hours	Proposed change in burden hours
1845-0015	14,828	+54
1845-0019	6,247,152	+38,864
1845-0020	8,197,127	- 4,155,077
1845-NEW1	588,044	+588,044
1845-NEW2	8,165	+8,165
Total	15,055,316	- 3,519,950

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 668, 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 27, 2013.
Arne Duncan,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations chapter VI as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070(g), 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

§ 668.204 [Amended]

■ 2. Section 668.204(c)(1)(i) is amended by removing the figure “0.06015” and adding, in its place, the figure “0.0832”.

§ 668.214 [Amended]

■ 3. Section 668.214 is amended by:
■ A. In paragraph (a)(1), removing the figure “0.06015” and adding, in its place, the figure “0.0832”.
■ B. In paragraph (d)(2), removing the words “0.06015 or 0.0625” and adding, in their place, the words “0.0832 or 0.0625, as applicable”.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 4. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa-1087hh, unless otherwise noted.

■ 5. Section 674.2(b) is amended by revising the definition of “Satisfactory repayment arrangement” to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement:
(1) For purposes of regaining eligibility for grant, loan, or work assistance under

title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six on-time, consecutive, voluntary, full monthly payments on a defaulted loan. "On-time" means a payment made within 20 days of the scheduled due date. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

* * * * *

- 6. Section 674.9 is amended by:
- A. In paragraph (j)(1), removing the word "those".
- B. Redesignating paragraph (k) as paragraph (l).
- C. Adding a new paragraph (k).

The addition reads as follows:

§ 674.9 Student eligibility.

* * * * *

(k) In the case of a borrower who is in default on an FFEL Program or a Direct Loan Program loan, makes satisfactory repayment arrangements as defined in 34 CFR 682.200(b) or 685.102(b) on the defaulted loan, as determined by the loan holder; and

* * * * *

■ 7. Section 674.19 is amended by adding a new paragraph (f) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(f) Enrollment reporting process. (1) Upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary—

- (i) In the manner and format prescribed by the Secretary; and
- (ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-

time basis for the period for which the loan was intended; or

- (ii) A student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address.

* * * * *

- 8. Section 674.33 is amended by:
- A. Revising paragraph (g)(4)(i)(B).
- B. In paragraph (g)(8)(i), removing the figure "90" and adding, in its place, the figure "120".

The revision reads as follows:

§ 674.33 Repayment.

* * * * *

- (g) * * *
- (4) * * *
- (i) * * *

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to the school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

* * * * *

- 9. Section 674.34 is amended by:
- A. In the introductory text of paragraph (e), removing the reference "(e)(5)" and adding, in its place, the reference "(e)(4)", each time it appears.
- B. Removing paragraph (e)(4).
- C. Redesignating paragraph (e)(5) as paragraph (e)(4).
- D. Removing paragraph (e)(6).
- E. Redesignating paragraphs (e)(7) and (e)(8) as paragraphs (e)(5) and (e)(6), respectively.
- F. In newly redesignated paragraph (e)(5), removing the words "paragraphs (e)(3) and (e)(4)" and adding, in their place, the words "paragraph (e)(3)".
- G. Removing paragraph (e)(9).
- H. Revising paragraph (f) to read as follows:

§ 674.34 Deferral of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(f)(1) To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution with a statement from an

authorized official of the borrower's graduate fellowship program certifying—

- (i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;
- (ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and
- (iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—

- (i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;
- (ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;
- (iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and
- (iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

* * * * *

■ 10. Section 674.39 is amended by revising paragraph (a)(2) to read as follows:

§ 674.39 Loan rehabilitation.

(a) * * *
(2) A loan is rehabilitated if the borrower—

- (i) Requests rehabilitation; and
- (ii) Makes a full monthly payment— as determined by the institution— within 20 days of the due date, each month for 9 consecutive months.

* * * * *

§ 674.50 [Amended]

■ 11. Section 674.50(e)(1) is amended by removing the words "is submitted for assignment under 674.8(d)(3)" and adding, in their place, the words "was made before September 13, 1982".

- 12. Section 674.52 is amended by:
- A. Removing paragraph (b)(2).
- B. Redesignating paragraph (b)(1)(i) as paragraph (b)(1).
- C. Redesignating paragraph (b)(1)(ii) as paragraph (b)(2).
- D. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.
- E. Adding a new paragraph (c).
- F. Adding a new paragraph (g).

The additions read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Break in service.* (1) If the borrower is unable to complete an academic year of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*), the borrower still qualifies for the cancellation if—

(i) The borrower completes one half of the academic year; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary increases, tenure, and retirement.

(2) If the borrower is unable to complete a year of eligible service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA, the borrower still qualifies for the cancellation if the borrower completes at least six consecutive months of eligible service.

* * * * *

(g) *Switching cancellation categories.* A borrower who qualifies for a cancellation under one of the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59 receives cancellation of 15 percent of the original principal for the first and second years of qualifying service, 20 percent of the original principal for the third and fourth years of qualifying service, and 30 percent of the original principal for the fifth year of qualifying service. If, after the first, second, third, or fourth complete year of qualifying service—

(1) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category; or

(2) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.58 or 674.60, the borrower's cancellation rate progression under the new cancellation category begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 13. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

■ 14. Section 682.100 is amended by:
 ■ A. Revising the introductory text of paragraph (a).

■ B. In paragraph (a)(1), removing the word “encourages” and adding, in its place, the word “encouraged”.

■ C. In the first sentence of paragraph (a)(3), removing the word “encourages” and adding, in its place, the word “encouraged”.

■ D. Revising the last sentence of paragraph (a)(3).

■ E. In paragraph (a)(4), removing the word “encourages” and adding, in its place, the word “encouraged”.

■ F. In paragraph (a)(4), adding the words “and prior to July 1, 2010” in the last sentence between the date “November 13, 1997” and the punctuation “.”.

■ G. Revising paragraph (b)(2)(iii).

The revisions read as follows:

§ 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as “the Federal Family Education Loan (FFEL) programs,” in which lenders used their own funds prior to July 1, 2010, to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools.

* * * * *

(3) * * * The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

* * * * *

(b) * * *

(2) * * *

(iii) The Federal GSL programs were authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS (as in effect for periods of enrollment that began prior to July 1, 1994) programs were authorized, under limited circumstances, to operate in States in which a guaranty agency program did not serve all eligible students.

* * * * *

■ 15. Section 682.101 is amended by:
 ■ A. Adding introductory text to this section.

■ B. In paragraph (a), removing the words “may make loans.” and adding, in their place, the words “made loans prior to July 1, 2010.”

■ C. In paragraph (b), removing the words “may participate” and adding, in their place, the word “participated”.

■ D. Revising paragraph (c).

The addition and revision read as follows:

§ 682.101 Participation in the FFEL programs.

The following entities and persons participate in the FFEL programs:

* * * * *

(c) Students who met certain requirements, including enrollment at a participating school, borrowed under the Stafford Loan Program prior to July 1, 2010 and, for periods of enrollment that began prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students borrowed under the PLUS Program prior to July 1, 2010. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, PLUS, or Nursing Student Loan Program loans borrowed under the Consolidation Loan Program prior to July 1, 2010. The PLUS Program also provided for making loans to graduate and professional students on or after July 1, 2006 and prior to July 1, 2010.

* * * * *

■ 16. Section 682.102 is amended by:

■ A. Revising the section heading.

■ B. Removing paragraphs (a), (c), and (d).

■ C. In the introductory text of paragraph (e), removing the paragraph heading.

■ D. Redesignating paragraphs (e)(1) through (e)(7) as paragraphs (a) through (g), respectively.

■ E. In newly redesignated paragraph (a), revising the last sentence.

■ F. In newly redesignated paragraph (b), removing the words “on a Stafford Loan”.

The revisions read as follows:

§ 682.102 Repaying a loan.

(a) * * * The obligation to repay all or a portion of a loan may be forgiven for Stafford Loan borrowers who enter certain areas of the teaching profession.

* * * * *

§ 682.103 [Amended]

■ 17. Section 682.103(c) is amended by removing the letter and the punctuation “E.”.

■ 18. Section 682.200 is amended by:

■ A. In paragraph (a)(1) introductory text, removing the words “subpart A of”.

■ B. In paragraph (a)(1), removing from the list, the terms *Academic Competitiveness Grant (ACG) Program*, *Graduate and professional student, Leveraging Educational Assistance Partnership (LEAP) Program*, *National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program*, *Supplemental Educational Opportunity Grant (SEOG) Program*, and *Supplemental Loans for Students (SLS) Program*.

■ C. In paragraph (a)(1), adding to the list, in alphabetical order, the terms *Federal Supplemental Educational Opportunity Grant (SEOG) Program*, *Federal Supplemental Loans for*

Students (SLS) Program, and Graduate or professional student.

■ D. In paragraph (b), in the definition of Authority, removing the words "making or purchasing" and adding, in their place, the word "purchase".

■ E. In paragraph (b), in the definition of Borrower, removing the word "is" and adding, in its place, the word "was".

■ F. In paragraph (b), in the definition of Estimated financial assistance, in paragraph (1)(vi), removing the words "Academic Competitiveness Grant, National SMART Grant,".

■ G. In paragraph (b), in the definition of Lender, revising paragraphs (5)(i)(A)(10) and 8.

■ H. In paragraph (b), revising the definition of Nationwide consumer reporting agency.

■ I. In paragraph (b), revising the definition of Satisfactory repayment arrangement.

The revisions read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * * Lender

* * * * *

(5) * * *

(i) * * *

(A) * * *

(10) Performance of, or payment to another third party to perform, any school function required under title IV, except that the lender may perform entrance counseling and, as provided in § 682.604(a), exit counseling, and may provide services to participating foreign schools at the direction of the Secretary, as a third-party servicer; and

* * * * *

(8) As of January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization—

(i) Must not—

(A) Make a loan to any undergraduate student;

(B) Make a loan other than a Federal Stafford loan to a graduate or professional student; or

(C) Make a loan to a borrower who is not enrolled at that school;

(ii) Must offer loans that carry an origination fee or an interest rate, or both, that are less than the fee or rate authorized under the provisions of the Act; and

(iii) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as

an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(A) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with § 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A-133, Appendix B, Compliance Supplement) is not audited as a "major program" (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a major program.

(B) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with § 682.305(c)(2)(i) through (iii).

(C) With regard to any school, the audit must include a determination that—

(1) The school used all payments and proceeds (i.e., special allowance and interest payments from borrowers, interest subsidy payments, proceeds from the sale or other disposition of loans) from the loans for need-based grant programs;

(2) Those need-based grants supplemented, rather than supplanted, the institution's use of non-Federal funds for such grants; and

(3) The school used no more than a reasonable portion of payments and proceeds from the loans for direct administrative expenses.

* * * * *

Nationwide consumer reporting agency. A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis and as defined in 15 U.S.C. 1681a(p).

* * * * *

Satisfactory repayment arrangement.

(1) For purposes of regaining eligibility under the title IV student financial assistance programs, the making of six consecutive, on-time, voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. "On-time" means a payment

received by the Secretary or a guaranty agency or its agent within 20 days of the scheduled due date.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again.

* * * * *

§ 682.201 [Amended]

■ 19. Section 682.201 is amended by:

■ A. In paragraph (a) introductory text, removing the words "made under § 682.209(e) or (f)".

■ B. In paragraph (a)(4)(ii) introductory text, adding the words "paragraph (a)(4) of" between the words "of" and "this".

■ C. In paragraph (a)(6) introductory text, removing the word "student" and adding, in its place, the word "borrower".

■ D. In paragraph (c)(2)(i), removing the words "credit bureau" and adding, in their place, the words "consumer reporting agency".

■ 20. Section 682.202 is amended by:

■ A. Revising paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) introductory text.

■ B. In paragraph (a)(1)(vii) introductory text, removing the first occurrence of the word "is" and adding, in its place, the word "was".

■ C. In paragraph (a)(1)(viii) introductory text, removing the first occurrence of the word "is" and adding, in its place, the word "was".

■ D. In paragraph (a)(1)(ix), removing the first occurrence of the word "is" and adding, in its place, the word "was".

■ E. In paragraph (a)(1)(x) introductory text, removing the word "is" and adding, in its place, the word "was".

■ F. Removing paragraphs (a)(1)(x)(D) and (a)(1)(x)(E).

■ G. In paragraph (a)(2)(ii) introductory text, removing the words "loan made under § 682.209(e) or (f)" and adding, in their place, the words "refinanced PLUS loan".

■ H. In paragraph (a)(2)(iv) introductory text, removing the first occurrence of the word "is" and adding, in its place, the word "was".

■ I. In paragraph (a)(2)(v) introductory text, removing the first occurrence of the word "is" and adding, in its place, the word "was".

■ J. In paragraph (a)(3)(ii) introductory text, removing the words "loan made under § 682.209(e) or (f)" and adding, in their place, the words "refinanced SLS loan".

■ K. In paragraph (a)(4)(iv) introductory text, adding the words "and prior to July

1, 2010” after the date “1998” and before the punctuation “;”.

■ L. In paragraph (a)(4)(v), adding the words “and prior to July 1, 2010” after the date “1997” and before the punctuation “;”.

■ M. In paragraph (a)(7)(iii)(A), removing the citation “(a)(6)(ii)” and adding, in its place, the citation “(a)(7)(i)”.

■ N. In paragraph (b)(1), adding the words “or Federal default fees” between the words “premiums” and “to”.

■ O. Removing paragraph (c)(1)(vi).

■ P. Redesignating paragraph (c)(1)(vii) as paragraph (c)(1)(vi)”.

■ Q. In paragraphs (c)(5), (c)(6), and the introductory text of paragraph (c)(7), removing the word “Shall” and adding, in its place, the words “A lender must”.

■ R. In paragraph (c)(7)(iv), removing the words “in accordance with § 682.207(b)(1)(ii)(B) and (C)”.

■ S. In paragraph (d)(2), removing the words “, other than an SLS or PLUS loan refinanced under § 682.209(e) or (f)” and adding, in their place, the words “and prior to July 1, 2010”.

■ T. Removing paragraph (e).

■ U. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g), respectively.

■ V. In newly redesignated paragraph (e)(1), removing the citation “(f)(2)” and adding, in its place, the citation “(e)(2)”.

■ W. In newly redesignated paragraph (f)(1)(i), removing the punctuation and letter “s”.

■ X. In newly redesignated paragraph (f)(2), removing the citation “(g)(1)” and adding, in its place, the citation “(f)(1)”.

The revisions read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(1) * * *

(i) For loans made prior to July 1, 1994, if the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on any FFEL Program loan, and the first disbursement was made—

* * * * *

(iii) For a Stafford loan for which the first disbursement was made before October 1, 1992—

(A) If the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of

principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan was signed, had an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement was made on or after October 1, 1992, but before December 20, 1993, if the borrower, on the date the promissory note evidencing the loan was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(v) For a Stafford loan for which the first disbursement was made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note was signed, had no outstanding balance on a Stafford loan but had an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement was made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that included or began on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

* * * * *

■ 21. Section 682.204 is amended by:

■ A. In paragraph (a) introductory text, removing the words “Federal Direct Stafford/Ford” and adding, in their place, the words “Direct Subsidized”.

■ B. In paragraphs (a)(i) and (a)(1)(ii), removing the words “\$2,625, or, for a loan disbursed on or after July 1, 2007, \$3,500,” and adding, in their place, the figure “\$3,500”.

■ C. Revising paragraph (a)(1)(iii).

■ D. In paragraph (a)(2) introductory text, removing the words “Federal Direct Stafford/Ford” and adding, in their place, the words “Direct Subsidized”.

■ E. In paragraphs (a)(2)(i) and (a)(2)(ii), removing the words “\$3,500, or, for a

loan disbursed on or after July 1, 2007, \$4,500,” and adding, in their place, the figure “\$4,500”.

■ F. In paragraph (a)(3) introductory text, removing the words “Federal Direct Stafford/Ford” and adding, in their place, the words “Direct Subsidized”.

■ G. Revising paragraph (a)(5).

■ H. In paragraph (a)(6) introductory text and paragraph (a)(7), removing the words “Federal Direct Stafford/Ford” and adding, in their place, the words “Direct Subsidized”.

■ I. In paragraph (b) introductory text, removing the words “Federal Direct Stafford/Ford”, and adding, in their place, the words “Direct Subsidized”.

■ J. Revising paragraph (c)(1).

■ K. Revising paragraph (c)(2).

■ L. In paragraph (d) introductory text, removing the word “additional” that appears after the word “borrow”.

■ M. In paragraph (d) introductory text, removing the words “Federal Direct Unsubsidized Stafford/Ford” and adding, in their place, the words “Direct Unsubsidized”.

■ N. In paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(i), and (d)(2)(ii), removing the words “\$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000,” and adding, in their place, the figure “\$6,000”.

■ O. Revising paragraph (d)(1)(iii).

■ P. In paragraphs (d)(3)(i) and (d)(3)(ii), removing the words “\$5,000, or, for a loan first disbursed on or after July 1, 2008, \$7,000,” and adding, in their place, the figure “\$7,000”.

■ Q. In paragraph (d)(5), removing the words “\$10,000, or, for a loan disbursed on or after July 1, 2007,”.

■ R. In paragraph (d)(6)(i), removing the words “\$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000,” and adding, in their place, the figure “\$6,000”.

■ S. In paragraph (d)(6)(ii), removing the words “\$5,000, or, for a loan disbursed on or after July 1, 2007, \$7,000,” and adding, in their place, the figure “\$7,000”.

■ T. In paragraph (d)(6)(iii), removing the words “\$5,000, or, for a loan disbursed on or after July 1, 2007,”.

■ U. Revising paragraph (e).

■ V. Removing paragraph (f).

■ W. Redesignating paragraphs (g) through (m) as paragraphs (f) through (l), respectively.

■ X. In newly redesignated paragraph (l), removing the citation “(d), (e), and (f)” and adding, in its place, the citation “(d), and (e)”.

The revisions read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(1) * * *
(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$3,500 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year
* * * * *

(5) In the case of a graduate or professional student, the total amount the student may borrow for loans made prior to July 1, 2010 for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Direct Subsidized Loan Program, may not exceed \$8,500.

* * * * *

(c) * * *

(1) Except for a dependent undergraduate student who qualifies for additional Unsubsidized Stafford Loan funds because the student's parents are unable to borrow under the PLUS Loan Program, as described in paragraph (d) of this section, the total amount the dependent undergraduate student may borrow for any academic year under the Unsubsidized Stafford Loan Program in combination with the Direct Unsubsidized Loan Program is the same amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program or the Direct Subsidized Loan program, plus—
(i) \$2,000, for a program of study of at least a full academic year in length.

(ii) For a program of study that is at least one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to \$2,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,000 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

(2) In the case of an independent undergraduate student, a graduate or

professional student, or certain dependent undergraduate students under the conditions specified in § 682.201(a)(3), the total amount the student may borrow for any period of enrollment under the Unsubsidized Stafford Loan and Direct Unsubsidized Loan programs may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Federal Stafford Loan Program or the Direct Subsidized Loan Program, in combination with the amounts determined under paragraph (d) of this section.

(d) * * *
(1) * * *

(iii) For a program of study that is less than a full academic year in length, an amount that is the same ratio to \$6,000 as the lesser of—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter, or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

* * * * *

(e) *Combined Federal Stafford, SLS and Federal Unsubsidized Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of Stafford Loans, Direct Subsidized Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Loans and SLS Loans, but excluding the amount of capitalized interest, may not exceed the following:

- (1) \$31,000 for a dependent undergraduate student.
- (2) \$57,500 for an independent undergraduate student or a dependent undergraduate student under the conditions specified in § 682.201(a)(3).
- (3) \$138,500 for a graduate or professional student.

* * * * *

■ 22. Section 682.205 is amended by:
■ A. Removing paragraphs (a), (b), (g), and (i).

■ B. Redesignating paragraphs (c), (d), (e), (f), (h), and (j) as paragraphs (a), (b), (c), (d), (e), and (f), respectively.

■ C. In newly redesignated paragraph (a)(1), removing the citation “(c)(2)” and adding, in its place, the citation “(a)(2)”.

■ D. In newly redesignated paragraph (a)(3) introductory text, removing the citation “(c)(1)” and adding, in its place, the citation “(a)(1)”.

■ E. Revising newly redesignated paragraph (a)(4).

■ F. In newly redesignated paragraph (a)(5)(ii), adding the word “business” after the word “five”.

■ G. In newly redesignated paragraph (b), removing the parenthetical “(c)”

and adding, in its place, the parenthetical “(a)”.

■ H. In newly redesignated paragraph (e)(2), removing the citation “(h)(1)” and adding, in its place, the citation “(e)(1)”.

The revision reads as follows:

§ 682.205 Disclosure requirements for lenders.

* * * * *

(a) * * *

(4) *Required disclosures for borrowers having difficulty making payments.* (i) Except as provided in paragraph (a)(4)(ii) of this section, the lender must provide a borrower who has notified the lender that he or she is having difficulty making payments with—

(A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) A disclosure under paragraph (a)(4)(i) of this section is not required if the borrower's difficulty has been resolved through contact with the borrower resulting from an earlier disclosure or other communication between the lender and the borrower.

* * * * *

§ 682.206 [Removed]

■ 23. Remove § 682.206.

§ 682.207 [Removed]

■ 24. Remove § 682.207.

§ 682.208 [Amended]

■ 25. Section 682.208 is amended by:

■ A. In paragraph (a), removing the words “national credit bureaus” and adding, in their place, the words “nationwide consumer reporting agencies”.

■ B. In paragraph (b)(1) introductory text, removing the words “at least one national credit bureau” and adding, in their place, the words “each nationwide consumer reporting agency”.

■ C. In paragraph (b)(2), removing the words “at least one national credit bureau” and adding, in their place, the words “each nationwide consumer reporting agency”.

■ D. In paragraph (b)(3) introductory text, removing both occurrences of the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

■ E. In paragraph (b)(3)(i)(A), removing the words “credit bureau” and adding,

in their place, the words “consumer reporting agency”.

■ F. In paragraph (e)(3), removing the citation “§ 682.401(b)(17)(ii)” and adding, in its place, the citation “§ 682.401(b)(8)(ii)”.

■ G. In paragraph (g), removing the citation “§ 682.411(g)” and adding, in its place, the citation “§ 682.411(h)”.

■ 26. Section 682.209 is amended by:

■ A. In paragraph (a)(3)(i)(B), removing the word “and”.

■ B. In paragraph (a)(3)(i)(C), removing the punctuation “.” and adding, in its place, the punctuation and the word “; and”.

■ C. Adding a new paragraph (a)(3)(i)(D).

■ D. In paragraph (a)(3)(ii)(E), removing the citation “§ 682.205(c)(1)” and adding, in its place, the citation “§ 682.205(a)(1)”.

■ E. In paragraph (b)(2)(ii), revising the last sentence.

■ F. Removing paragraphs (e), (f), (g), and (j).

■ G. Redesignating paragraphs (h), (i), and (k) as paragraphs (e), (f), and (g), respectively.

■ H. In newly redesignated paragraph (e)(3) introductory text, removing the citation “(h)” and adding, in its place, the citation “(e)”.

■ I. In newly redesignated paragraph (e)(4)(ii), removing the word “Must” and adding, in its place, the words “Except in the case of an income-based repayment schedule, must”.

■ J. In newly redesignated paragraph (e)(5), removing the citation “(h)” and adding, in its place, the citation “(e)”.

■ K. In newly redesignated paragraph (f)(2)(i), removing the words “under § 682.209(f)”.

■ L. In newly redesignated paragraph (f)(2)(ii), removing the citation “(i)(2)(i)” and adding, in its place, the citation “(f)(2)(i)”.

The addition and revision read as follows:

§ 682.209 Repayment of a loan.

■ (a) * * *

■ (3) * * *

■ (i) * * *

(D) For a borrower with a loan for which the applicable interest rate is fixed at 6.0 percent per year, 5.6 percent per year, or 6.8 percent per year, the day after 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an institution of higher education;

* * * * *

■ (b) * * *

■ (2) * * *

(ii) * * * Information related to next scheduled payment due date need not be provided to borrowers making such

prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

* * * * *

■ 27. Section 682.210 is amended by:

■ A. In paragraph (a)(4), adding the words and punctuation “, or the borrower’s representative for purposes of paragraphs (i) and (t) of this section,” between the words “borrower” and “must”.

■ B. Revising paragraph (b).

■ C. In paragraph (n)(1) introductory text and in paragraph (n)(2), removing the citation “(b)(2)(v)” and adding, in its place, the citation “(b)(3)(iv)”.

■ D. In paragraph (o)(1) introductory text, adding the parenthetical “(i)” between the parenthetical “(3)” and the word “of”.

■ E. In paragraph (q)(1) introductory text, removing the citation “(b)(5)(ii)” and adding, in its place, the citation “(b)(3)(iii)”.

■ F. In paragraph (r)(1) introductory text, removing the citation “(b)(5)(iv)” and adding, in its place, the citation “(b)(3)(v)”.

■ G. In paragraph (s)(2), removing the punctuation and the words “, except that the borrower is not required to obtain a Stafford or SLS loan for the period of enrollment covered by the deferment”.

■ H. In paragraph (s)(6) introductory text, removing both occurrences of the citation “(s)(6)(vi)” and adding, in their place, the citation “(s)(6)(iv)”.

■ I. In paragraph (u)(5), removing both occurrences of the words “military active” and adding, in their place, the words “post-active”.

The revision reads as follows:

§ 682.210 Deferment.

* * * * *

(b) *Authorized deferments for borrowers prior to July 1, 1993.* (1) *For all borrowers who are not new borrowers on or after July 1, 1993.* Deferment is authorized for a FFEL borrower during any period when the borrower is—

(i) Except as provided in paragraph (b)(4) of this section, engaged in full-time study at a school in accordance with paragraph (c) of this section;

(ii) Engaged in a course of study under an eligible graduate fellowship program in accordance with paragraph (d) of this section;

(iii) Engaged in a rehabilitation training program for disabled individuals in accordance with paragraph (e) of this section;

(iv) Temporarily totally disabled in accordance with paragraph (f) of this section, or unable to secure employment because the borrower is caring for a spouse or other dependent who is

disabled and requires continuous nursing or similar services for up to three years in accordance with paragraph (g) of this section; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years, in accordance with paragraph (h) of this section.

(2) *For all Stafford and SLS borrowers who are not new borrowers on or after July 1, 1993, and for parent PLUS loans made before August 15, 1983.*

Deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces in accordance with paragraph (i) of this section, or an officer in the Commissioned Corps of the United States Public Health Service in accordance with paragraph (j) of this section, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(ii) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years, in accordance with paragraph (k) of this section;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years, in accordance with paragraph (l) of this section;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years, in accordance with paragraph (m) of this section; or

(v) Engaged in an internship or residency program, in accordance with paragraph (n) of this section, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(3)(iv) of this section).

(3) *For new Stafford or SLS borrowers on or after July 1, 1987 but before July 1, 1993.* Deferment is authorized—

(i) In accordance with paragraph (o) of this section, if the borrower has been enrolled on at least a half-time basis at an institution of higher education during the six months preceding the beginning of the deferment, for a period of up to six months during which the borrower is—

(A)(1) Pregnant;

(2) Caring for his or her newborn child; or

(3) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(B) Not attending a school or gainfully employed;

(ii) During a period when the borrower is on active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three

years, in accordance with paragraph (p) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(iii) During a period of up to three years when the borrower is serving as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section;

(iv) During a period when the borrower is engaged in an internship or residency program, for up to two years, in accordance with paragraph (n) of this section, (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(v) When a mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than \$1 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force, in accordance with paragraph (r) of this section. Full-time employment involves at least 30 hours of work a week and it is expected to last at least 3 months.

(4) For new Stafford or SLS borrowers on or after July 1, 1987. Deferment is authorized during periods when the borrower is engaged in at least half-time study at a school in accordance with paragraph (b) of this section.

(5) For new parent PLUS borrowers on or after July 1, 1987 and before July 1, 1993. Deferment is authorized during any period when a student on whose behalf the parent borrower received the loan—

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i) through (iii) and (b)(4) of this section.

(6) Definition of a new borrower. For purposes of paragraphs (b)(3), (b)(4), and (b)(5) of this section, a “new borrower” with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

* * * * *

■ 28. Section 682.211 is amended by:

■ A. In paragraph (a)(4), removing the parenthetical “(10)” and adding, in its place, the parenthetical “(11)”.

■ B. Revising paragraphs (c) and (d).

■ C. In paragraph (f)(2), removing the words “or an administrative forbearance period as specified under paragraph (f)(11) or (i)(2) of this section;” and adding, in their place, the words “or an authorized period of forbearance;”.

■ D. In paragraph (f)(6), removing the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

■ E. In paragraph (h)(2)(ii)(B), removing the words “10 U.S.C. 2171; or” and adding, in their place, the words “10 U.S.C. 2171, 2173, 2174 or any other student loan repayment programs administered by the Department of Defense; or”.

■ F. In paragraph (h)(2)(ii)(C), removing the citation “§ 682.215” and adding, in its place, the citation “§ 682.216”.

■ G. In paragraph (h)(4)(iii)(A), removing the citation “§ 682.215(c)” and adding, in its place the citation “§ 682.216(c)”.

■ H. In paragraph (h)(4)(iii)(B), removing the citation “§ 682.215(c)” and adding, in its place the citation “§ 682.216(c)”.

The revisions read as follows:

§ 682.211 Forbearance.

* * * * *

(c) Except as provided in paragraph (d)(2) of this section, a lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the borrower or endorser requests the forbearance orally and the lender and the borrower or endorser agree to the terms of the forbearance orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

(d)(1) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default but prior to claim payment. The forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower’s or endorser’s obligation to repay the debt.

(2) If the forbearance is based on the borrower’s or endorser’s oral request and affirmation of the obligation to repay the debt—

(i) The forbearance period is limited to a period of 120 days;

(ii) Such a forbearance cannot be granted consecutively;

(iii) The lender must orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and other repayment options available to the borrower; and

(iv) The lender must send a notice to the borrower or endorser, as provided in paragraph (c) of this section, that confirms the terms of the forbearance and the borrower’s or endorser’s affirmation of the obligation to repay the debt, and retain a record of the terms of the forbearance and affirmation in the borrower’s or endorser’s file.

(3) For purposes of this section, an “affirmation” means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to, the borrower’s or endorser’s—

(i) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(ii) Oral acknowledgment and agreement to repay the debt documented by the lender in the borrower’s or endorser’s file and confirmed by the lender in a notice to the borrower; or

(iii) A payment made on the loan by the borrower or endorser.

* * * * *

§ 682.214 [Removed]

■ 29. Remove § 682.214.

■ 30. Section 682.216 is amended by: ■ A. In paragraph (a)(2)(iii), removing the first occurrence of the word “at” and adding, in its place, the word “for”.

■ B. In paragraph (a)(4)(i), removing the second occurrence of the word “at” and adding, in its place, the word “for”.

■ C. In paragraph (c)(1) introductory text, removing the words “at an educational” and adding, in their place, the words “for an educational”.

■ D. In paragraph (c)(1)(iii), removing the final sentence.

■ E. Redesignating paragraphs (c)(2) through (c)(11) as paragraphs (c)(3) through (c)(12), respectively.

■ F. Adding a new paragraph (c)(2).

■ G. In newly redesignated paragraph (c)(4)(ii)(A), removing the words “at an eligible educational” and adding, in their place, the words “for an eligible educational”.

■ H. In newly redesignated paragraph (c)(4)(ii)(B), adding the words “for an” immediately before the words “educational service agency”.

■ I. In newly redesignated paragraph (c)(4)(iii), removing the first occurrence of the word “at” and adding, in its place, the word “for”.

■ J. In newly redesignated paragraph (c)(5)(i), adding the words “for an”

immediately before the words “educational service”.

■ K. In newly redesignated paragraph (c)(5)(ii)(A), removing the words “students at an eligible” and adding, in their place, the words “students for an eligible”.

■ L. In newly redesignated paragraph (c)(5)(ii)(B), adding the words “for an” immediately before the words “educational service”.

■ M. In newly redesignated paragraph (c)(5)(iii), removing the first occurrence of the word “at” and adding, in its place the word “for”.

■ N. In newly redesignated paragraph (c)(10), removing the second occurrence of the word “at” and adding, in its place, the word “for”.

■ O. In paragraph (e) introductory text, removing the word “discharge” and adding in its place, the word “forgiveness”.

■ P. In paragraph (e)(1)(i), removing the citation “(h)(3)(iii)” and adding, in its place, the citation “(h)(4)(iii)”.

■ Q. In paragraph (e)(1)(iii), removing the word “discharge” and adding, in its place, the word “forgiveness”.

■ R. Revising paragraphs (f)(2)(i) and (f)(2)(ii).

■ S. In paragraph (f)(2)(iii), removing both occurrences of the word “discharged” and adding, in their place, the words “loan forgiveness”.

■ T. In paragraph (f)(3)(ii), removing both occurrences of the word “discharge” and adding, in their place, the words “loan forgiveness”.

■ U. In paragraph (f)(4), removing both occurrences of the word “discharge” and adding, in their place, the words “loan forgiveness”.

■ V. In paragraph (f)(5), removing the word “discharge”.

■ W. Revising paragraph (g).

The additions and revisions read as follows:

§ 682.216 Teacher loan forgiveness program.

* * * * *

(c) * * *

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

* * * * *

(f) * * *

(2) * * *

(i) The holder must file a request for payment with the guaranty agency on a teacher loan forgiveness amount no later than 60 days after the receipt, from the borrower, of a completed teacher loan forgiveness application.

(ii) When filing a request for payment on a teacher loan forgiveness, the holder must provide the guaranty agency with the completed loan forgiveness application submitted by the borrower and any required supporting documentation.

* * * * *

(g) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* In the case of a teacher loan forgiveness applied to a defaulted loan held by the guaranty agency, the Secretary pays the guaranty agency a percentage of the amount forgiven that is equal to the complement of the reinsurance percentage paid on the loan.

The payment of up to \$5,000, or up to \$17,500, may also include interest that accrues on the forgiveness amount during the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the guaranty agency determines that the borrower is eligible for the teacher loan forgiveness.

* * * * *

§ 682.300 [Amended]

■ 31. Section 682.300 is amended by:

■ A. In paragraph (b)(2)(ii) introductory text, removing the words “, except as provided in paragraph (c)(4) of this section”.

■ B. In paragraph (b)(2)(ii)(B), removing the words “in accordance with § 682.207(b)(1)(ii)(B) and (C)”.

■ C. In paragraph (c)(1), adding the word “or” after the punctuation “;”.

■ D. In paragraph (c)(2), removing the punctuation “;” and adding, in its place, the punctuation “.”.

■ E. Removing paragraphs (c)(3) and (c)(4).

§ 682.301 [Amended]

■ 32. Section 682.301 is amended by removing paragraph (c).

■ 33. Section 682.302 is amended by:

■ A. In paragraph (b)(3) introductory text, adding the words “and prior to July 1, 2010” after the date “1992” and before the punctuation “;”.

■ B. In paragraph (d)(1)(vi)(B), removing the words “the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii)(B) and (C)” and adding, in their place, the words “The loan proceeds disbursed by electronic funds transfer or master check”.

■ C. In paragraph (d)(2) introductory text, adding the words “and prior to July 1, 2010” after the date “1992” and before the punctuation “;”.

■ D. In paragraph (e)(1)(i), removing the citation “§ 682.800” and adding, in its place, the words “section 438(e) of the Act”.

■ E. Revising paragraph (f)(3)(viii)(B).

■ F. In paragraph (f)(3)(x)(B)(3), removing the figure “503” and adding, in its place, the figure “501”.

The revision reads as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(f) * * *

(3) * * *

(viii) * * *

(B) Fees are reasonable and customary for purposes of paragraph (f)(3)(viii) of this section, if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the State or non-profit entity that the Secretary considers reliable.

* * * * *

§ 682.305 [Amended]

■ 34. Section 682.305 is amended by:

■ A. In paragraph (a)(3)(ii)(B), by adding the words “and prior to July 1, 2010” after the date “2007” and before the punctuation “;”.

■ B. In paragraph (c)(1)(i), removing the words “originating or”.

■ C. Removing paragraph (c)(1)(ii).

■ D. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(ii).

■ E. In paragraph (c)(2)(iv), adding the word “and” as the last word in the paragraph, immediately following the punctuation “;”.

■ F. In paragraph (c)(2)(v), removing the final punctuation “;” and adding, in its place, the punctuation “.”.

■ G. Removing paragraphs (c)(2)(vi) and (c)(2)(vii).

■ 35. Section 682.400 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 682.400 Agreements between a guaranty agency and the Secretary.

* * * * *

(b) * * *

(1) * * *

(i) Borrowers whose Stafford or Consolidation loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower’s behalf under 34 CFR 682.301; and

* * * * *

■ 36. Section 682.401 is amended by:

■ A. Removing paragraphs (b)(1), (b)(2), and (b)(3).

■ B. Redesignating paragraph (b)(4) as paragraph (b)(1).

- C. In newly redesignated paragraph (b)(1) introductory text, removing the citation “(b)(4)” and adding, in its place, the citation “(b)(1)”.
- D. Removing paragraphs (b)(5) and (b)(6).
- E. Redesignating paragraph (b)(7) as paragraph (b)(2).
- F. Removing paragraphs (b)(8) and (b)(9).
- G. Redesignating paragraphs (b)(10) and (b)(11) as paragraphs (b)(3) and (b)(4), respectively.
- H. In newly redesignated paragraph (b)(3)(i) introductory text, removing the words “SLS or PLUS loans refinanced under § 682.209(e) or (f)” and adding, in their place, the words “refinanced SLS or PLUS loans”.
- I. In newly redesignated paragraph (b)(3)(iv)(C), adding the words “and prior to July 1, 2010” between the date “2006” and the punctuation “.”.
- J. In newly redesignated paragraph (b)(3)(vi)(B)(4), removing the words “in accordance with § 682.207(b)(1)(ii)(B) and (C)”.
- K. Removing paragraphs (b)(12) and (b)(13).
- L. Redesignating paragraphs (b)(14) through (b)(29) as paragraphs (b)(5) through (b)(20), respectively.
- M. In newly redesignated paragraph (b)(6), adding the words “and N” between the letter “M” and the word “of”.
- N. In newly redesignated paragraph (b)(8)(i) introductory text, removing the parenthetical “(17)” and adding, in its place, the parenthetical “(8)”.
- O. In newly redesignated paragraph (b)(8)(iii), removing the parenthetical “(17)” and adding, in its place, the parenthetical “(8)”.
- P. In newly redesignated paragraph (b)(10)(i)(B), removing the words “School and lender” and adding, in their place, the word “Lender”.
- Q. In newly redesignated paragraph (b)(10)(i)(C), removing the words “school and”.
- R. In newly redesignated paragraph (b)(10)(i)(D), removing the words “school or”.
- S. In newly redesignated paragraph (b)(11) introductory text, adding the word “of” between the words “days” and “any”.
- T. In newly redesignated paragraph (b)(14)(ii), removing the parenthetical “(23)” and adding, in its place, the parenthetical “(14)”.
- U. In newly redesignated paragraph (b)(18)(i), removing the word “Federal” and adding, in its place, the word “Direct”.
- V. In newly redesignated paragraph (b)(18), removing paragraph (b)(18)(ii).
- W. In newly redesignated paragraph (b)(18), redesignating paragraphs

- (b)(18)(iii) through (v) as paragraphs (b)(18)(ii) through (iv), respectively.
- X. Revising newly redesignated paragraph (b)(18)(iii).
- Y. Removing paragraph (c).
- Z. Redesignating paragraph (d) as paragraph (c).
- AA. In newly redesignated paragraph (c)(2), removing the parenthetical “(d)” and adding, in its place, the parenthetical “(c)”.
- BB. In newly redesignated paragraph (c)(3), adding a final sentence to the end of the paragraph.
- CC. In newly redesignated paragraph (c), removing paragraph (c)(4).
- DD. In newly redesignated paragraph (c), redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(4) and (c)(5), respectively.
- EE. Removing paragraph (e).
- FF. Redesignating paragraphs (f) and (g) as paragraphs (d) and (e), respectively.
- GG. In newly redesignated paragraph (d)(2), removing the word “HEA” and adding, in its place, the word “Act”.
- HH. In newly redesignated paragraph (e)(1), removing the word “participate” and adding, in its place, the word “participated”.
- II. In newly redesignated paragraph (e)(2), removing the parenthetical “(g)” and adding, in its place, the parenthetical “(e)”.
- JJ. In newly redesignated paragraph (e)(4), removing the parenthetical “(g)” and adding, in its place, the parenthetical “(e)”.

The revision and addition read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *
(18) * * *

(iii) On or after October 1, 2009, when returning proceeds to the Secretary from the consolidation of a defaulted loan that is paid off with excess consolidation proceeds as defined in paragraph (b)(18)(iv) of this section, a guaranty agency must remit the entire amount of collection costs repaid through the consolidation loan.

* * * * *

(c) * * *

(3) * * * Each loan made under an MPN is enforceable in accordance with the terms of the MPN and is eligible for claim payment based on a true and exact copy of such MPN.

* * * * *

■ 37. Section 682.402 is amended by:

- A. In paragraph (a)(5)(ii), removing the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

- B. Revising paragraph (d)(1)(i).
- C. In paragraph (d)(3)(ii)(B), by removing the figure “90” and adding, in its place, the figure “120”.
- D. Except for paragraphs (d)(6)(ii)(G)(1) and (d)(6)(ii)(G)(2), in paragraph (d)(6), by removing the figure “90” each time it appears and adding, in its place, the figure “120”.
- E. In paragraph (d)(7)(iv), removing the words “credit bureaus” and adding, in their place, the words “consumer reporting agencies”.
- F. In paragraph (d)(8)(i), removing the citation “34 CFR 685.213” and adding, in its place, the citation “34 CFR 685.214”.
- G. In paragraph (e)(3) introductory text, removing the parenthetical “(14)” and adding, in its place, the parenthetical “(15)”.
- H. In paragraph (e)(3)(v)(C), removing the word “identify” and adding, in its place, the word “identity”.
- I. In paragraph (e)(12)(v) introductory text, removing the words “credit bureaus” and adding, in their place, the words “consumer reporting agencies”.
- J. In paragraphs (l)(1), (l)(2)(ii), and (l)(3)(i), adding the words “or Federal default fees” between the word “premiums” and the punctuation “)”.
- K. In paragraph (n)(2), adding the words “or Federal default fees” between the word “premiums” and the punctuation “)”.

The revision reads as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(d) * * *

(1) * * *

(i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 120 days prior to the date the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: The school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the

State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.

* * * * *

§ 682.403 [Removed]

- 38. Remove § 682.403.
- 39. Section 682.404 is amended by:
 - A. Revising paragraph (b)(3)(ii).
 - B. In paragraph (b)(3)(iii), adding the word "or" after the punctuation ",'".
 - C. In paragraph (b)(4)(ii)(G)(2), removing the words "is consistent with § 682.509(a)(1)" and adding, in their place, the words "addresses the condition identified in paragraph (b)(3)(ii) of this section".
 - D. In paragraph (d)(1) introductory text, removing the words "made under § 682.209(e), (f) and (h)," and adding, in their place the words "that were refinanced pursuant to section 428B(e)(2) and (3) of the Act,".
 - E. Removing paragraph (h).
 - F. Redesignating paragraphs (i) through (l) as paragraphs (h) through (k), respectively.
 - G. In newly redesignated paragraph (j)(3)(i), removing the parenthetical "(k)(2)(i)" and adding, in its place, the parenthetical "(j)(2)(i)".
 - H. In newly redesignated paragraph (j)(3)(ii), removing the parenthetical "(k)(2)(ii)" and adding, in its place, the parenthetical "(j)(2)(ii)".

The revision reads as follows:

§ 682.404 Federal reinsurance agreement.

* * * * *

- (b) * * *
- (3) * * *

(ii) Under a policy established by the agency that addresses instances in which, for a non-school originated loan, a lender learns that the school terminated its teaching activities while a student was enrolled during the academic period covered by the loan;

* * * * *

- 40. Section 682.405 is amended by:
 - A. In the introductory text of paragraph (a)(2)(i), adding the word "qualifying" between the words "ten" and "payments".
 - B. Revising the introductory text of paragraph (a)(2)(i)(A).
 - C. Redesignating paragraph (a)(3) as paragraph (a)(4).
 - D. Adding a new paragraph (a)(3).
 - E. Revising paragraph (b)(1).

The revisions and addition read as follows:

§ 682.405 Loan rehabilitation agreement.

- (a) * * *
- (2) * * *
- (i) * * *

(A) A qualifying payment is—

* * * * *

(3)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the guaranty agency must continue collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement. After the borrower makes the fifth qualifying monthly payment, the guaranty agency must, unless otherwise directed by the borrower, suspend collecting the loan by administrative wage garnishment.

(ii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

* * * * *

(b) * * *

(1) A borrower may request rehabilitation of the borrower's defaulted loan held by the guaranty agency. In order to be eligible for rehabilitation of the loan, the borrower must voluntarily make at least 9 of the 10 payments required under a monthly repayment agreement.

(i) Each of which payment is—

- (A) Made voluntarily;
- (B) In the full amount required;
- (C) Received within 20 days of the due date for the payment; and
- (D) Reasonable and affordable.

(ii) All 9 payments are received within a 10-month period that begins with the month in which the first required due date falls and ends with the ninth consecutive calendar month following that month.

(iii) For the purposes of this section, the borrower's reasonable and affordable payment amount, as determined by the guaranty agency or its agents, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(B) Family size as defined in § 682.215(a)(3); and

(C) Reasonable and necessary expenses, which include—

- (1) Food;
- (2) Housing;
- (3) Utilities;
- (4) Basic communication expenses;
- (5) Necessary medical and dental costs;
- (6) Necessary insurance costs;
- (7) Transportation costs;
- (8) Dependent care and other work-related expenses;
- (9) Legally required child and spousal support;
- (10) Other title IV and non-title IV student loan payments; and
- (11) Other expenses approved by the Secretary.

(iv) The reasonable and affordable payment amount must not be—

(A) A required minimum loan payment amount (e.g., \$50) if the agency determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(v) Within 15 business days of its determination of the borrower's reasonable and affordable payment amount, the guaranty agency must provide the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount, with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be considered for repurchase by an eligible lender (i.e., rehabilitated). The agency may not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement must inform the borrower of—

(A) The effects of having the loans rehabilitated (e.g., removal of the record of default from the borrower's credit history and return to normal repayment); and

(B) The amount of any collection costs to be added to the unpaid principal of the loan when the loan is sold to an eligible lender, which may not exceed 18.5 percent of the unpaid principal and accrued interest on the loan at the time of the sale.

(vi) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, the guaranty agency must recalculate the payment amount. The guaranty agency must follow the

monthly payment calculation rules in § 682.215(b)(1) to determine a borrower's recalculated reasonable and affordable payment amount, except that if the recalculated amount under § 682.215(b)(1) is less than \$5, the borrower's recalculated monthly rehabilitation payment is \$5. The guaranty agency must provide the borrower with a new written rehabilitation agreement confirming the borrower's recalculated reasonable and affordable payment amount within the timeframe specified in paragraph (b)(1)(v) of this section.

(vii) If the borrower objects to the monthly payment amount determined under paragraph (b)(1)(iii) of this section, but does not provide the documentation required to calculate a monthly payment amount under § 682.215(b)(1), no rehabilitation agreement exists between the borrower and the guaranty agency, and the rehabilitation does not proceed.

(viii) The agency must include any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (b)(1) of this section have been made.

(ix) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii) of this section.

(x) During the rehabilitation period, the guaranty agency must limit contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

* * * * *

§ 682.406 [Amended]

- 41. Section 682.406 is amended by:
 - A. In paragraph (a)(2)(ii), removing the words "in accordance with § 682.207(b)(1)(ii)(B) and (C)".
 - B. In paragraph (a)(12)(iv), adding the words "and prior to July 1, 2010" after the date "1999" and before the punctuation " , ".

§ 682.407 [Amended]

- 42. Section 682.407(e)(1)(ii) is amended by removing the figure "24" the first time it appears and adding, in its place, the figure "72".

§ 682.408 [Removed]

- 43. Remove § 682.408.

§ 682.409 [Amended]

- 44. Section 682.409 is amended by:
 - A. In paragraph (a)(2)(i), removing the citation "§ 682.401(b)(4)" and adding, in its place, the citation "§ 682.401(b)(1)".

- B. In paragraph (a)(3)(i)(B), removing the citation "§ 682.401(b)(4)" and adding, in its place, the citation "§ 682.401(b)(1)".

- 45. Section 682.410 is amended by:

- A. Revising the introductory text of paragraph (a)(2).

- B. In paragraph (a)(2)(ii) introductory text, removing the word "preclaims" and adding, in its place, the words "default aversion".

- C. In paragraph (b)(2) introductory text, removing the citation "§ 682.401(b)(27)" and adding, in its place, the citation "§ 682.401(b)(18)(i)".

- D. In paragraph (b)(5)(i) introductory text, removing the parenthetical "(b)(6)(v)" and adding, in its place, the parenthetical "(b)(6)(ii)".

- E. In paragraph (b)(7)(i), removing the words "conditions described in § 682.509(a)(1)" and adding, in their place, the words "condition described in § 682.404(b)(3)(ii)".

- F. In paragraph (b)(7)(ii)(A), removing the words "credit bureau" and adding, in their place, the words "consumer reporting agency".

- G. Revising paragraph (b)(9).

- H. In paragraph (c)(1)(i)(A) introductory text, removing the words "made or".

- I. In paragraph (c)(1)(i)(A)(1), removing the words "in that year".

- J. In paragraph (c)(1)(i)(A)(2), removing the words "in that year".

- K. Revising paragraph (c)(1)(i)(C).

- L. In paragraph (c)(1)(ii), adding the parenthetical "(i)" between the parenthetical "(1)" and the parenthetical "(A)".

- M. Removing paragraph (c)(4).

- N. Redesignating paragraphs (c)(5) through (c)(11) as paragraphs (c)(4) through (c)(10), respectively.

- O. In newly redesignated paragraphs (c)(8)(i) and (c)(8)(ii), adding the words "title IV eligibility of a" between the words "or" and "school".

- P. Revising newly redesignated paragraph (c)(10) introductory text.

The revisions read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(2) *Uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under paragraph (a)(1) of this section to pay only—

* * * * *

(b) * * *

(9) *Administrative garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it must do so in

accordance with the following procedures:

(A) At least 30 days before the initiation of garnishment proceedings, the guaranty agency must mail to the borrower's last known address, a written notice described in paragraph (b)(9)(i)(B) of this section.

(B) The notice must describe—

(1) The nature and amount of the debt;

(2) The intention of the agency to collect the debt through deductions from disposable pay;

(3) An explanation of the borrower's rights;

(4) The deadlines by which a borrower must exercise those rights; and

(5) The consequences of failure to exercise those rights in a timely manner.

(C) The guaranty agency must offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency must offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E)(1) The guaranty agency must offer the borrower an opportunity for a hearing in accordance with paragraphs (b)(9)(i)(F) through (J) of this section and other guidance provided by the Secretary, for any objection regarding the existence, amount, or enforceability of the debt, and any objection that withholding from the borrower's disposable pay in the amount or at the rate proposed in the notice would cause financial hardship to the borrower.

(2) The borrower must request a hearing in writing. At the borrower's option, the hearing may be oral or written. The time and location of the hearing is established by the guaranty agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. The agency notifies the borrower of the process for arranging the time and location of an oral hearing. All telephonic charges are the responsibility of the agency. All travel expenses incurred by the borrower in connection with an in-person oral hearing are the responsibility of the borrower.

(F)(1) If the borrower submits a written request for a hearing on the existence, amount, or enforceability of the debt—

(i) The guaranty agency must provide evidence of the existence of the debt. If the agency provides evidence of the existence of the debt, the borrower must prove by the preponderance of the evidence that no debt exists, the debt is not enforceable under applicable law, the amount the guaranty agency claims

the borrower owes is incorrect, including that any amount of collection costs assessed to the borrower exceeds the limits established under § 682.410(b)(2), or the debt is not delinquent; and

(i) The borrower may raise any of the objections described in paragraph (b)(9)(i)(F)(1)(i) of this section not raised in the written request, but must do so before a hearing is completed. For purposes of this paragraph, a hearing is completed when the record is closed and the hearing official notifies the parties that no additional evidence or objections will be accepted.

(2) If the borrower submits a written request for a hearing on an objection that withholding the amount or rate that the agency proposed in its notice would cause financial hardship to the borrower and the borrower's spouse and dependents—

(i) The borrower bears the burden of proving the claim of financial hardship by a preponderance of the credible evidence by providing credible documentation that the amount of wages proposed in the notice would leave the borrower unable to meet basic living expenses of the borrower, the borrower's spouse, and the borrower's dependents. The documentation must show the amount of the costs incurred for basic living expenses and the income available from any source to meet those expenses;

(ii) The borrower's claim of financial hardship must be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size and similar income to the borrower's. For the purposes of this section, the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the National Standards) establish the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, the borrower's family;

(iii) The amount that the borrower proves is incurred for a type of basic living expense is considered to be reasonable to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards. If the borrower claims an amount for any basic living expense that exceeds the amount in the National Standards, the borrower must prove that the amount claimed is reasonable and necessary;

(iv) If the borrower's objection to the rate or amount proposed in the notice is upheld in part, the garnishment may be

ordered at a lesser rate or amount, that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency must notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order; and

(v) A determination by a hearing official that financial hardship would result from garnishment is effective for a period not longer than six months after the date of the finding. After this period, the guaranty agency may require the borrower to submit current information regarding the borrower's family income and living expenses. If the borrower fails to submit current information within 30 days of this request, or the guaranty agency concludes from a review of the available evidence that garnishment should now begin or the rate or the amount of an outstanding withholding should be increased, the guaranty agency must notify the borrower and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in paragraph (b)(9)(i) of this section.

(G) If the borrower's written request for a hearing is received by the guaranty agency on or before the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing and a decision has been rendered. The guaranty agency must provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(H) If the borrower's written request for a hearing is received by the guaranty agency after the 30th day following the date of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency must provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. If a decision is not rendered within 60 days following receipt of a borrower's

written request for a hearing, the guaranty agency must suspend the order beginning on the 61st day after the hearing request was received until a hearing is provided and a decision is rendered.

(I) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge. Under no circumstance may the hearing official be under the supervision or control of the head of the guaranty agency or of a third-party servicer or collection contractor employed by the agency. Payment of compensation by the guaranty agency, third-party servicer, or collection contractor employed by the agency to the hearing official for service as a hearing official does not constitute impermissible supervision or control under this paragraph. The guaranty agency must ensure that, except as needed to arrange the type of hearing requested by the borrower and the time, place, and manner of conducting an oral hearing, all oral communications with any representative of the guaranty agency or with the borrower are made within the hearing of the other party, and that copies of any written communication with either party are promptly provided to the other party.

(J) The hearing official must conduct any hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of any hearing. The hearing official must issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. However—

(1) The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence; and

(2) The agency may request, and the hearing official must grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to any such additional evidence or any objections raised pursuant to paragraph (b)(9)(i)(F)(1)(ii) of this section.

(K) An employer served with a garnishment order from the guaranty agency with respect to a borrower whose wages are not then subject to a withholding order of any kind must deduct and pay to the agency from a borrower's disposable pay an amount that does not exceed the smallest of—

(1) The amount specified in the guaranty agency order;

(2) The amount permitted by section 488A(a)(1) of the Act, which is 15

percent of the borrower's disposable pay; or

(3) The amount permitted by 15 U.S.C. 1673(a)(2), which is the amount by which the borrower's disposable pay exceeds 30 times the minimum wage.

(L) If a borrower's pay is subject to more than one garnishment order—

(1) Unless other Federal law requires a different priority, the employer must pay the agency the amount calculated under paragraph (b)(9)(i)(K) of this section before the employer complies with any later garnishment orders, except a family support withholding order;

(2) If an employer is withholding from a borrower's pay based on a garnishment order served on the employer before the guaranty agency's order, or if a withholding order for family support is served on an employer at any time, the employer must comply with the agency's garnishment order by withholding an amount that is the lesser of—

(i) The amount specified in the guaranty agency order; or

(ii) The amount calculated under paragraph (b)(9)(i)(L)(3) of this section less the amount or amounts withheld under the garnishment order or orders that have priority over the agency's order; and

(3) The cumulative withholding for all garnishment orders issued by guaranty agencies may not exceed, for an individual borrower, the amount permitted by 15 U.S.C. 1673, which is the lesser of 25 percent of the borrower's disposable pay or the amount by which the borrower's disposable pay exceeds 30 times the minimum wage. If a borrower owes debts to one or more guaranty agencies, each agency may issue a garnishment order to enforce each of those debts, but no single agency may order a total amount exceeding 15 percent of the disposable pay of a borrower to be withheld. The employer must honor these orders as provided in paragraphs (b)(9)(i)(L)(1) and (2) of this section.

(M) Notwithstanding paragraphs (b)(9)(i)(K) and (L) of this section, an employer may withhold and pay a greater amount than required under the order if the borrower gives the employer written consent.

(N) A borrower may, at any time, raise an objection to the amount or the rate of withholding specified in the guaranty agency's order to the borrower's employer on the ground of financial hardship. However, the guaranty agency is not required to consider such an objection and provide the borrower with a hearing until at least six months after the agency issued the most recent

garnishment order, either one for which the borrower did not request a hearing or one that was issued after a hardship-related hearing determination. The agency may provide a hearing in extraordinary circumstances earlier than six months if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as injury, divorce, or catastrophic illness.

(O) A garnishment order is effective until the guaranty agency rescinds the order or the agency has fully recovered the amounts owed by the borrower, including interest, late fees, and collections costs. If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must notify the agency and comply with the order when sufficient disposable pay is available. Upon full recovery of the debt, the agency must send the borrower's employer notification to stop wage withholding.

(P) The guaranty agency must sue any employer for any amount that the employer, after receipt of the withholding order provided by the agency under paragraph (b)(9)(i)(R) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(Q) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The borrower has the burden of informing the guaranty agency of the circumstances surrounding the borrower's involuntary separation from employment.

(R) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it must send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(S) The notice given to the employer under paragraph (b)(9)(i)(R) of this section must contain only the information as may be necessary for the employer to comply with the withholding order and to ensure proper credit for payments received. At a minimum, the notice given to the

employer includes the borrower's name, address, and Social Security Number, as well as instructions for withholding and information as to where the employer must send payments.

(T)(1) A guaranty agency may use a third-party servicer or collection contractor to perform administrative activities associated with administrative wage garnishment, but may not allow such a party to conduct required hearings or to determine that a withholding order is to be issued. Subject to the limitations of paragraphs (b)(9)(i)(T)(2) and (3) of this section, administrative activities associated with administrative wage garnishment may include but are not limited to—

(i) Identifying to the agency suitable candidates for wage garnishment pursuant to agency standards;

(ii) Obtaining employment information for the purposes of garnishment;

(iii) Sending candidates selected for garnishment by the agency notices prescribed by the agency;

(iv) Negotiating alternative repayment arrangements with borrowers;

(v) Responding to inquiries from notified borrowers;

(vi) Receiving garnishment payments on behalf of the agency;

(vii) Arranging for the retention of hearing officials and for the conduct of hearings on behalf of the agency;

(viii) Providing information to borrowers or hearing officials on the process or conduct of hearings; and

(ix) Sending garnishment orders and other communications to employers on behalf of the agency.

(2) Only an authorized official of the agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues, including any order which it causes to be prepared or mailed by a third-party servicer or collection contractor. The guarantor must evidence the official's approval, either by including the official's signature on the order or, if the agency uses a form of withholding order that does not provide for execution by signature, by retaining in the agency's records the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued, and the debt for which the order was issued.

(3) The withholding order must identify the guaranty agency as the holder of the debt, as the issuer of the order, and as the sole party legally authorized to issue the withholding order. If a guaranty agency uses a third-

party servicer or collection contractor to prepare and mail a withholding order that includes the name of the servicer or contractor that prepared or mailed the order, the guaranty agency must also ensure that the order contains no captions or representations that the servicer or contractor is the party that issued, or was empowered by Federal law or by the agency to issue, the withholding order.

(U) As specified in section 488A(a)(8) of the Act, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) For purposes of paragraph (b)(9) of this section—

(A) “Borrower” includes all endorsers on a loan;

(B) “Day” means calendar day;

(C) “Disposable pay” means that part of a borrower’s compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. “Amounts required by law to be withheld” include amounts for deductions such as Social Security taxes and withholding taxes, but do not include any amount withheld under a court order or other withholding order. All references to an amount of disposable pay refer to disposable pay calculated for a single week;

(D) “Employer” means a person or entity that employs the services of another and that pays the latter’s wages or salary and includes, but is not limited to, State and local governments, but does not include an agency of the Federal Government;

(E) “Financial hardship” means an inability to meet basic living expenses for goods and services necessary for the survival of the borrower and the borrower’s spouse and dependents;

(F) “Garnishment” means the process of withholding amounts from an employee’s disposable pay and paying those amounts to a creditor in satisfaction of a withholding order; and

(G) “Withholding order” means any order for withholding or garnishment of pay issued by the guaranty agency and may also be referred to as “wage garnishment order” or “garnishment order.”

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Each school that participated in the guaranty agency’s program, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as described in subpart M of 34 CFR part 668, that includes FFEL Program loans, for either of the 2 immediately preceding fiscal years, as defined in 34 CFR 668.182, that exceeds 20 percent, unless the school is under a mandate from the Secretary under subpart M of 34 CFR part 668 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the cohort default rate of over 20 percent is based does not exceed \$100,000; or

* * * * *

(10) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a school that participated in the FFEL Program or a holder of loans participating in the program is experiencing problems that threaten the solvency of the school or holder, including—

* * * * *

§ 682.411 [Amended]

■ 46. Section 682.411 is amended by:

■ A. In paragraph (d)(2), removing the words “all national credit bureaus” and adding, in their place, the words “each nationwide consumer reporting agency”.

■ B. In paragraph (f), removing the words “a national credit bureau” and adding, in their place, the words “each nationwide consumer reporting agency”.

■ C. In paragraph (n)(2), removing the words “a national credit bureau” and adding, in their place, the words “each nationwide consumer reporting agency”.

■ D. In paragraph (o)(2), removing the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

§ 682.412 [Amended]

■ 47. Section 682.412(a)(2) is amended by removing the words “as provided under § 682.301”.

■ 48. Section 682.413 is amended by:

■ A. In paragraph (c)(1)(vi), removing the words “certification required under § 682.206(f)(1)” and adding, in their place the words “required lender verification certification”.

■ B. Revising the first sentence of paragraph (h).

The revision reads as follows:

§ 682.413 Remedial actions.

* * * * *

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of section 428(b)(3) of the Act, if the Secretary finds that the guaranty agency provided or offered the prohibited payments or activities, the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. * * *

* * * * *

§ 682.414 [Amended]

■ 49. Section 682.414 is amended by:

■ A. In paragraph (a)(1)(ii)(D), removing the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

■ B. In paragraph (a)(4)(ii)(f), removing the words “credit bureau” and adding, in their place, the words “consumer reporting agency”.

■ C. In paragraph (a)(6)(ii)(D), removing the word “is” and adding, in its place, the word “it”.

■ D. In paragraph (b)(2), removing paragraph (b)(2)(i).

■ E. Redesignating paragraphs (b)(2)(ii) through (b)(2)(iv), as (b)(2)(i) through (b)(2)(iii), respectively.

■ F. In paragraph (b)(3)(i), removing the words “schools and”.

■ G. In paragraph (b)(3)(ii), removing the words “schools and”.

■ H. In paragraph (b)(3)(iii), removing the words “school or”.

■ I. In paragraph (c)(2), removing the citation “§ 682.401(b)(21) and (22)” and adding, in its place, the citation “§ 682.401(b)(12) and (13)”.

§ 682.416 [Amended]

■ 50. Section 682.416(d)(2) is amended by removing the word “Title” and adding, in its place, the word “title”.

§ 682.418 [Removed]

■ 51. Remove § 682.418.

§ 682.419 [Amended]

■ 52. Section 682.419 is amended by:

■ A. In paragraph (b)(8), removing the words “, in accordance with § 682.420”.

■ B. In paragraph (c)(6), removing the citation “§ 682.421” and adding, in its place, the citation “section 422A(f) of the Act”.

§ 682.420 [Removed]

■ 53. Remove § 682.420.

§ 682.421 [Removed]

■ 54. Remove § 682.421.

§ 682.422 [Removed]

■ 55. Remove § 682.422.

§ 682.423 [Amended]

- 56. Section 682.423 is amended by:
 - A. In the second sentence of paragraph (a), adding the word “may” between the words “that” and “have”.
 - B. In paragraph (a), removing the last sentence.

Subpart E [Removed and Reserved]

- 57. Remove and reserve subpart E of part 682.
- 58. Revising the heading to subpart F of part 682 to read as follows:

Subpart F—Requirements, Standards, and Payments for Schools That Participated in the FFEL Program

* * * * *

§ 682.601 [Removed]

- 59. Remove § 682.601.

§ 682.602 [Removed]

- 60. Remove § 682.602.
- 61. Section 682.603 is amended by:
 - A. Revising the section heading.
 - B. In paragraph (b)(3), removing the citation “§ 682.604(c)” and adding, in its place, the citation “section 428G of the Act”.
 - C. Revising paragraphs (g), (h), and (i).
 - D. Removing the second of the two paragraphs that are both designated as paragraph (j).
 - E. Revising the first of the two paragraphs that are both designated as paragraph (j).
 - F. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

§ 682.603 Certification by a school that participated in the FFEL Program in connection with a loan application.

* * * * *

(g) The maximum period for which a school may certify a loan application is—

(1) Generally an academic year, as defined by 34 CFR 668.3, except that a guaranty agency may allow a school to use a longer period of time, corresponding to the period to which the agency applies the annual loan limits; or

(2) For a defaulted borrower who has regained eligibility under § 682.401(b)(1), the academic year in which the borrower regained eligibility.

(h) In certifying a Stafford or Unsubsidized Stafford loan amount in accordance with § 682.204—

(1) A program of study must be considered at least one full academic year if—

(i) The number of weeks of instructional time is at least 30 weeks; and

(ii) The number of clock hours is at least 900, the number of semester or

trimester hours is at least 24, or the number of quarter hours is at least 36;

(2) A program of study must be considered two-thirds ($\frac{2}{3}$) of an academic year if—

(i) The number of weeks of instructional time is at least 20 weeks; and

(ii) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24;

(3) A program of study must be considered one-third ($\frac{1}{3}$) of an academic year if—

(i) The number of weeks of instruction time is at least 10 weeks; and

(ii) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12; and

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(i)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

(j)(1) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than—

(i) 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs; or

(ii) October 1, 2002.

(2) A school must cease certifying loans based on the exceptions in section 428G(a)(3) of the Act no later than 30 days after the date the school receives notification from the Secretary of an FFEL cohort default rate, calculated under subpart M of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in those paragraphs.

(k) A school may not assess the borrower, or the student in the case of a parent PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

(l) Pursuant to paragraph (b)(3) of this section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in 34 CFR 668.167.

* * * * *

■ 62. Section 682.604 is amended by:

- A. Revising the section heading.
- B. Removing paragraphs (a), (c), (d), (e), (f), (h), and (i).
- C. Redesignating paragraph (g) as paragraph (a).
- D. Removing and reserving paragraph (b).
- E. In the last sentence of newly redesignated paragraph (a)(1), adding the punctuation and words “, or by sending written counseling materials by email to an email address provided by the student borrower” between the words “last known address” and “within 30 days”.
- F. Removing newly redesignated paragraph (a)(2)(vi).
- G. In newly redesignated paragraph (a), redesignating paragraphs (a)(2)(vii)

through (a)(2)(xii) as paragraphs (a)(2)(ix) through (a)(2)(xiv), respectively.

■ H. Adding new paragraphs (a)(2)(vi) through (a)(2)(viii).

■ I. Adding new paragraph (a)(5).

The revision and additions read as follows:

§ 682.604 Required exit counseling for borrowers.

(a) * * *

(2) * * *

(vi) Explain to the borrower the use of a Master Promissory Note;

(vii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the borrower has assumed;

(viii) Emphasize to the student borrower that the full amount of the loan (other than a loan made or originated by the school) must be repaid in full even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

* * * * *

(5)(i) For students who have received both FFEL Program and Direct Loan Program loans for attendance at a school, the school's compliance with the exit counseling requirements in 34 CFR 685.304(b) satisfies the requirements of this section if the school ensures that the exit counseling also provides the borrower with the information described in paragraph (a)(2)(i) and (a)(2)(ii) of this section.

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of this section, and for students who have also received Direct Loan Program loans for attendance at the school, the requirements of 34 CFR 685.304(b).

* * * * *

§ 682.605 [Amended]

■ 63. Section 682.605 is amended by: ■ A. In paragraph (b), adding the words "and the Secretary" between the words "lender" and "the date".

■ B. In paragraph (c), adding the words "and the Secretary" between the word "lender" and the punctuation " , ,".

§ 682.608 [Removed]

■ 64. Remove § 682.608.

■ 65. Section 682.610 is amended by:

■ A. Revising the section heading.

■ B. Revising paragraph (b)(5).

■ C. Revising paragraph (c).

The revisions read as follows:

§ 682.610 Administrative and fiscal requirements for schools that participated.

* * * * *

(b) * * *

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's required written authorization, if it was not provided in the loan application or MPN, to deliver the initial and subsequent disbursements of each FFEL Program loan; and

* * * * *

(c) Enrollment reporting process. (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date that the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

* * * * *

■ 66. The heading of subpart G of part 682 is revised to read as follows:

Subpart G—Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders

* * * * *

§ 682.700 [Amended]

■ 67. Section 682.700 is amended by:

■ A. In paragraph (a), removing the words "or school" in the final sentence.

■ B. In paragraph (b)(1)(ii), adding the word "or" after the punctuation " ; ,".

■ C. Removing paragraph (b)(2).

■ D. Redesignating paragraph (b)(3) as paragraph (b)(2).

■ E. In paragraph (c), removing the words "or schools".

■ 68. Section 682.701 is amended by revising the definition of "Disqualification" to read as follows:

§ 682.701 Definitions of terms used in this subpart.

* * * * *

Disqualification: The removal of a lender's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender by a guaranty agency.

* * * * *

■ 69. Section 682.702 is amended by:

■ A. In paragraph (a), removing the words "in paragraph (d) of this section and".

■ B. Revising paragraph (b)(1).

■ C. Removing paragraph (b)(2).

■ D. Redesignating paragraph (b)(3) as paragraph (b)(2).

■ E. Removing paragraph (d).

The revision reads as follows:

§ 682.702 Effect on participation.

* * * * *

(b) * * *

(1) A limit on the number or total amount of loans that a lender may purchase or hold under the FFEL Program; or

* * * * *

§ 682.704 [Amended]

■ 70. Section 682.704(a) introductory text is amended, by removing the words "stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to".

§ 682.705 [Amended]

■ 71. Section 682.705 is amended by:

■ A. In paragraph (a)(1) introductory text, removing the words "new loan made by the lender or".

■ B. In paragraph (b)(2)(v), removing the words " , except as provided in paragraph (c)(9) of this section , ,".

■ C. Removing paragraph (c).

§ 682.706 [Amended]

■ 72. Section 682.706 is amended by removing paragraph (d).

■ 73. Section 682.709 is amended by adding paragraph (d) to read as follows:

§ 682.709 Reimbursements, refunds, and offsets.

* * * * *

(d) In any action under this part based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or the hearing official finds that the lender provided or offered the payments or activities described in paragraph (5)(i) of the definition of "lender" in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans. To

reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

§ 682.711 [Amended]

- 74. Section 682.711 is amended by:
 - A. Removing paragraph (c).
 - B. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
 - C. In newly redesignated paragraph (d)(2), removing the parenthetical “(d)” and adding, in its place, the parenthetical “(c)”.
 - D. In newly redesignated paragraph (d)(2), removing the parenthetical “(e)” and adding, in its place, the parenthetical “(d)”.

§ 682.712 [Amended]

- 75. Section 682.712 is amended by:
 - A. In paragraph (g)(2), removing the parenthetical “(j)” and adding, in its place, the parenthetical “(i)”.
 - B. In paragraph (h)(2) and in paragraph (h)(3) introductory text, removing the parenthetical “(j)” and adding, in its place, the parenthetical “(i)”.
 - C. Removing paragraph (i).
 - D. Redesignating paragraph (j) as paragraph (i).

§ 682.713 [Removed]

- 76. Remove § 682.713.

Subpart H of part 682—[Removed and Reserved]

- 77. Remove and reserve subpart H of part 682.

Appendix C to Part 682 [Removed]

- 78. Remove and reserve Appendix C to part 682.

Appendix D to Part 682 [Amended]

- 79. In appendix D to part 682, paragraph 3 of the introduction is amended by removing the final citation “34 CFR 682.401(d)” and adding, in its place, the citation “34 CFR 682.401(c)”.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

- 80. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

- 81. Section 685.100 is amended by:
 - A. Revising paragraph (a).
 - B. In paragraph (b), removing the words “has been selected by the Secretary to participate” and adding, in their place, the word “participates”.

- C. Revising paragraph (c).

The revisions read as follows:

§ 685.100 The William D. Ford Federal Direct Loan Program.

(a) Under the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student’s attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1)(i) Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program), which provides loans to undergraduate, graduate, and professional students. Loans made under this program are referred to as Direct Subsidized Loans. Except as provided in paragraph (a)(1)(ii) of this section, the Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

(ii) The Secretary does not subsidize the interest that accrues during the grace period on any Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (Direct Unsubsidized Loan Program), which provides loans to undergraduate, graduate and professional students. Loans made under this program are referred to as Direct Unsubsidized Loans. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program (Direct PLUS Loan Program), which provides loans to parents of dependent students and to graduate or professional students. Loans made under this program are referred to as Direct PLUS Loans. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program (Direct Consolidation Loan Program), which provides loans to borrowers to consolidate certain Federal educational loans. Loans made under this program are referred to as Direct Consolidation Loans.

* * * * *

(c) The Secretary makes a Direct Consolidation Loan only to a borrower who is consolidating at least one loan made under the Direct Loan Program or the Federal Family Education Loan (FFEL) Program.

* * * * *

- 82. Section 685.101 is revised to read as follows:

§ 685.101 Participation in the Direct Loan Program.

(a) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student’s cost of attendance at the school.

(b)(1) An eligible undergraduate student who is enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan and Direct Unsubsidized Loan Programs.

(2) An eligible graduate or professional student enrolled at a school participating in the Direct Loan Program may borrow under the Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan Programs, except that a graduate or professional student may not borrow under the Direct Subsidized Loan Program for any period of enrollment beginning on or after July 1, 2012.

(3) An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Direct PLUS Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

- 83. Section 685.102 is amended by:

- A. In paragraph (a)(1) introductory text, removing the words “subpart A of”.
- B. In paragraph (a)(1), removing the terms “Academic Competitiveness Grant (ACG) Program”, “Disburse”, “Federal Direct Student Loan Program (Direct Loan Program)”, “Leveraging Educational Assistance Partnership Program”, “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”, and “State”.
- C. In paragraph (a)(1), adding the terms “Disbursement” and “William D. Ford Federal Direct Loan (Direct Loan) Program” in alphabetical order.
- D. In paragraph (a)(2), adding the terms “Correspondence course” and “State” in alphabetical order.
- E. In paragraph (a)(2), removing the term “Program of study by correspondence”.
- F. Removing paragraph (a)(3).

■ G. In paragraph (b), adding the definitions of “Act”, “Endorser”, “Federal Insured Student Loan Program”, “Federal Stafford Loan Program”, “Guaranty agency”, “Holder”, “Lender”, “Nationwide consumer reporting agency”, “Substantial gainful activity”, and “Totally and permanently disabled”, in alphabetical order.

■ H. In paragraph (b), removing the definitions of “Alternative originator”, “Consortium”, “School origination option 1”, “School origination option 2”, “Servicer”, and “Standard origination”.

■ I. In paragraph (b), in the definition of “Estimated financial assistance”, revising paragraphs (1)(vi) and (2)(i).

■ J. In paragraph (b), in the heading of the definition of “Federal Direct Consolidation Loan Program:”, adding the words “(Direct Consolidation Loan Program)” immediately before the punctuation “:”.

■ K. In paragraph (b), in paragraph (4) of the definition of “Federal Direct Consolidation Loan Program”, removing the words “The term” in the first sentence and adding, in their place, the words “In the case of a Direct Consolidation Loan that entered repayment prior to July 1, 2006, the term”.

■ L. In paragraph (b), in the heading of the definition of “Federal Direct PLUS Program:”, adding the words “(Direct PLUS Loan Program)” immediately before the punctuation “:”.

■ M. In paragraph (b), revising the definition of “Federal Direct Stafford/Ford Loan Program”.

■ N. In paragraph (b), in the heading of the definition of “Federal Direct Unsubsidized Stafford/Ford Loan Program:”, adding the words “(Direct Unsubsidized Loan Program)” immediately before the punctuation “:”.

■ O. In paragraph (b), revising the definition of “Grace period”.

■ P. In paragraph (b), in the definition of “Master Promissory Note (MPN)”, adding a new paragraph (4).

■ Q. In paragraph (b), revising the definition of “Satisfactory repayment arrangement”.

The revisions and additions read as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Act: The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.*

* * * * *

Endorser: An individual who signs a promissory note and agrees to repay the

loan in the event that the borrower does not.

Estimated financial assistance: (1) * * *

(vi) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of subsidized and unsubsidized Federal Stafford Loans, Direct Subsidized and Unsubsidized Loans, and Federal PLUS or Direct PLUS Loans.

(2) * * *

(i) Those amounts used to replace the expected family contribution (EFC), including the amounts of any TEACH Grants, unsubsidized Federal Stafford Loans or Direct Unsubsidized Loans, Federal PLUS or Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student’s EFC exceed the EFC, the excess amount must be treated as estimated financial assistance;

* * * * *

Federal Direct Stafford/Ford Loan Program (Direct Subsidized Loan Program): A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period, except that the Secretary does not subsidize the interest that accrues during the grace period on a loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014. Loans made under this program are referred to as Direct Subsidized Loans. Graduate and professional students are not eligible to receive Direct Subsidized Loans for any period of enrollment beginning on or after July 1, 2012.

* * * * *

Federal Insured Student Loan Program: The loan program authorized by title IV, part B of the Act under which the Secretary directly insures lenders against losses.

Federal Stafford Loan Program: The loan program authorized by title IV, part B of the Act which encouraged the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

Grace period: A six-month period that begins on the day after a Direct Subsidized Loan borrower, a Direct

Unsubsidized Loan borrower, or, in some cases, a Direct Consolidation Loan borrower whose consolidation application was received before July 1, 2006, ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Guaranty agency: A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Holder: The entity that owns a loan. For a FFEL Program loan, the term “holder” refers to an eligible lender owning a FFEL Program loan, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

* * * * *

Lender: As used in this part, the term “lender” has the meaning specified in section 435(d) of the Act for purposes of the FFEL Program.

* * * * *

Master Promissory Note (MPN):

* * * * *

(4) Unless the Secretary determines otherwise, a school may use a single MPN as the basis for all loans borrowed by a student or parent borrower for attendance at that school. If a school is not authorized by the Secretary for multi-year use of the MPN, a student or parent borrower must sign a new MPN for each academic year.

Nationwide consumer reporting agency: A consumer reporting agency as defined in 15 U.S.C. 1681a(p).

* * * * *

Satisfactory repayment arrangement:

(1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under § 685.220(d)(1)(ii)(A)(3)—

(i) The making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan prior to consolidation; or

(ii) Agreeing to repay the Direct Consolidation Loan under one of the income-contingent repayment plans described in § 685.209 or the income-based repayment plan described in § 685.221.

(3) For the purpose of paragraph (2)(i) of this definition, the required monthly payment amount may not be more than

is reasonable and affordable based on the borrower's total financial circumstances. "On-time" means a payment made within 20 days of the scheduled due date, and voluntary payments are payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(4) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Substantial gainful activity: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Totally and permanently disabled: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

- (i) Can be expected to result in death;
- (ii) Has lasted for a continuous period of not less than 60 months; or
- (iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

* * * * *

- 84. Section 685.200, is amended by:
 - A. Revising paragraph (a)(1)(iv).
 - B. Revising paragraph (a)(1)(v).
 - C. Revising paragraph (b)(4).
 - D. In paragraph (c)(1)(vii)(C), adding the word "paragraph" immediately before the citation "(c)(1)(vii)(A)".
 - E. Adding a new paragraph (c)(1)(vii)(D).
 - F. Revising paragraph (d).

The revisions and addition read as follows:

§ 685.200 Borrower eligibility.

- (a) * * *
- (1) * * *

(iv) In the case of a borrower whose previous loan or TEACH Grant service obligation was discharged due to total and permanent disability, the student—

(A) In the case of a borrower whose prior loan under title IV of the Act or TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that neither the new Direct Loan the borrower receives nor any previously discharged loan on which the borrower is required to resume payment in accordance with paragraph (a)(1)(iv)(B) of this section can be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates;

(B) In the case of a borrower who receives a new Direct Loan, other than a Direct Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 685.213(b)(4)(iii), 34 CFR 674.61(b)(3)(v), 34 CFR 682.402(c)(3)(iv), or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, the borrower resumes repayment on the previously discharged loan in accordance with § 685.213(b)(7), 34 CFR 674.61(b)(6), or 34 CFR 682.402(c)(6), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan; and

(C) In the case of a borrower whose prior loan under title IV of the Act was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010—

(1) The suspension of collection activity on the prior loan has been lifted;

(2) The borrower complies with the requirement in paragraph (a)(1)(iv)(A)(1) of this section;

(3) The borrower signs a statement acknowledging that neither the new Direct Loan the borrower receives nor the loan that has been conditionally discharged prior to a final determination of total and permanent disability can be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made, unless that impairment substantially deteriorates; and

(4) The borrower signs a statement acknowledging that the suspension of collection activity on the prior loan will be lifted.

(v) In the case of a student who was enrolled in a program of study prior to July 1, 2012 and who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets

the requirements under 34 CFR 668.32(e)(2), (3), (4), or (5).

* * * * *

(b) * * *

(4) The student has received a determination of his or her annual loan maximum eligibility under the Direct Unsubsidized Loan Program and, for periods of enrollment beginning before July 1, 2012, the Direct Subsidized Loan Program; and

* * * * *

(c) * * *

(1) * * *

(vii) * * *

(D) For the purposes of paragraph (c)(1)(vii)(A)(3) of this section, the Secretary may determine that extenuating circumstances exist based on documentation that includes, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than \$500.

* * * * *

(d) *Defaulted Perkins, FFEL, and Direct Loan program borrowers.* Except as noted in § 685.220(d)(1)(ii)(A)(3), in the case of a student or parent borrower who is currently in default on a Perkins, FFEL, or Direct Loan program loan, the borrower must make satisfactory repayment arrangements, as described in paragraph (1) of the definition of that term under § 685.102(b), on the defaulted loan.

* * * * *

- 85. Section 685.201 is amended by:
 - A. Revising paragraph (a)(2).
 - B. Revising paragraph (b).
 - C. Revising paragraph (c)(1).
 - D. In paragraph (c)(2), removing the word "Servicer" and adding, in its place, the word "Secretary".

The revisions read as follows:

§ 685.201 Obtaining a loan.

(a) * * *

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the school in which the student is enrolled must perform the following functions:

(i) Create a loan origination record and transmit the record to the Secretary.

(ii) Ensure that the loan is supported by a completed Master Promissory Note (MPN) and, if applicable, transmit the MPN to the Secretary.

(iii) In accordance with 34 CFR 668.162, draw down funds or receive funds from the Secretary, and disburse the funds to the student.

(b) *Application for a Direct PLUS Loan.* (1) For a parent to obtain a Direct

PLUS Loan, the parent must complete the Direct PLUS Loan MPN and the dependent student on whose behalf the parent is borrowing must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) For a graduate or professional student to apply for a Direct PLUS Loan, the student must complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application. The graduate or professional student must also complete the Direct PLUS Loan MPN.

(3) For either a parent or student PLUS borrower, as applicable, the school must complete its portion of the PLUS MPN and, if applicable, submit it to the Secretary. The Secretary makes a determination as to whether the parent or graduate or professional student has an adverse credit history. The school performs the functions described in paragraph (a)(2) of this section.

(c) * * *
 (1) To obtain a Direct Consolidation Loan, the applicant must complete the application and promissory note and submit it to the Secretary. The application and promissory note sets forth the terms and conditions of the Direct Consolidation Loan and informs the applicant how to contact the Secretary. The Secretary answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

- * * * * *
- 86. Section 685.202 is amended by:
 - A. Revising paragraph (a)(1)(iv).
 - B. In the introductory text of paragraph (a)(1)(v), removing the words “subsidized Stafford loan” and adding, in their place, the words “Direct Subsidized Loan”.
 - C. In paragraph (a)(1)(v)(A), adding the words “or on or after July 1, 2013,” immediately before the words “the interest rate”.
 - D. Revising paragraph (b)(2).

The revisions read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *
 (1) * * *
 (iv) *Loans first disbursed on or after July 1, 2006.* Except as provided in paragraph (a)(1)(v) of this section for Direct Subsidized Loans made to undergraduate students, the interest rate is 6.8 percent.

* * * * *
 (b) * * *

(2) For a Direct Unsubsidized Loan, a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, a Direct PLUS Loan, or for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, the Secretary may capitalize the unpaid interest that accrues on the loan when the borrower enters repayment.

* * * * *

- 87. Section 685.203 is amended by:
- A. Revising the introductory text of paragraph (a)(1).
- B. In paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), removing the words “\$2,625, or, for a loan disbursed on or after July 1, 2007, \$3,500,” and adding, in their place, the figure “\$3,500”.
- C. Revising the introductory text of paragraph (a)(2).
- D. In paragraphs (a)(2)(i) and (a)(2)(ii), removing the words “\$3,500, or, for a loan disbursed on or after July 1, 2007, \$4,500,” and adding, in their place, the figure “\$4,500”.
- E. Revising the introductory text of paragraph (a)(3).
- F. Revising paragraph (a)(5).
- G. Revising the introductory text of paragraph (a)(6).
- H. Revising paragraph (a)(7).
- I. Revising paragraph (b).
- J. In paragraph (c)(1)(i), removing the words “Federal Direct Unsubsidized Loan Program” and adding, in their place, the words “Direct Unsubsidized Loan Program”.
- K. Revising paragraph (c)(1)(ii).
- L. In paragraph (c)(1)(iii), in the last sentence, removing the words “Federal PLUS Loan or”.
- M. Revising the introductory text of paragraph (c)(2).
- N. In paragraphs (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(i)(C), (c)(2)(ii)(A), and (c)(2)(ii)(B), removing the words “\$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000,” and adding, in their place, the figure “\$6,000”.
- O. In paragraphs (c)(2)(iii)(A) and (c)(2)(iii)(B), removing the words “\$5,000, or, for a loan first disbursed on or after July 1, 2008, \$7,000,” and adding, in their place, the figure “\$7,000”.
- P. In paragraph (c)(2)(v), removing the words “\$10,000, or, for a loan disbursed on or after July 1, 2007,”.
- Q. In paragraph (c)(2)(vi)(A), removing the words “\$4,000, or, for a loan first disbursed on or after July 1, 2008, \$6,000,” and adding, in their place, the figure “\$6,000”.
- R. In paragraph (c)(2)(vi)(B), removing the words “\$5,000, or, for a loan

disbursed on or after July 1, 2007, \$7,000,” and adding, in their place, the figure “\$7,000”.

- S. In paragraph (c)(2)(vii), removing the words “\$5,000, or, for a loan disbursed on or after July 1, 2007,”.
- T. Revising the introductory text of paragraph (d).
- U. Revising paragraph (e).
- V. In paragraph (i)(1), adding the word “Subsidized” immediately before the words “Federal Stafford Loans”.
- W. In paragraph (i)(2), removing the words “Federal Unsubsidized Stafford Loans” and adding, in their place, the words “Unsubsidized Federal Stafford Loans”.

The revisions read as follows:

§ 685.203 Loan limits.

(a) * * *
 (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(5) In the case of a graduate or professional student for periods of enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed \$8,500.

(6) In the case of a student enrolled for no longer than one consecutive 12-month period in a course of study necessary for enrollment in a program leading to a degree or a certificate, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed the following:

* * * * *

(7) In the case of a student who has obtained a baccalaureate degree and is enrolled or accepted for enrollment in coursework necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State, the total amount the student may borrow for any academic year of study under the Direct Subsidized Loan Program may not exceed \$5,500.

* * * * *

(b) *Direct Unsubsidized Loans.* (1) In the case of a dependent undergraduate student, except as provided in paragraph (c)(3) of this section, the total amount a student may borrow for any academic year of study under the Direct Unsubsidized Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Direct Subsidized Loan Program, plus—

(i) \$2,000 for a program of study of at least a full academic year in length.

(ii) For a program of study that is one academic year or more in length with less than a full academic year remaining, the amount that is the same ratio to \$2,000 as the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter or clock hours in academic year

(iii) For a program of study that is less than a full academic year in length, the amount that is the same ratio to \$2,000 as the lesser of the—

Number of semester, trimester, quarter, or clock hours enrolled

Number of semester, trimester, quarter or clock hours in academic year or Number of weeks enrolled

Number of weeks in academic year

(2)(i) In the case of an independent undergraduate student or certain dependent undergraduate students under the conditions specified in paragraph (c)(1)(ii) of this section, except as provided in paragraph (c)(3) of this section, the total amount the student may borrow for any period of enrollment under the Direct Unsubsidized Loan Program may not exceed the amounts determined under paragraph (a) of this section less any amount received under the Direct Subsidized Loan Program in combination with the amounts determined under paragraph (c) of this section.

(ii) In the case of a graduate or professional student for a period of

enrollment beginning before July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed the amount determined under paragraph (a)(5) of this section, less any amount received under the Direct Subsidized Loan Program.

(iii) In the case of a graduate or professional student for a period of enrollment beginning on or after July 1, 2012, the total amount the student may borrow for any academic year of study under the Direct Unsubsidized Loan Program may not exceed \$8,500.

(c) * * *

(1) * * *

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parent likely will be precluded by exceptional circumstances from borrowing under the Direct PLUS Loan Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator must base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and must document the determination in the school's file.

* * * * *

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Direct Unsubsidized Loan Program for any academic year of study may not exceed the following:

* * * * *

(d) *Aggregate limits for subsidized loans.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Subsidized Federal Stafford Loans made to a student but excluding the amount of capitalized interest may not exceed the following:

* * * * *

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Unsubsidized Federal Stafford Loans, and Federal SLS Loans, excluding the amount of capitalized interest, may not exceed the following:

(1) For a dependent undergraduate student, \$31,000 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, \$57,500 minus any Direct Subsidized Loan and Subsidized Federal Stafford Loan amounts.

(3) For a graduate or professional student, \$138,500, including any loans for undergraduate study, minus any Direct Subsidized Loan, Subsidized Federal Stafford Loan, and Federal SLS Program loan amounts.

* * * * *

■ 88. Section 685.204 is revised to read as follows:

§ 685.204 Deferment.

(a) *General.* (1) A Direct Subsidized Loan or Direct Subsidized Consolidation Loan borrower who meets the requirements described in paragraphs (b), (d), (e), (f), (g), (h), (i), and (j) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Unsubsidized Loan, Direct Unsubsidized Consolidation Loan, Direct PLUS Loan, or Direct PLUS Consolidation Loan borrower who meets the requirements described in paragraphs (b) through (j) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower. At or before the time a deferment is granted, the Secretary provides information, including an example, to assist the borrower in understanding the impact of capitalization of accrued, unpaid interest on the borrower's loan principal and on the total amount of interest to be paid over the life of the loan.

(3) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(4)(i) To receive a deferment, except as provided for in-school deferments under paragraphs (b)(2)(ii) through (iv) of this section, the borrower must request the deferment and, except as provided in paragraph (a)(5)(i) of this section, provide the Secretary with all information and documents required to establish eligibility for the deferment.

(ii) In the case of a military service deferment under paragraph (h) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower. If the Secretary grants a military service deferment based on a request from a borrower's

representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

(5)(i) After receiving a borrower's written or verbal request for a deferment, the Secretary may grant a graduate fellowship deferment under paragraph (d), a rehabilitation training deferment under paragraph (e), an unemployment deferment under paragraph (f), an economic hardship deferment under paragraph (g), a military service deferment under paragraph (h), or a post-active duty student deferment under paragraph (i) of this section if the Secretary confirms that the borrower has received a deferment on a FFEL Program loan for the same reason and during the same time period.

(ii) The Secretary will grant a deferment based on the information obtained under paragraph (a)(5)(i) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary will resolve any discrepant information before granting a deferment under paragraph (a)(5)(i) of this section.

(iii) If the Secretary grants a deferment under paragraph (a)(5)(i) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(b) *In-school deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period during which—

(i) The borrower is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2) For the purpose of paragraph (b)(1) of this section, the Secretary processes a deferment when—

(i) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(ii) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan;

(iii) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis; or

(iv) The Secretary confirms a borrower's half-time enrollment status through the use of the National Student Loan Data System if requested to do so by the school the borrower is attending.

(3)(i) Upon notification by the Secretary that a deferment has been granted based on paragraph (b)(2)(ii), (iii), or (iv) of this section, the borrower has the option to cancel the deferment and continue to make payments on the loan.

(ii) If the borrower elects to cancel the deferment and continue to make payments on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

(c) *In-school deferments for Direct PLUS Loan borrowers with loans first disbursed on or after July 1, 2008.* (1)(i) A student Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008 during the six-month period that begins on the day after the student ceases to be enrolled on at least a half-time basis at an eligible institution.

(ii) If the Secretary grants an in-school deferment to a student Direct PLUS Loan borrower in accordance with § 685.204(b)(2)(ii), (iii), or (iv), the deferment period for a Direct PLUS loan first disbursed on or after July 1, 2008 includes the six-month post-enrollment period described in paragraph (c)(1)(i) of this section.

(2) A parent Direct PLUS Loan borrower is eligible for a deferment on a Direct PLUS Loan first disbursed on or after July 1, 2008—

(i) Upon the request of the borrower, during the period when the student on whose behalf the loan was obtained is enrolled at an eligible institution on at least a half-time basis; and

(ii) Upon the request of the borrower, during the six-month period that begins on the later of the day after the student on whose behalf the loan was obtained ceases to be enrolled on at least a half-time basis or, if the parent borrower is also a student, the day after the parent borrower ceases to be enrolled on at least a half-time basis.

(d) *Graduate fellowship deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's

graduate fellowship program certifies that the borrower is pursuing a course of study pursuant to an eligible graduate fellowship program in accordance with paragraph (d)(2) of this section.

(2)(i) To qualify for a deferment under paragraph (d)(1) of this section, a borrower must—

(A) Hold at least a baccalaureate degree conferred by an institution of higher education;

(B) Have been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program, as defined in paragraph (d)(2)(ii) of this section; and

(C) Not be serving in a medical internship or residency program, except for a residency program in dentistry.

(ii) An eligible graduate fellowship program is a fellowship program that—

(A) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(B) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(C) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(D) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which an authorized official of the borrower's rehabilitation training program certifies that the borrower is pursuing an eligible rehabilitation training program for individuals with disabilities in accordance with paragraph (e)(2) of this section.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Unemployment deferment.* (1) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower is seeking and unable to find full-time employment.

(2) A borrower qualifies for an unemployment deferment by—

(i) Providing evidence of eligibility for unemployment benefits to the Secretary; or

(ii) Providing to the Secretary a written certification, or an equivalent as approved by the Secretary, that—

(A) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(B) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding six-month period to secure full-time employment.

(3) For purposes of obtaining an unemployment deferment under paragraph (f)(2)(ii) of this section, the following rules apply:

(i) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(ii) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels overqualified by virtue of education or previous experience.

(iii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to six months before the date the Secretary receives the borrower's request, and may be granted for up to six months after that date.

(4) The Secretary does not grant an unemployment deferment beyond the date that is six months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (f)(2)(i) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (f)(2)(ii) of this section.

(g) *Economic hardship deferment.*

(1)(i) A Direct Loan borrower is eligible for a deferment during periods that, collectively, do not exceed three years in which the borrower has experienced or will experience an economic hardship in accordance with paragraph (g)(2) of this section.

(ii) An economic hardship deferment is granted for periods of up to one year at a time, except that a borrower who receives a deferment under paragraph (g)(2)(iv) of this section may receive an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum.

(2) A borrower qualifies for an economic hardship deferment if the borrower—

(i) Has been granted an economic hardship deferment under either the FFEL or the Federal Perkins Loan programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Direct Loan;

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance;

(iii) Is working full-time (as defined in paragraph (g)(3)(iii) of this section) and has a monthly income (as defined in paragraph (g)(3)(iv) of this section) that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size (as defined in paragraph (g)(3)(v) of this section) as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States; or

(iv) Is serving as a volunteer in the Peace Corps.

(3) The following rules apply to a deferment granted under paragraph (g)(2)(iii) of this section:

(i) For an initial period of deferment, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income.

(ii) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (g)(2)(iii) of this section, the Secretary requires the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(iii) A borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(iv) A borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(v) Family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(h) *Military service deferment.* (1) A Direct Loan borrower is eligible for a deferment during any period in which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency, as defined in paragraph (h)(5) of this section.

(2) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of the service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(3) Without supporting documentation, the military service deferment will be granted to an otherwise eligible borrower for a period not to exceed the initial 12 months from the date the qualifying eligible service began based on a request from the borrower or the borrower's representative.

(4) The provisions of paragraph (h) of this section do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(5) As used in paragraph (h) of this section—

(i) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(A) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(B) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(C) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned;

(ii) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds;

(iii) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(iv) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(v) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(i) *Post-active duty student deferment.*
(1) A Direct Loan borrower is eligible for

a deferment for 13 months following the conclusion of the borrower's active duty military service and any applicable grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled on at least a half-time basis in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section, "active duty" means active duty as defined in 10 U.S.C. 101(d)(1) for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which a Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which a Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status on at least a half-time basis during the grace period or the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) *Additional deferments for Direct Loan borrowers with FFEL Program loans made before July 1, 1993.* If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the

borrower is eligible for a deferment during—

(1) The periods described in paragraphs (b) through (i) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b)(7).

(Approved by the Office of Management and Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 89. Section 685.205 is amended by:

■ A. In paragraph (a)(4), removing the word "or" that appears after the punctuation ";;";

■ B. Revising paragraph (a)(5).

■ C. Adding new paragraphs (a)(8) and (a)(9).

■ D. In paragraph (b)(2), removing the words "authorized deferment period" and adding, in their place, the words "authorized deferment or forbearance period".

The additions read as follows:

§ 685.205 Forbearance.

(a) * * *

(5)(i) The borrower is performing the type of service that would qualify the borrower for loan forgiveness under the requirements of the teacher loan forgiveness program in § 685.217.

(ii) Before a forbearance is granted under § 685.205(a)(5)(i), the borrower must—

(A) Submit documentation for the period of the annual forbearance request showing the beginning and ending dates that the borrower is expected to perform, for that year, the type of service described in § 685.217(c); and

(B) Certify the borrower's intent to satisfy the requirements of § 685.217(c).

(iii) The Secretary grants forbearance under paragraph (a)(5) of this section only if the Secretary believes, at the time of the borrower's annual request, that the expected forgiveness amount under § 685.217(d) will satisfy the anticipated remaining outstanding balance on the borrower's loan at the time of the expected forgiveness;

* * * * *

(8)(i) The Secretary may grant a forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new agreement to repay the debt signed by the borrower or endorser or a written or oral affirmation of the borrower's or endorser's obligation to repay the debt.

(ii) If the forbearance is based on the borrower's or endorser's oral affirmation

of the obligation to repay the debt, the forbearance period is limited to 120 days, such a forbearance is not granted consecutively, and the Secretary will—

(A) Orally review with the borrower the terms and conditions of the forbearance, including the consequences of interest capitalization, and other repayment options available to the borrower;

(B) Send a notice to the borrower or endorser that confirms the terms of the forbearance and the borrower's or endorser's affirmation of the obligation to repay the debt; and

(C) Retain a record of the terms of the forbearance and affirmation in the borrower's or endorser's file.

(iii) For purposes of this section, an "affirmation" means an acknowledgement of the loan by the borrower or endorser in a legally binding manner. The form of the affirmation may include, but is not limited to the borrower's or endorser's—

(A) New signed repayment agreement or schedule, or another form of signed agreement to repay the debt;

(B) Oral acknowledgement and agreement to repay the debt documented by the Secretary in the borrower's or endorser's file and confirmed by the Secretary in a notice to the borrower; or

(C) A payment made on the loan by the borrower or endorser.

(9)(i) The borrower is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense.

(ii) To receive a forbearance under this paragraph, the borrower must submit documentation showing the time period during which the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under a student loan repayment program.

* * * * *

§ 685.206 [Amended]

■ 90. Section 685.206 is amended by:

■ A. In the introductory text of paragraph (a), removing the word "shall" and adding, in its place, the word "must".

■ B. In paragraph (b)(1), removing the word "shall" and adding, in its place, the word "must".

■ C. In paragraph (b)(2), removing the word "shall" and adding, in its place, the word "must".

■ D. In paragraph (c)(1)(iv), removing the words "Credit bureau" and adding, in their place, the words "Consumer reporting agency".

■ E. In paragraph (c)(2)(iii), removing the words "credit bureaus" and adding, in their place, the words "consumer reporting agencies".

■ 91. Section 685.207 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Adding a new paragraph (a)(3).

■ C. In paragraph (b)(1)(ii), removing the citation "\$ 685.204" and adding, in its place, the citation "\$ 685.204(b)".

■ D. Revising paragraph (b)(3).

The revisions and addition read as follows:

§ 685.207 Obligation to repay.

(a) * * *

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, the discharge provisions in § 685.212, and the loan forgiveness provisions in §§ 685.217 and 685.219.

(3) A borrower's first payment on a Direct Loan is due within 60 days of the beginning date of the repayment period as determined in accordance with paragraph (b), (c), (d), or (e) of this section.

(b) * * *

(3)(i) A borrower is not obligated to pay interest on a Direct Subsidized Loan during periods when the borrower is enrolled at an eligible school on at least a half-time basis unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, a borrower is not obligated to pay interest on a Direct Subsidized Loan during grace periods.

(iii) In the case of a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, a borrower is responsible for the interest that accrues during the grace period.

* * * * *

§ 685.208 [Amended]

■ 92. Section 685.208 is amended by:

■ A. In paragraph (a)(5), removing the words "income contingent" and adding, in their place, the words "income-contingent".

■ B. In paragraph (j)(1), removing the word "then" and adding, in its place, the word "than".

■ C. In paragraph (m)(1), adding the words "or, for a new borrower as of July 1, 2014, as defined in § 685.221(a)(4), 10 percent" immediately after the words "15 percent".

■ 93. Section 685.210 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Revising the introductory text of paragraph (b)(1).

■ C. Revising paragraph (b)(1)(i).

■ D. In paragraph (b)(2)(i), removing the words "income contingent" and adding, in their place, the words "income-contingent".

The revisions read as follows:

§ 685.210 Choice of repayment plan.

(a) * * *

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) or (c) for the borrower, as applicable.

(b) * * *

(1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary. However, a borrower who is repaying a defaulted loan under an income-contingent repayment plan or the income-based repayment plan in accordance with § 685.211(d)(3)(ii), or who is repaying a Direct Consolidation Loan under the income-contingent repayment plan or the income-based repayment plan in accordance with § 685.220(d)(1)(ii)(A)(3) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income-contingent repayment plan or income-based repayment plan in each of the prior three months; or

* * * * *

■ 94. Section 685.211 is amended by:

■ A. In paragraph (d)(3)(i), removing the words "national credit bureaus" and adding, in their place, the words "nationwide consumer reporting agencies".

■ B. In paragraph (d)(3)(ii), removing the words "income contingent" and adding, in their place, the words "income-contingent".

■ C. Revising paragraph (f).

The revision reads as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) *Rehabilitation of defaulted loans.*

(1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 9 voluntary, reasonable and affordable monthly payments within 20 days of the due date during 10 consecutive months. The Secretary determines the amount of a borrower's reasonable and affordable payment on the basis of a borrower's total financial circumstances.

(i) For the purposes of this section, the borrower's reasonable and affordable payment amount, as determined by the

Secretary, is based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the borrower and other sources, and considers—

(A) The borrower's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the borrower and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the borrower's household income;

(B) Family size as defined in § 685.221(a)(3); and

(C) Reasonable and necessary expenses, which include—

- (1) Food;
- (2) Housing;
- (3) Utilities;
- (4) Basic communication expenses;
- (5) Necessary medical and dental costs;
- (6) Necessary insurance costs;
- (7) Transportation costs;
- (8) Dependent care and other work-related expenses;
- (9) Legally required child and spousal support;
- (10) Other title IV and non-title IV student loan payments; and
- (11) Other expenses approved by the Secretary.

(ii) The reasonable and affordable payment amount must not be—

(A) A required minimum loan payment amount (e.g. \$50) if the Secretary determines that a smaller amount is reasonable and affordable;

(B) A percentage of the borrower's total loan balance; or

(C) Based on other criteria unrelated to the borrower's total financial circumstances.

(iii) Within 15 business days of the Secretary's determination of the borrower's reasonable and affordable payment amount, the Secretary provides the borrower with a written rehabilitation agreement which includes the borrower's reasonable and affordable payment amount, a prominent statement that the borrower may object orally or in writing to the reasonable and affordable payment amount with the method and timeframe for raising such an objection, and an explanation of any other terms and conditions applicable to the required series of payments that must be made. The Secretary does not impose any other conditions unrelated to the amount or timing of the rehabilitation payments in the rehabilitation agreement. The written rehabilitation agreement informs the borrower of the effects of having the loans rehabilitated

(e.g., removal of the record of default from the borrower's credit history and return to normal repayment).

(2) The Secretary provides the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the Secretary, and explaining any other terms and conditions applicable to the required series of payments that must be made before the borrower's account can be rehabilitated. The statement informs the borrower that the borrower may object to the terms and conditions of the rehabilitation agreement, and explains the method and timeframe for objecting to the terms and conditions of the rehabilitation agreement.

(3) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, the Secretary recalculates the payment amount by using the monthly payment calculation rules in § 685.221(b)(1) and § 685.221(b)(2), except that if the calculated amount under these sections is less than \$5, the monthly rehabilitation payment is \$5.

(4) The Secretary provides the borrower with a written statement confirming the borrower's recalculated reasonable and affordable payment amount.

(5) If the borrower objects to the monthly payment amount determined under paragraph (f)(1) of this section, but does not provide the documentation required to calculate a monthly payment amount under § 685.221(b)(1) and § 685.221(b)(2), no rehabilitation agreement exists between the borrower and the Secretary, and the rehabilitation does not proceed.

(6) The Secretary includes any payment made under § 682.401(b)(1) in determining whether the 9 out of 10 payments required under paragraph (f)(1) of this section have been made.

(7) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (f)(1)(i) of this section.

(8) During the rehabilitation period, the Secretary limits contact with the borrower on the loan being rehabilitated to collection activities that are required by law or regulation and to communications that support the rehabilitation.

(9) If a defaulted loan is rehabilitated, the Secretary instructs any consumer reporting agency to which the default was reported to remove the default from the borrower's credit history.

(10) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

(11) A Direct Loan obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance may not be rehabilitated.

(12)(i) If a borrower's loan is being collected by administrative wage garnishment while the borrower is also making monthly payments on the same loan under a loan rehabilitation agreement, the Secretary continues collecting the loan by administrative wage garnishment until the borrower makes five qualifying monthly payments under the rehabilitation agreement. After the borrower makes the fifth qualifying monthly payment, the Secretary, unless otherwise directed by the borrower, suspends collecting the loan by administrative wage garnishment.

(ii) A borrower may only obtain the benefit of a suspension of administrative wage garnishment while also attempting to rehabilitate a defaulted loan once.

(13) Effective for any defaulted Direct Loan that is rehabilitated on or after August 14, 2008, the borrower cannot rehabilitate the loan again if the loan returns to default status following the rehabilitation.

* * * * *

§ 685.212 [Amended]

■ 95. Section 685.212 is amended by:

■ A. In paragraph (a)(3), removing the words "Direct PLUS Consolidation Loan" and adding, in their place, the words "Direct Consolidation Loan".

■ B. In paragraph (b), removing the citation "\$ 685.213(c)" and adding, in its place, the citation "\$ 685.213".

■ 96. Section 685.214 is amended by:

■ A. Revising paragraph (a)(2)(ii).

■ B. Revising paragraph (b)(4).

■ C. Revising paragraph (c).

■ D. In paragraph (d)(1), removing the word "shall" each time it appears and adding, in its place, the word "must".

■ E. In paragraph (f)(1), removing the number and words "90 days" and adding, in their place, the number and words "120 days".

The revisions read as follows:

§ 685.214 Closed school discharge.

(a) * * *

(2) * * *

(ii) "School" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(b) * * *

(4) The Secretary reports the discharge of a loan under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* (1) In order to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in

accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) The Secretary may discharge a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge.

* * * * *

■ 97. Section 685.215 is amended by:

■ A. In paragraph (a)(1)(iv), removing the citation “§ 682.402(e)(14)” and adding, in its place, the words “paragraph (c)(4)(ii) of this section”.

■ B. Revising paragraph (b)(5).

■ C. In the introductory text of paragraph (c), removing the word “shall” each time it appears and adding, in its place, the word “must”.

■ D. In the introductory text of paragraph (c)(1), removing the word “shall” and adding, in its place, the word “must”.

■ E. In the introductory text of paragraph (c)(2), removing the word “shall” and adding, in its place, the word “must”.

■ F. In the introductory text of paragraph (c)(3), removing the word “shall” and adding, in its place, the word “must”.

■ G. Revising paragraph (c)(4).

■ H. In paragraph (c)(5), removing the word “shall” and adding, in its place, the word “must”.

I. In the introductory text of paragraph (c)(6), removing the word “shall” and adding, in its place, the word “must”.

The revisions read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

* * * * *

(b) * * *

(5) The Secretary reports the discharge under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) * * *

(4) *Identity theft.* (i) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide—

(1) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(ii) of this section, or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(2) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(ii)(A) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(B) Identifying information includes, but is not limited to—

(1) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

* * * * *

§ 685.216 [Amended]

■ 98. Section 685.216(b)(2) is amended by removing the word “credit” and adding, in its place, the word “consumer”.

■ 99. Section 685.217 is amended by:

■ A. Revising paragraph (a)(1).

■ B. In the last sentence of paragraph (a)(2)(i), adding the word “for” immediately before the words “an eligible educational service agency”.

■ C. In paragraph (a)(2)(iii), removing the word “at” each time it appears and adding, in its place, the word “for”.

■ D. In paragraph (a)(3), removing the words “FFEL and Direct Loan” and adding, in their place, the words “Direct Loan and FFEL”.

■ E. In the introductory text of paragraph (a)(4), removing the words “FFEL and Direct Loan” and adding, in their place, the words “Direct Loan and FFEL”.

■ F. In paragraph (a)(4)(i), removing the word “at” the second time it appears and adding, in its place, the word “by”.

■ G. In paragraph (a)(4)(ii), adding the words “by an eligible” immediately before the words “educational service agency”.

■ H. In the introductory text of paragraph (c)(1), adding the word “by” immediately before the words “an educational service agency”.

■ I. In paragraph (c)(1)(iii), removing the sentence “The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.”

■ J. Redesignating paragraphs (c)(2) through (c)(11) as paragraphs (c)(3) through (c)(12), respectively.

■ K. Adding a new paragraph (c)(2).

■ L. In redesignated paragraph (c)(4)(ii)(A), removing the word “at” the second time it appears and adding, in its place, the word “for”.

■ M. In redesignated paragraph (c)(4)(ii)(B), adding the words “for an eligible” immediately before the words “educational service agency”.

■ N. In redesignated paragraph (c)(4)(iii), removing the word “at” each time it appears and adding, in its place, the word “for”.

■ O. In redesignated paragraph (c)(5)(i), adding the words “for an eligible” immediately before the words “educational service agency”.

■ P. In redesignated paragraph (c)(5)(ii)(A), removing the word “at” the second time it appears and adding, in its place, the word “for”.

■ Q. In redesignated paragraph (c)(5)(ii)(B), adding the words “for an eligible” immediately before the words “educational service agency”.

■ R. In redesignated paragraph (c)(5)(iii), removing the word “at” each time it appears and adding, in its place, the word “for”.

■ S. Revising the introductory text of redesignated paragraph (c)(7).

■ T. Revising redesignated paragraph (c)(9).

■ U. Revising redesignated paragraph (c)(10).

■ V. Adding a new paragraph (c)(13).

■ W. Revising paragraph (d)(1).

■ X. In paragraph (d)(2), removing the words “paragraphs (c)(3)(ii) or (c)(4)(ii)” and adding, in their place, the words “paragraph (c)(4)(ii) or (c)(5)(ii)”.

The revisions and addition read as follows:

§ 685.217 Teacher loan forgiveness program.

(a) * * *

(1) The teacher loan forgiveness program is intended to encourage individuals to enter and continue in the teaching profession. For new borrowers, the Secretary repays the amount specified in this paragraph (a) on the borrower’s Direct Subsidized Loans, Direct Unsubsidized Loans, Subsidized and Unsubsidized Federal Stafford Loans, and in certain cases, Direct Consolidation Loans or Federal Consolidation Loans. The forgiveness program is only available to a borrower who has no outstanding loan balance under the Direct Loan Program or the FFEL Program on October 1, 1998 or who has no outstanding loan balance on the date he or she obtains a loan after October 1, 1998.

* * * * *

(c) * * *

(2) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract with the BIE to qualify as schools serving low-income students.

* * * * *

(7) For teacher loan forgiveness applications received by the Secretary on or after July 1, 2006, a teacher in a private, non-profit elementary or secondary school who is exempt from State certification requirements (unless otherwise applicable under State law) may qualify for loan forgiveness under paragraphs (c)(4)(ii) or (c)(5) of this section if—

* * * * *

(9) A borrower’s period of postsecondary education, qualifying FMLA condition, or military active duty as described in paragraph (c)(8) of this section, including the time necessary for the borrower to resume qualifying teaching no later than the beginning of the next regularly scheduled academic year, does not constitute a break in the required five consecutive years of qualifying teaching service.

(10) A borrower who was employed as a teacher at more than one qualifying school, for more than one qualifying educational service agency, or a combination of both during an academic year and demonstrates that the combined teaching was the equivalent

of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one academic year of qualifying teaching.

* * * * *

(13) A borrower may request forbearance during each of the five years of qualifying teaching service in accordance with § 685.205(a)(5).

(d) * * *

(1) A qualified borrower is eligible for forgiveness of up to \$5,000, or up to \$17,500 if the borrower meets the requirements of paragraph (c)(4)(ii) or (c)(5)(ii) of this section. The forgiveness amount is deducted from the aggregate amount of the borrower’s Direct Subsidized Loan or Direct Unsubsidized Loan or Direct Consolidation Loan obligation that is outstanding after the borrower completes his or her fifth consecutive complete academic year of teaching as described in paragraph (c) of this section. Only the outstanding portion of the Direct Consolidation Loan that was used to repay an eligible Direct Subsidized Loan, an eligible Direct Unsubsidized Loan, or an eligible Subsidized or Unsubsidized Federal Stafford Loan qualifies for loan forgiveness under this section.

* * * * *

■ 100. Section 685.218 is amended by:

■ A. In paragraph (b)(4), removing the words “FFEL or Direct” and adding, in their place, the words “Direct or FFEL”.

■ B. Revising paragraph (d)(3).

■ C. In paragraph (d)(6), removing the words “a Perkins Loan, a FFEL Program loan, or another Direct Loan” and adding, in their place, the words “another Direct Loan, a FFEL Program Loan, or a Perkins Loan”.

■ D. In paragraph (d)(7), removing the words “a FFEL Program Loan or another Direct Loan” and adding, in their place, “another Direct Loan or a FFEL Program Loan”.

■ E. In paragraph (e)(1)(ii), removing the number and word “24 hours” each time they appear and adding, in their place, the number and word “72 hours”.

■ F. Revising paragraph (f)(4)(iii).

■ G. In paragraph (g)(2)(i), removing the words “Direct Loans” and adding, in their place, the words “Direct Loan”.

The revisions read as follows:

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

* * * * *

(d) * * *

(3) If the individual owed a Direct Loan, a FFEL Program Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001,

documentation that the individual's loans were discharged by the Secretary, the lender, or the institution due to death may be substituted for the original or certified copy of a death certificate.

* * * * *
(f) * * *
(4) * * *

(iii) Copies of approved joint Direct Loan or FFEL Consolidation Loan applications or an approved Direct or FFEL PLUS Loan application.

* * * * *

- 101. Section 685.220, as amended by:
A. Revising paragraph (b).
B. Revising paragraph (c).
C. Revising paragraph (d).
D. In paragraph (e), removing the word "shall" and adding, in its place, the word "must".
E. In paragraph (f)(1)(i), removing the word "shall" and adding, in its place, the word "must".
F. Revising paragraph (f)(1)(iii).
G. In paragraph (f)(2), removing the word "shall" each time it appears and adding, in its place, the word "must".
H. In paragraph (f)(4), removing the word "shall" and adding, in its place, the word "must".
I. In paragraph (f)(5), removing the word "shall" and adding, in its place, the word "must".
J. Revising paragraph (h).
K. In paragraph (i)(2)(ii), removing the words "(i)(3)(1) and (ii)" and adding, in their place, the words "(i)(3)(i) through (iii)".
L. Revising paragraph (i)(4).
M. In paragraph (k), removing the word "shall" and adding, in its place, the word "must".

The revisions read as follows:

685.220 Consolidation.

- (a) * * *
(b) Loans eligible for consolidation.
The following loans may be consolidated into a Direct Consolidation Loan:
(1) Subsidized Federal Stafford Loans.
(2) Guaranteed Student Loans.
(3) Federal Insured Student Loans (FISL).
(4) Direct Subsidized Loans.
(5) Direct Subsidized Consolidation Loans.
(6) Federal Perkins Loans.
(7) National Direct Student Loans (NDSL).
(8) National Defense Student Loans (NDSL).
(9) Federal PLUS Loans.
(10) Parent Loans for Undergraduate Students (PLUS).
(11) Direct PLUS Loans.
(12) Direct PLUS Consolidation Loans.

- (13) Federal Consolidation Loans.
(14) Unsubsidized Federal Stafford Loans.
(15) Federal Supplemental Loans for Students (SLS).
(16) Direct Unsubsidized Loans.
(17) Direct Unsubsidized Consolidation Loans.
(18) Auxiliary Loans to Assist Students (ALAS).
(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.
(20) Health Education Assistance Loans (HEAL).
(21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.
(c) Components of Direct Consolidation Loans.
(1) Subsidized component of Direct Consolidation Loans.
The term "Direct Subsidized Consolidation Loan" refers to the portion of a Direct Consolidation Loan attributable to—
(i) The loans identified in paragraphs (b)(1) through (b)(5) of this section; and
(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act.
(2) Unsubsidized component of Direct Consolidation Loans.
Except as provided in paragraph (c)(3) of this section, the term "Direct Unsubsidized Consolidation Loan" refers to the portion of a Direct Consolidation Loan attributable to—
(i) The loans identified in paragraphs (b)(6) through (b)(12) of this section;
(ii) The portion of a Federal Consolidation Loan under paragraph (b)(13) of this section that is not eligible for interest benefits during a deferment period under section 428C(b)(4)(C) of the Act; and
(iii) The loans identified in paragraphs (b)(14) through (b)(21) of this section.
(3) PLUS component of Direct Consolidation Loans.
In the case of a Direct Consolidation Loan made before July 1, 2006, the term "Direct PLUS Consolidation Loan" refers to the portion of a Direct Consolidation Loan attributable to the loans identified in paragraphs (b)(9) through (b)(12) of this section.
(d) Eligibility for a Direct Consolidation Loan.
(1) A borrower may obtain a Direct Consolidation Loan if the borrower meets the following requirements:
(i) The borrower consolidates at least one Direct Loan Program or FFEL Program loan.

- (ii) On the loans being consolidated, the borrower is—
(A) At the time the borrower applies for the Direct Consolidation Loan—
(1) In the grace period;
(2) In a repayment period but not in default; or
(3) In default but has made satisfactory repayment arrangements in accordance with paragraph (2) of the definition of that term in 685.102(b);
(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or
(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.
(iii) The borrower agrees to notify the Secretary of any change in address.
(2) A borrower may not consolidate a Direct Consolidation Loan or a Federal Consolidation Loan into a new consolidation loan under this section unless at least one additional eligible loan is included in the consolidation, except that a borrower may consolidate a Federal Consolidation Loan into a new consolidation loan under this section without including any additional loans if—
(i) The borrower has a Federal Consolidation Loan that is in default or has been submitted to the guaranty agency by the lender for default aversion, and the borrower wants to consolidate the Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income-contingent repayment plan or an income-based repayment plan; or
(ii) The borrower has a Federal Consolidation Loan and the borrower wants to consolidate that loan into the Direct Loan Program for the purpose of using the Public Service Loan Forgiveness Program or the no accrual of interest benefit for active duty service.
(3) Eligible loans received before or after the date a Direct Consolidation Loan is made may be added to a subsequent Direct Consolidation Loan.
* * * * *
(f) * * *
(1) * * *
(iii) For a Direct Loan Program or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to a maximum of 18.5 percent of the outstanding principal and interest amount of the defaulted loan. For any other defaulted Federal education loan, all collection costs that are owed may be charged to the borrower.
* * * * *
(h) Repayment plans. A borrower may choose a repayment plan for a Direct

Consolidation Loan in accordance with § 685.208, and may change repayment plans in accordance with § 685.210(b).

(j) * * *

(4) A Direct Consolidation Loan that was made based on an application received before July 1, 2006 receives a grace period if it includes a Direct Loan Program or FFEL Program loan for which the borrower was in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

* * * * *

■ 102. Section 685.300 is amended by:

- A. Revising paragraph (a).
- B. In the introductory text of paragraph (b), removing the word “shall” each time it appears and adding, in its place, the word “must”.
- C. Removing paragraph (b)(8).
- D. Redesignating paragraphs (b)(5), (6), and (7) as paragraphs (b)(6), (7), and (8), respectively.
- E. Adding a new paragraph (b)(5).
- F. Revising paragraph (c).

The revisions and addition read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) *General.* Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school must—

(1) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(2) Enter into a written program participation agreement with the Secretary.

(b) * * *

(5) On a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary;

* * * * *

(c) *Origination.* A school that originates loans in the Direct Loan Program must originate loans to eligible students and parents in accordance with part D of the Act. The note or evidence of the borrower’s obligation on the loan originated by the school is the property of the Secretary.

* * * * *

■ 103. Section 685.301 is amended by:

- A. In paragraph (a)(1), removing the word “shall” each time it appears and adding, in its place, the word “must”.
- B. In the introductory text of paragraph (a)(2), removing the word

“shall” and adding, in its place, the word “must”.

■ C. In paragraph (a)(2)(iii), adding the words “, as determined in accordance with § 685.303(d)” at the end of the paragraph, immediately after the words “the loan proceeds”.

■ D. Revising paragraph (a)(10).

■ E. Removing paragraphs (b) and (e).

■ F. Revising paragraph (c).

■ G. Redesignating paragraph (d) as paragraph (b).

The revisions read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(10)(i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or that has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(10)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student’s program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 688.3.

(ii) For a student who transfers into a school from another school and the prior school originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student’s annual loan limit.

(iii) For a student who completes a program at a school, where the student’s last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student’s annual loan limit at the loan level associated with the new program.

(iv) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 688.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

* * * * *

(c) *Reporting to the Secretary.* The Secretary accepts a student’s Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register**, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

* * * * *

■ 104. Section 685.303 is amended by:

- A. In paragraph (a), removing the word “shall” and adding, in its place, the word “must”.
- B. Revising paragraph (b)(1).
- C. Redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), respectively.
- D. Adding a new paragraph (b)(2).
- E. Revising redesignated paragraph (b)(3)(i).
- F. Revising redesignated paragraph (b)(3)(ii).
- G. Revising redesignated paragraph (b)(5)(i) introductory text.
- H. In redesignated paragraph (b)(5)(i)(A)(1), removing the citation “(b)(4)(i)(A)(2)” and adding, in its place, the citation “(b)(5)(i)(A)(2)”.
- I. Revising redesignated paragraph (b)(5)(ii).
- J. In redesignated paragraph (b)(5)(iii), removing the citation “(b)(4)(i)(B)” and adding, in its place, the citation “(b)(5)(i)(B)”.
- K. In paragraph (c), removing the word “shall” and adding, in its place, the word “must”.
- L. Redesignating paragraphs (d) and (e) as paragraphs (f) and (g), respectively.
- M. Adding a new paragraph (d).
- N. Adding a new paragraph (e).
- O. Revising redesignated paragraph (g).
- P. Adding an authority citation after the OMB control number parenthetical at the end of the section.

The revisions and additions read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(1) A school may not disburse loan proceeds to a borrower unless the borrower has executed a legally enforceable promissory note.

(2) The Secretary provides Direct Loan funds to a school in accordance with 34 CFR 668.162.

(3)(i) Except in the case of a late disbursement under paragraph (f) of this section, or as provided in paragraph (b)(3)(iii) of this section, a school may disburse loan proceeds only to a student, or a parent in the case of a Direct PLUS Loan obtained by a parent borrower, if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period for which the loan was intended.

(ii) If a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirements under paragraph (b)(4) of this section.

* * * * *

(5)(i) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Subsidized or Unsubsidized Federal Stafford Loan, or a Federal Supplemental Loan for Students, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study unless—

* * * * *

(ii) Paragraphs (b)(5)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (b)(5)(i)(A) or (B) of this section, as applicable.

* * * * *

(d) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school must determine that all information required by the promissory note has been provided by the borrower and, if applicable, the student.

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (d)(4) or (d)(6) of this section applies—

(i) If a loan period is more than one payment period, the school must

disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under § 685.301(a)(10)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(B) For a loan originated under § 685.301(a)(10)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods.

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(6)(i) A school is not required to make more than one disbursement if—

(A)(1) The loan period is not more than one semester, one trimester, one quarter, or, for non term-based schools or schools with non-standard terms, 4 months; and

(2)(i) Except as provided in paragraph (d)(6)(i)(A)(2)(ii) of this section, the school has a cohort default rate, calculated under subpart M of 34 CFR part 668 of less than 10 percent for each of the three most recent fiscal years for which data are available; or

(ii) For loan disbursements made on or after October 1, 2011, the school in which the student is enrolled has a cohort default rate, calculated under either subpart M or subpart N of 34 CFR part 668, of less than 15 percent for each of the three most recent fiscal years for which data are available; or

(B) The school is an eligible home institution originating a loan to cover the cost of attendance in a study abroad program and has a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, of less than five percent for the single most recent fiscal year for which data are available.

(ii) Paragraphs (d)(6)(i)(A) and (B) of this section do not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a

cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in paragraph (d)(6)(i)(A) or (B) of this section, as applicable.

(iii) Paragraph (d)(6)(i)(B) of this section does not apply to any loans originated by the school beginning 30 days after the date the school receives notification from the Secretary of a cohort default rate, calculated under subpart M or subpart N of 34 CFR part 668, that causes the school to no longer meet the qualifications outlined in that paragraph.

(e) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional

time longer than any other term in that loan period.

* * * * *

(g) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct PLUS Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible (except for Federal Work-Study Program funds up to \$300), the school must reduce or eliminate the overaward by either—

(1) Using the student's Direct Unsubsidized Loan, Direct PLUS Loan, or State-sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 105. Section 685.304 is amended by:

■ A. Revising paragraph (a)(1).

■ B. In paragraph (a)(2), removing the words “prior Direct PLUS Loan or Federal PLUS Loan” and adding, in their place, the words “prior student Direct PLUS Loan or student Federal PLUS Loan”.

■ C. In paragraph (a)(7)(i)(A), removing the word “or” the first time it appears and adding, in its place, the word “of”.

■ D. Revising paragraph (a)(7)(iii).

■ E. Revising paragraph (a)(7)(iv).

■ F. Revising paragraph (b)(3).

■ G. In paragraph (b)(4)(ii), removing the words “income contingent repayment plans” and adding, in their place, the words “income-contingent repayment”.

■ H. Adding a new paragraph (b)(8).

The revisions and addition read as follows:

§ 685.304 Counseling borrowers.

(a) * * *

(1) Except as provided in paragraph (a)(8) of this section, a school must ensure that entrance counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized or Unsubsidized Federal Stafford Loan, or Federal SLS Loan.

* * * * *

(7) * * *

(iii) For a graduate or professional student PLUS Loan borrower who has

received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior Direct Subsidized Loan, Direct Unsubsidized Loan, Subsidized Federal Stafford Loan, or Unsubsidized Federal Stafford Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section.

* * * * *

(b) * * *

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, exit counseling must be provided either through interactive electronic means, by mailing written counseling materials to the student borrower at the student borrower's last known address, or by sending written counseling materials to an email address provided by the student borrower within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

* * * * *

(8)(i) For students who have received loans under both the FFEL Program and the Direct Loan Program for attendance at a school, the school's compliance with the exit counseling requirements in paragraph (b) of this section satisfies the exit counseling requirements in 34 CFR 682.604(a) if the school ensures that the exit counseling also provides the borrower with the information described in 34 CFR 682.604(a)(2)(i) and (ii).

(ii) A student's completion of electronic interactive exit counseling offered by the Secretary satisfies the requirements of paragraph (b) of this section and, for students who have also received FFEL Program loans for attendance at the school, 34 CFR 682.604(a).

* * * * *

§ 685.305 [Amended]

■ 106. Section 685.305 is amended by:

■ A. In paragraph (a), removing the word “shall” and adding, in its place, the word “must”.

■ B. In paragraph (b), removing the word “shall” and adding, in its place, the word “must”.

■ C. In paragraph (c), removing the word “shall” and adding, in its place, the word “must”.

§ 685.306 [Amended]

■ 107. Section 685.306 is amended by:

■ A. In paragraph (a)(1), removing the word “Shall” and adding, in its place, the word “Must”.

■ B. In paragraph (a)(2), removing the word “Shall” and adding, in its place, the word “Must”.

■ C. In paragraph (b), removing the word “shall” and adding, in its place, the word “must”.

§ 685.307 [Amended]

■ 108. Section 685.307(b) is amended by removing the word “shall” and adding, in its place, the word “must”.

■ 109. Section 685.309 is amended by:

■ A. In the introductory text of paragraph (a), removing the word “shall” and adding, in its place, the word “must”.

■ B. Revising paragraph (b).

■ C. In paragraph (c), removing the word “shall” and adding, in its place, the word “must”.

■ D. In paragraph (d), removing the word “shall” and adding, in its place, the word “must”.

■ E. In paragraph (e), removing the word “shall” and adding, in its place, the word “must”.

■ F. In paragraph (f), removing the word “shall” and adding, in its place, the word “must”.

■ G. In paragraph (g), removing the words “Except for funds paid to a

school under section 452(b)(1) of the Act, funds” and adding, in their place, the word “Funds”.

The revision reads as follows:

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

* * * * *

(b) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, a school must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe prescribed by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the Act was made to or on behalf of a student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the school and who received a loan under title IV of the Act has changed his or her permanent address.

* * * * *

§ 685.400 [Removed and Reserved]

■ 110. Section 685.400 is removed and reserved.

§ 685.402 [Removed and Reserved]

■ 111. Section 685.402 is removed and reserved.

Appendix

Appendix A below summarizes proposed technical changes to the FFEL Program regulations in 34 CFR part 682, excluding minor technical or conforming changes. A document showing all proposed changes to 34 CFR part 682 that are included in this notice of proposed rulemaking (NPRM) may be found at <http://www2.ed.gov/policy/>

higher/ed/reg/heardrulemaking/2011/loans.html.

Laws cited in Appendix A:

- Higher Education Act of 1965, as amended (HEA)
- SAFRA Act (included in the Health Care and Reconciliation Act of 2010 (HCERA)) (Pub. L. 111–152, enacted March 30, 2010)
- Higher Education Opportunity Act (HEOA) (Pub. L. 110–315, enacted August 14, 2008)

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682

Section	Proposed change	Reason
General	Revise nomenclature as necessary to ensure consistent use of same terms to refer to Direct Loan Program components in 34 CFR parts 682 and 685. Where applicable, remove or revise language to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010. Change regulatory citations and redesignate paragraphs to conform with revisions, additions, and deletions to the regulations. Replace all references to “credit bureau” with “consumer reporting agency”. Correct spelling and grammatical errors.	To ensure accuracy and consistency.
§ 682.100 The Federal Family Education Loan programs.	Revise language to use past tense and to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.101 Participation in the FFEL programs.	Revise language to use past tense and to reflect the elimination of authority to make new FFEL Program loans effective July 1, 2010.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.102 Obtaining and repaying a loan.	Retitle the section and remove paragraphs (a) through (d), which pertain to the application process to obtain a FFEL Program loan.	The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.
§ 682.103 Applicability of subparts	In paragraph (c), remove reference to deleted subpart E governing Federal Insured Student Loan (FISL) Program.	No new FISL Program loans have been made since 1983 and very few of these loans are in repayment; therefore regulations governing the FISL Program are no longer needed. Additionally, the SAFRA Act eliminated the authority to make any new loans under Part B of the HEA effective July 1, 2010.
§ 682.200 Definitions	Remove reference to eliminated programs in § 682.200(a)(1) and elsewhere in the section and reorder remaining listed terms in paragraph (a)(1) In § 682.200(b), revise definitions of: <ul style="list-style-type: none"> • “Lender” to include audit requirements for a trustee lender that operated on behalf of a school or school-affiliated organization to originate FFEL Program loans; • “Nationwide consumer reporting agency” • “Satisfactory repayment arrangements” to replace reference to § 682.401(b)(4) with the phrase “the title IV student assistance programs” and to remove current paragraph (2). (See discussion of other proposed non-technical changes to the definition of “satisfactory repayment arrangements” in the “Significant Proposed Regulations” section of the preamble to these regulations) 	Changes to § 682.200(a)(1) to ensure accuracy. Conforming change to “Lender” due to elimination of § 682.601. Revision to “Nationwide consumer reporting agency” to ensure accuracy with statutory citation and distinguish a nationwide consumer reporting agency from a local or regional agency and from a nationwide specialty consumer reporting agency. Revisions to “Satisfactory Repayment Arrangements” to ensure accuracy and clarity and to reflect elimination of authority to make FFEL Consolidation loans effective July 1, 2010.
§ 682.201 Eligible borrowers	Minor technical changes	Clarity/consistency/accuracy.
§ 682.202 Permissible charges by lenders to borrowers.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.203 Responsible parties	No changes	

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.204	<p>Maximum loan amounts</p> <p>Remove language throughout the section that refers to loans first disbursed before July 1, 2008. In paragraphs (a)(1)(iii), (c)(1)(iii), and (d)(1)(iii), replace the word “program” with the word “enrolled” in the fraction for prorating loan amounts for programs of study less than a full academic year in length.</p> <p>Remove paragraph (f), as it pertains to the annual loan limits in the SLS Program.</p>	<p>To remove historical references that are no longer needed.</p> <p>To ensure consistent treatment of students enrolled in programs of less than a full academic year, whether students are new or transfer students, or are students admitted to a program with advanced standing.</p> <p>To remove regulations that are no longer needed; SLS program ended July 1, 1994.</p>
§ 682.205	<p>Disclosure requirements for lenders.</p> <p>Remove regulations governing required lender disclosures to borrowers in § 682.205(a), (b), (g), and (i) that are provided when new loans are made.</p> <p>See discussion of proposed non-technical changes to the regulations governing lender disclosures to FFEL borrowers under “FFEL Lender Disclosures for Borrowers Who Are 60 Days Delinquent” and “FFEL Lender Repayment Disclosures to Borrowers Who Are Having Difficulty Making Payments” in the “Significant Proposed Regulations” section of the preamble to these regulations.</p>	<p>The SAFRA Act eliminated the authority to make new FFEL Program loans effective July 1, 2010.</p>
§ 682.206	<p>Due diligence in making a loan.</p> <p>Remove this section</p>	<p>To remove regulations governing FFEL loan origination that are no longer needed as a result of the SAFRA Act.</p>
§ 682.207	<p>Due diligence in disbursing a loan.</p> <p>Remove this section</p>	<p>To remove regulations governing the disbursement of new FFEL loans that are no longer needed as a result of the SAFRA Act.</p>
§ 682.208	<p>Due diligence in servicing a loan.</p> <p>Minor technical changes</p>	<p>Clarity/consistency/accuracy.</p>
§ 682.209	<p>Repayment of a loan</p> <p>Add new § 682.209(a)(3)(i)(D) explaining date repayment begins for borrowers with 6.0, 5.6, and 6.8 percent fixed interest rate loans.</p> <p>Add exception to the repayment schedule requirements for consolidation loans in redesignated § 682.209(e)(4)(ii) for borrowers whose payment can be less than the amount of accruing interest under the income-based repayment plan.</p> <p>Remove § 682.209(e) and (f) governing refinancing of existing PLUS and SLS loans to secure a variable interest rate from the regulations.</p> <p>Remove § 682.209(j) governing FFEL Consolidation Loan lender certifications.</p>	<p>To ensure consistency with the HEA.</p> <p>To conform provision to the income-based repayment regulations.</p> <p>To remove obsolete FFEL regulations.</p> <p>To remove provisions related to making new FFEL Consolidation Loans that are no longer needed as a result of the SAFRA Act.</p>
§ 682.210	<p>Deferment</p> <p>Add reference in § 682.210(a)(4) to the ability of a representative to request a military deferment on behalf of a borrower.</p> <p>Identify the applicable borrower cohort in introductory language to § 682.210(b)(1)–(6) and add cross-references to eligibility criteria in § 682.210 (c)–(r) for each deferment type available to these borrowers.</p>	<p>To clarify the ability of a representative to act on a borrower’s behalf when the borrower is not available to request a military deferment.</p> <p>To clarify the regulations by identifying the deferment requirements and eligibility criteria applicable to the pre-July 1, 1993 cohort of borrowers.</p>
§ 682.211	<p>Forbearance</p> <p>See the discussion of proposed non-technical changes in this section under “Forbearance for Borrowers Who are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status.” “Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits,” and “Borrowers who are Delinquent When Forbearance is Granted” in the “Significant Proposed Regulations” section of the preamble to these regulations.</p>	
§ 682.212	<p>Prohibited transactions ..</p> <p>No changes.</p>	
§ 682.213	<p>Prohibition against the use of the Rule of the 78s.</p> <p>No changes.</p>	
§ 682.214	<p>Compliance with equal credit opportunity requirements.</p> <p>Remove this section</p>	<p>To remove regulations related to lender compliance with the Equal Credit Opportunity Act when making FFEL loans; these regulations are no longer needed as a result of the SAFRA Act.</p>

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.215 Income-based repayment plan.	See the changes to the regulations governing the Income-Based Repayment Plan for FFEL borrowers in the final regulations published on November 1, 2012 (77 FR 66088).	
§ 682.216 Teacher loan forgiveness program.	In paragraphs (a) and (c), rephrase to state that a borrower works “for” an educational service agency, not “at” an educational service agency.	To clarify that a teacher who is employed by an ESA may not always teach at an ESA facility.
§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.	Redesignate last paragraph of § 682.216(c)(1)(iii) as paragraph (2) and renumber subsequent paragraphs.	To clarify that a borrower employed by the school operated by the Bureau of Indian Affairs is not subject to the requirements of § 682.216(1)(i)–(iii).
§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.	Replace references to loan “discharge” throughout the section with “loan forgiveness”.	To ensure consistency with the HEA and section title.
§ 682.302 Payment of special allowance on FFEL loans.	Remove reference to deleted § 682.207 in paragraph (b)(2)(ii)(B) and remove paragraphs (c)(3) and (4) from the regulations.	To remove references to FFEL loan disbursement and interest subsidy payments to lenders on newly disbursed loans that are no longer needed as a result of the SAFRA Act.
§ 682.303 [Reserved]	Remove § 682.301(c) allowing use of unsubsidized Federal, State-sponsored, and private loans to cover expected family contribution when determining loan eligibility.	To remove provision related to new FFEL loan origination that is no longer needed as a result of the SAFRA Act.
§ 682.304 Methods for computing interest benefits and special allowance.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.	N/A.	
§ 682.400 Agreements between a guaranty agency and the Secretary.	No changes.	
§ 682.401 Basic program agreement.	Revise § 682.305(c) by deleting the phrase “originating or” in (c)(1)(i) and removing (c)(1)(ii), (vi), and (vii) from the regulations.	To remove reference to FFEL loan originations when determining applicability of lender audit requirement to non-school lenders and to remove school lender audit requirement from the regulations. School lender audit requirements are no longer needed as the authority for new school lenders and new FFEL loans no longer exists. Audit requirements pertaining to lender trustees for schools or school-affiliated organizations were moved under the definition of “Lender” in § 682.200(b).
§ 682.401 Basic program agreement.	Revise § 682.400(b)(1)(i) by replacing the word “and” with “or” and by removing the phrase “that consolidate only subsidized loans” from the paragraph.	To ensure consistency with the HEA; Consolidation Loan borrowers are eligible for interest subsidy during certain periods on the portion of the Consolidation loan that repaid subsidized FFEL or Direct loans.
§ 682.401 Basic program agreement.	<p>In § 682.401, remove from the regulations</p> <ul style="list-style-type: none"> • § 682.401(b)(1)–(2), which pertain to annual and aggregate loan limits; • § 682.401(b)(3), which specifies the duration of a borrower’s eligibility for loans. • § 682.401(b)(5), which describes borrower responsibilities in the loan origination process. • § 682.401(b)(6), which details school eligibility requirements to participate in a guaranty agency’s program, limits on that participation, and an agency’s authority to limit, suspend and terminate a school’s participation. • §§ 682.401(b)(8) and (b)(9), which outline when a guaranty agency must guarantee loans for students attending out-of-state schools and for out-of-state residents. • § 682.401(b)(12) and (b)(13), which authorize an administrative fee for consolidation and refinanced PLUS and SLS loans. • § 682.401(c), which requires guaranty agencies to provide lender-of-last resort loan origination services. • § 682.401(d)(4), which details requirements for use of the master promissory note(MPN); and. 	To remove provisions no longer needed as a result of the SAFRA Act.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
	<ul style="list-style-type: none"> • § 682.401(e), which details guaranty agency prohibited activities to secure loan guarantees and other permissible activities.. <p>In redesignated § 682.401(b)(3)(i), replace reference to deleted § 682.209 (e) and (f) with program name references; in paragraph (b)(3)(vi)(B)(4), remove reference to deleted § 682.207; and in paragraph (b)(6), insert reference to subpart N of 34 CFR part 668.</p> <p>In redesignated § 682.401(b)(18), delete paragraph (b)(18)(ii), which references pre-October 1, 2006 loan consolidations.</p>	<p>To ensure accuracy; required conforming changes.</p> <p>Delete obsolete regulations.</p>
§ 682.402 Death, disability, closed school, false certification, unpaid refund, and bankruptcy payments.	For § 682.402(c), see the final regulations published on November 1, 2012 (77 FR 66088) for significant changes to regulations governing discharge based on total and permanent disability.	
	For § 682.402(d), see the discussion of proposed non-technical changes to regulations governing discharge based on school closure under “Closed School Discharge” in the “Significant Proposed Regulations” section of the preamble to these regulations.	
	In § 682.402(l)(1), (l)(2)(ii), (l)(3)(i), and (n)(2), revise language to include reference to “Federal default fees” to fees included in an unpaid refund discharge.	To ensure accuracy.
§ 682.403 Federal advances for claim payments.	Remove this section	To remove obsolete provisions related to Federal advances made to a State or guaranty agency.
§ 682.404 Federal reinsurance agreement.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.405 Loan rehabilitation agreement.	For proposed non-technical changes in § 682.405, see the discussions under “Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard” and “Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment” in the “Significant Proposed Regulations” section of the preamble to these regulations.	
§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.	In § 682.406(a)(2)(ii), remove reference to deleted § 682.207.	To ensure accuracy.
§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.	Minor technical change.	
§ 682.408 Loan disbursement through an escrow agent.	Remove this section	To remove regulations governing FFEL loan disbursement through an escrow agent that are no longer needed as a result of the SAFRA Act.
§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.	Minor technical change	Clarity/consistency/accuracy.
§ 682.410 Fiscal, administrative, and enforcement requirements.	In § 682.410(a)(2), remove reference to deleted § 682.418 and in paragraph (b)(7), replace reference to deleted § 682.509(a)(1) with reference to § 682.404(b)(3)(ii).	To ensure accuracy; required conforming changes.
	In § 682.410(a)(2)(ii), replace the word “preclaims” with “default aversion”.	To accurately reflect the HEA.
	For § 682.410(b)(9), see the discussion of proposed non-technical changes under “Administrative Wage Garnishment (AWG) of the Disposable Pay of Defaulted FFEL Program Borrowers” in the “Significant Proposed Regulations” section of the preamble to these regulations.	
	In § 682.410(c)(1)(i)(C), revise to limit scope of guaranty agency reviews of schools.	To limit required guaranty agency reviews of schools that formerly participated in the FFEL Program to those schools with two-year cohort rates that include FFEL loans.
	In § 682.410(c), remove (c)(4), and in redesignated paragraphs (c)(8) and (c)(10), make necessary conforming changes.	To remove provision no longer needed due to the SAFRA Act and make required conforming changes.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.411 Lender due diligence in collecting guaranty agency loans.	Minor technical changes	Clarity/consistency/accuracy.
§ 82.412 Consequences of the failure of a borrower or student to establish eligibility.	Minor technical change	Clarity/consistency/accuracy.
§ 682.413 Remedial actions	Minor technical changes	Clarity/consistency/accuracy.
§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.	Remove reference to “schools” in § 682.414(b)(2) and (b)(3) governing required guaranty agency reporting.	To reflect a change to the HEA made by the HEOA.
§ 682.415 [Reserved]	N/A.	
§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.	No changes.	
§ 682.417 Determination of Federal funds or assets to be returned.	No changes.	
§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating fund contains transferred funds owed to the Federal Fund.	Remove this section	To remove an obsolete section of the regulations governing the uses of a guaranty agency’s Operating Fund when it contains funds transferred from the agency’s Federal Fund.
§ 682.419 Guaranty agency Federal Fund.	Minor technical changes	Clarity/consistency/accuracy.
§ 682.420 Federal nonliquid assets	Remove this section	To remove an obsolete section of the regulations that govern a guaranty agency’s use of Federal non-liquid assets.
§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.	Remove this section	To remove an obsolete section of the regulations that govern the transfer of funds from a guaranty agency’s Federal Fund to its Operating Fund.
§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.	Remove this section	To remove an obsolete section of the regulations that govern a guaranty agency’s repayment of funds transferred from its Federal Fund to its Operating Fund.
§ 682.423 Guaranty agency Operating Fund.	Minor technical changes	Clarity/consistency/accuracy.
Subpart E—Federal Guaranteed Student Loan Programs.	Remove and reserve this subpart	To remove obsolete subpart that governs the Federal Insured Student Loan Program (FISL) under which no loans have been made since 1983.
§§ 682.500 to 682.515.	N/A.	
§ 682.600 [Reserved]	N/A.	
§ 682.601 Rules for a school that makes or originates loans.	Remove this section	To remove regulations governing schools that make or originate FFEL Program loans. No new FFEL school lenders were authorized after February 7, 2006, and no new FFEL loans are authorized to be made by any lender as a result of the SAFRA Act, effective July 1, 2010.
§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.	Remove this section	To remove regulations governing schools and school-affiliated organizations that originate or hold FFEL Program loans as a lender through an eligible lender trustee. No new trustee arrangements for this purpose are authorized after September 30, 2006, and no new FFEL loans are authorized to be made by any lender as a result of SAFRA Act, effective July 1, 2010.
§ 682.603 Certification by a participating school in connection with a loan application.	In § 682.603(h), remove provisions in paragraph (h)(1) that duplicate § 682.603(f)(1)(i) and redesignate current § 682.603(h)(2) as § 682.603(g). Replace cross-references to deleted § 682.604 provisions in § 682.603(b)(3) and redesignated § 682.603(j)(1) and (2) with applicable statutory citations.	To correct technical error in the regulatory section. To ensure accuracy; required conforming changes.
§ 682.604 Processing the borrower’s loan proceeds and counseling borrowers.	Remove § 682.604 (a); remove and reserve paragraph (b); remove-paragraphs (c)–(f) and (h); and redesignate paragraph (g) as paragraph (a). Revise redesignated § 682.604(a) governing “exit counseling” by: • Adding another method for providing exit counseling materials to students who withdraw or fail to complete exit counseling;	To remove provisions governing school delivery of loan disbursements and entrance counseling with new borrowers that are no longer needed as a result of the SAFRA Act and to make required conforming changes. To incorporate Department’s earlier policy guidance and make necessary conforming changes.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.605 Determining the date of a student's withdrawal.	<ul style="list-style-type: none"> • Replacing cross-references to deleted provisions in paragraph (a)(2)(vi) with the content of those cross-references; and • Adding new paragraph (a)(5) to reflect earlier guidance on school compliance with the exit counseling requirements. Minor technical changes	Clarity/consistency/accuracy.
§ 682.606 [Reserved]	N/A.	
§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.	No changes.	
§ 682.608 Termination of a school's lending eligibility.	Remove this section	To remove section governing termination of a school lender that is no longer needed in the regulations.
§ 682.609 Remedial actions	No changes.	
§ 682.610 Administrative and fiscal requirements for participating schools.	For § 682.610(c), see the discussion of proposed non-technical changes to regulations governing student enrollment reporting under "School Enrollment Status Reporting Requirements" in the "Significant Proposed Regulations" section of the preamble to these regulations.	
§ 682.611 [Reserved]	Other minor technical changes	Clarity/consistency/accuracy.
Subpart G—Limitation, suspension, or Termination of Lender or third-party Servicer Eligibility and Disqualification of Lenders and Schools.	N/A. Revise title to subpart by deleting reference to schools.	Required conforming change; termination of schools from loan programs became purview of Department effective July 1, 2010.
§ 682.700 Purpose and scope	Minor technical changes	Clarity/consistency/accuracy.
§ 682.701 Definitions of terms used in this subpart.	Minor technical change	Clarity/consistency/accuracy.
§ 682.702 Effect on participation ...	In paragraph (b), remove reference to the number or total amount of new loans in lender limitation actions. Remove paragraph (d) referencing new loan guarantees and payment of lender benefits on new loans; make related conforming change in § 682.702(a).	As a result of the SAFRA Act, limitation, suspension, and termination actions against lenders no longer involve loss of ability to make new FFEL loans or loan guarantees, or to receive benefits on those loans, since no new FFEL Program loans are being made.
§ 682.703 Informal compliance procedures.	No changes.	
§ 682.704 Emergency action	In paragraph (a), remove reference to new loan guarantee commitments.	As a result of the SAFRA Act, emergency actions against lenders no longer involve loss of guarantee commitments.
§ 682.705 Suspension proceedings	Remove § 682.705(c) on the application of a "rebuttable presumption" in lender suspension proceedings based on prohibitions in section 435(d)(5) of the HEA. Make other minor technical changes	Use of "rebuttable presumption" in lender suspension actions applies only to existing loans and lender activities prior to July 1, 2010. Moved to § 682.709(d). Clarity/consistency/accuracy.
§ 682.706 Limitation or termination proceedings.	Remove § 682.706(d) that governs the application of a "rebuttable assumption" in lender limitation and termination proceedings based on prohibitions in section 435(d)(5).	Use of "rebuttable presumption" in lender limitation and termination proceedings applies only to existing loans and lender activities prior to July 1, 2010.
§ 682.707 Appeals in a limitation or termination proceeding.	No changes.	
§ 682.708 Evidence of mailing and receipt dates.	No changes.	
§ 682.709 Reimbursements, refunds, and offsets.	Add "rebuttable presumption" provision that is being removed from §§ 682.705 and 682.706 to § 682.709 as new paragraph(d).	Use of "rebuttable presumption" in lender sanctions applies only to existing loans and lender activities prior to July 1, 2010.
§ 682.710 Removal of limitation	No changes.	
§ 682.711 Reinstatement after termination.	Remove § 682.711(c) governing school lender termination and reinstatement.	To remove provision governing school lenders that is no longer needed.
§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.	Remove § 682.712(i) referencing FISL program standards that have been removed from the regulations.	To ensure accuracy; required conforming change.

APPENDIX A—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 682—Continued

Section	Proposed change	Reason
§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.	Remove this section	To remove section governing Department review of guaranty agency sanctions against schools that is no longer needed, as Department will undertake all such actions.
Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations.	Remove § 682.800 and reserve subpart H of part 682.	To remove a section prohibiting discrimination when making new loans with tax-exempt funds that, as a result of SAFRA, is no longer needed in the regulations.
§ 682.800 Prohibition against discrimination as a condition for receiving special allowance payments.		
Appendix C to Part 682	Remove and reserve this appendix	To remove the appendix containing provisions for curing lender due diligence violations in the FISL program.
Appendix D to Part 682	Minor technical change	To ensure accuracy and consistency.

Appendix B below summarizes proposed technical changes to the Direct Loan Program regulations in 34 CFR part 685, excluding minor technical or conforming changes. A document showing all proposed changes to 34 CFR part 685 that are included in this NPRM may be found at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/loans.html>.

Laws cited in Appendix B:

- Higher Education Act of 1965, as amended (HEA)
- Consolidated Appropriations Act, 2012 (Pub. L. 112–74, enacted December 23, 2011)
- Budget Control Act of 2011 (BCA) (Pub. L. 112–25, enacted August 2, 2011)

- SAFRA Act (included in the Health Care and Reconciliation Act of 2010) (Pub. L. 111–152, enacted March 30, 2010)
- Higher Education Opportunity Act (HEOA) (Pub. L. 110–315, enacted August 14, 2008)

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685

Section	Proposed change	Reason
General	Revise nomenclature as necessary to ensure that the same terms are used to refer to Direct Loan Program components and Direct Loan types throughout 34 CFR part 685. Where applicable, remove language that is no longer needed due to the elimination of the authority for new FFEL Program loans after July 1, 2010. Where applicable, remove or revise language that does not reflect current procedures used in the Direct Loan Program. Replace all references to “credit bureau” with “consumer reporting agency”	Greater clarity and consistency. To reflect changes to the HEA made by the SAFRA Act. To ensure that the Direct Loan Program regulations accurately reflect current processes. To reflect a change to the HEA made by the HEOA.
§ 685.100 The William D. Ford Federal Direct Loan Program.	Revise § 685.100(a)(1) to specify that <ul style="list-style-type: none"> • Graduate and professional students are not eligible to receive Direct Subsidized Loans effective for loan periods beginning on or after July 1, 2012; and. • The Secretary does not subsidize the interest that accrues during the grace period on Direct Subsidized Loans for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014. 	To reflect a change to the HEA made by the BCA. To reflect a change to the HEA made by the Consolidated Appropriations Act, 2012.
§ 685.101 Participation in the Direct Loan Program.	Revise § 685.101(b) to specify that graduate and professional students are not eligible to receive Direct Subsidized Loans effective for loan periods beginning on or after July 1, 2012.	To reflect a change to the HEA made by the BCA.
§ 685.102 Definitions	See the discussion of proposed technical changes to the definitions in § 685.102 under “Modification of Direct Loan Program Regulations: Definitions” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.103 Applicability of subparts § 685.200 Borrower eligibility	See the discussion of proposed non-technical changes to the definition of “satisfactory repayment arrangement” in § 685.102(b) under “Satisfactory Repayment Arrangements” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations. No changes.	
§ 685.200 Borrower eligibility	In § 685.200(a)(1)(iv) introductory text, replace “cancelled” with “discharged”.	Technical correction for consistency with terminology used in § 685.212 and § 685.213.
	Add language to § 685.200(a)(1)(iv)(B)(2) stating that a borrower who receives a new loan after a prior total and permanent disability (TPD) discharge must acknowledge that neither the new loan nor any previously discharged loan that is reinstated may be discharged in the future based on an impairment that exists at the time the new loan is made, unless the impairment substantially deteriorates.	Technical correction; this provision was inadvertently omitted from final regulations published by the Department on October 29, 2009 (74 FR 55972) and is consistent with the provision in current § 685.200(a)(1)(iv)(B)(3) that applies to borrowers who receive new loans within three years of being granted a conditional TPD discharge under the regulations that were in effect for TPD discharge applications received prior to July 1, 2010.
	Revise § 685.200(a)(1)(v) to provide that this paragraph applies only to students who were enrolled in a program of study prior to July 1, 2012.	To reflect a change to the HEA made by the Consolidated Appropriations Act, 2012.
	In § 685.200(c)(1)(vi), add new paragraph D describing examples of extenuating circumstances that the Secretary may consider in determining that a borrower may receive a Direct PLUS Loan despite having an adverse credit history.	For consistency with the FFEL provision in § 682.201(c)(2)(v).
§ 685.201 Obtaining a loan	In § 685.201(a) and (b), remove or revise language as necessary. In § 685.201(b)(1), add language stating that the dependent student on whose behalf a parent obtains a Direct PLUS Loan must complete and submit a Free Application for Federal Student Aid (FAFSA).	To remove obsolete language and, where applicable, replace with updated language that reflects current procedures in the Direct Loan Program. In paragraph (b)(1), add language to reflect guidance provided in the Department’s Dear Colleague Letter GEN–11–07.
§ 685.202 Charges for which borrowers are responsible.	In § 685.202(b)(2), add language stating that for a Direct Subsidized Loan for which the first disbursement is made on or after July 1, 2012 and before July 1, 2014, interest that accrues during the grace period may be capitalized when the loan enters repayment.	To reflect a change made by the Consolidated Appropriations Act, 2012, that eliminates the grace period interest subsidy for Direct Subsidized Loans with a first disbursement date on or after July 1, 2012 and before July 1, 2014.
§ 685.203 Loan limits	Throughout the section, remove references to loan limits that were in effect prior to more recent statutory changes.	To simplify the loan limit regulations by removing outdated language.
	In § 685.203(a)(5) and (b)(2), revise language to reflect the elimination of subsidized loan eligibility for graduate and professional students for loan periods beginning on or after July 1, 2012.	To reflect a change made by the BCA.
§ 685.204 Deferment	See the discussion of proposed technical changes in this section under “Modification of Direct Loan Program Regulations: Deferment” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	
§ 685.205 Forbearance	Add new § 685.205(a)(5)(iii) describing the conditions under which a borrower may receive forbearance while performing qualifying teaching service for loan forgiveness under § 685.217.	To reflect the Department’s longstanding policy in the Direct Loan Program and for consistency with the corresponding FFEL Program regulations in § 682.216(e).
	See the discussion of proposed non-technical changes in this section under “Forbearance for Borrowers Who are 270 or More Days Delinquent Prior to Guaranty Agency Default Claim Payment or Transfer by the Department to Collection Status,” “Forbearance Provisions for Borrowers Receiving Department of Defense Student Loan Repayment Benefits,” and “Borrowers Who are Delinquent when Authorized Forbearance is Granted” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	
§ 685.206 Borrower responsibilities and defenses.	Minor technical changes	Clarity/consistency/accuracy.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.207 Obligation to repay	Add new § 685.207(a)(3) stating that a borrower's first payment is due within 60 days of a loan entering repayment. In § 685.207(b)(3), add language to reflect the temporary elimination of the grace period interest subsidy for Direct Subsidized Loans.	To reflect the Department's longstanding policy in regulations. To reflect a change made by the Consolidated Appropriations Act, 2012.
§ 685.208 Repayment plans	See the final regulations published on November 1, 2012 (77 FR 66088) for technical changes in § 685.208.	
§ 685.209 Income-Contingent Repayment Plan.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.209.	
§ 685.210 Choice of repayment plan.	In § 685.210(a)(2), add a cross-reference to the standard repayment plan for Direct Consolidation Loan borrowers entering repayment on/after July 1, 2006.	To clarify that a Direct Consolidation Loan borrower who does not select a repayment plan will be placed on the standard repayment plan for Direct Consolidation Loan borrowers described in § 685.208(c) rather than the standard repayment plan with a maximum 10-year repayment period described in § 685.208(b).
§ 685.211 Miscellaneous repayment provisions.	See the final regulations published on November 1, 2012 (77 FR 66088) for additional technical changes in § 685.210(b)(2)(ii). Minor technical changes in § 685.211(a) and (d) (including technical changes in § 685.211(a)(1) included in the final regulations published on November 1, 2012 (77 FR 66088). For proposed non-technical changes in § 685.211(f), see the discussions under "Loan Rehabilitation Agreement: Reasonable and Affordable Payment Standard" and "Loan Rehabilitation Agreement: Treatment of Borrowers Subject to Administrative Wage Garnishment" in the "Significant Proposed Regulations" section of the preamble to these proposed regulations.	Clarity/consistency/accuracy.
§ 685.212 Discharge of a loan obligation.	Minor technical changes (including technical changes included in the final regulations published on November 1, 2012 (77 FR 66088).	Clarity/consistency/accuracy.
§ 685.213 Total and permanent disability discharge.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.213.	
§ 685.214 Closed school discharge	Revise § 685.214(a)(2)(ii) to clarify that the definition of "school" applies regardless of whether the school or its location or branch is considered eligible. Revise § 685.214(b)(4) to state that the Secretary reports a discharge to consumer reporting agencies "so as to delete all adverse credit history assigned to the loan". Add new § 685.214(c)(4) describing the conditions under which the Secretary may grant a discharge without an application from the borrower. See the discussion of proposed non-technical changes in § 685.214(c)(1)(ii) under "Closed School Discharge" in the "Significant Proposed Regulations" section of the preamble to these proposed regulations.	For consistency with the corresponding FFEL Program regulation in § 682.402(d)(1)(ii)(C). For consistency with the corresponding FFEL Program regulation in § 682.402(d)(2)(iv). For consistency with §§ 685.215(c)(7), 685.216(c)(2), and 682.402(d)(8).
§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.	In § 685.215(a)(1)(iv), remove the cross-reference to the definition of "identity theft" in the FFEL regulations; In § 685.215(c)(4), add the definition of "identity theft" from § 682.402(e)(2)(iv) of the FFEL Program regulations. Revise § 685.215(a)(5) to state that the Secretary reports a discharge to consumer reporting agencies "so as to delete all adverse credit history assigned to the loan".	To eliminate the need to refer to the FFEL Program regulations for the definition of "identity theft." To eliminate the need to refer to the FFEL Program regulations for the definition of "identity theft." For consistency with the corresponding FFEL Program regulation in § 682.402(e)(2)(iv).
§ 685.216 Unpaid refund discharge	Minor technical changes	Clarity/consistency/accuracy.
§ 685.217 Teacher loan forgiveness program.	Throughout section, replace references to employment "at" or teaching "at" an education service agency (ESA) to employment "by" or teaching "for" an ESA.	To clarify that a teacher who is employed by an ESA may not necessarily teach at the ESA itself.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.	Revise § 685.217(c)(1)(iii) by making the last sentence a new paragraph. Add new § 685.217(c)(13) stating that borrowers performing qualifying teaching service may request forbearance in accordance with § 685.205(a)(5). Minor technical changes	To clarify that Bureau of Indian Education schools are not subject to the requirements in § 685.217(c)(1)(i)—(iii). To reflect longstanding policy in the Direct Loan Program and for consistency with the corresponding FFEL Program regulations in § 682.216(e). Clarity/consistency/accuracy.
§ 685.219 Public Service Loan Forgiveness.	No changes.	
§ 685.220 Consolidation	See the discussion of proposed technical changes under “Modification of Direct Loan Program Regulations: Consolidation” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	
§ 685.221 Income-based repayment plan.	See the final regulations published on November 1, 2012 (77 FR 66088) for significant regulatory changes in § 685.221.	
§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.	In § 685.300(a), add new paragraph (5) stating that schools must, on a monthly basis, reconcile institutional records with Direct Loan funds received from the Secretary and Direct Loan disbursement records submitted to and accepted by the Secretary. Remove § 685.300(b)(8), which prohibits borrowers from receiving the same type of loan under both the Direct Loan Program and the FFEL Program for the same period of enrollment at the same school.	To reflect in the regulations an existing requirement for schools participating in the Direct Loan Program. To eliminate a provision that is no longer needed due to the change made by the SAFRA Act providing that no new loans may be made under the FFEL Program effective July 1, 2010.
§ 685.301 Origination of a loan by a Direct Loan Program school.	Move current § 685.301(b), which contains provisions for determining disbursement dates and amounts, to § 685.303 as new paragraph § 685.303(d). Move current § 685.301(c), which contains provisions for governing annual loan limit progression based on completion of an academic year, to § 685.303 as new paragraph § 685.303(e). Revise § 685.301(a)(10)	These provisions are more appropriately included in § 685.303, which covers processing loan proceeds. These provisions are more appropriately included in § 685.303, which covers processing loan proceeds.
§ 685.302 [Reserved]	In redesignated § 685.301(c), remove paragraph (2) and redesignate paragraph (c)(1) as (c). See the discussion of a proposed non-technical change in § 685.301(a)(10)(ii) under “Minimum loan period for transfer students in non-term and certain non-standard term programs” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	To fix a technical error resulting from incorrect amendatory language in final regulations published by the Department on November 1, 2007 (72 FR 62011 and 72 FR 62032). To correct a technical error in the final regulations published by the Department on October 29, 2010 (75 FR 66832). The intent of the regulations was to replace the original paragraphs § 685.301(c)(1) and (2) with the text in paragraph (1), but paragraph (2) was inadvertently retained.
§ 685.302 [Reserved]	N/A.	
§ 685.303 Processing loan proceeds.	Add new § 685.303(d) and 685.303(e) that contain the provisions currently in § 685.301(b) and 685.301(c).	Refer to the proposed changes for § 685.301.
§ 685.304 Counseling borrowers ...	See the discussion of technical changes under “Modification of Direct Loan Program Regulations: Counseling Borrowers” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations.	
§ 685.305 Determining the date of a student’s withdrawal.	Minor technical changes	Clarity/consistency/accuracy.
§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.	Minor technical changes	Clarity/consistency/accuracy.

APPENDIX B—SUMMARY OF PROPOSED TECHNICAL CHANGES TO 34 CFR PART 685—Continued

Section	Proposed change	Reason
§ 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.	Minor technical changes only	Clarity/consistency/accuracy.
§ 685.308 Remedial actions	No changes.	
§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.	In § 685.309(g), remove the words “Except for funds paid to a school under section 452(b)(1) of the Act”.	Remove an obsolete reference to a statutory provision related to payment of administrative fees to Direct Loan schools that was removed from the HEA many years ago.
§ 685.400 School participation requirements.	See the discussion of proposed non-technical changes in § 685.309(b) under “School Enrollment Status Reporting Requirements” in the “Significant Proposed Regulations” section of the preamble to these proposed regulations. Remove this section	To remove obsolete provisions that no longer apply to the Direct Loan Program.
§ 685.401 [Reserved]	N/A.	
§ 685.402 Criteria for schools to originate loans.	Remove this section	With the exception of the provisions in § 685.402(f), the provisions in this section are obsolete. The provisions in § 685.402(f) related to the use of the Master Promissory Note (MPN) would be updated to reflect current policy and incorporated in the definition of MPN in § 685.102(b).

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