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34 CFR Parts 668, 682, and 685

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

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

[Docket ID ED-2014-OPE-0161]

RIN 1840-AD18

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

**SUMMARY:** The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to create a new income-contingent repayment plan in accordance with the President's initiative to allow more Direct Loan borrowers to cap their loan payments at 10 percent of their monthly incomes. The Secretary is also implementing changes to the Federal Family Education Loan (FFEL) Program and Direct Loan Program regulations to streamline and enhance existing processes and provide additional support to struggling borrowers. These regulations will also amend the Student Assistance General Provisions regulations by expanding the circumstances under which an institution may challenge or appeal a draft or final cohort default rate based on the institution's participation rate index.

**DATES:** The regulations are effective July 1, 2016.

Implementation date: For the implementation dates of the included regulatory provisions, see the *Implementation Date of These Regulations* section of this document.

**FOR FURTHER INFORMATION CONTACT:** For further information related to the Servicemembers Civil Relief Act (SCRA), the treatment of lump sum payments made under Department of Defense (DOD) student loan repayment programs for the purposes of public service loan forgiveness, and expanding the use of the participation rate index (PRI) challenge and appeal, Barbara Hoblitzell at (202) 502-7649 or by email at: [Barbara.Hoblitzell@ed.gov](mailto:Barbara.Hoblitzell@ed.gov). For information related to loan rehabilitation, Ian Foss at (202) 377-3681 or by email at: [Ian.Foss@ed.gov](mailto:Ian.Foss@ed.gov). For information related to the Revised Pay As You Earn repayment plan, Brian Smith or Jon Utz at (202) 502-7551 or (202) 377-4040 or by email at: [Brian.Smith@ed.gov](mailto:Brian.Smith@ed.gov) or [Jon.Utz@ed.gov](mailto:Jon.Utz@ed.gov).

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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 final regulations will amend the Student Assistance General Provisions regulations governing Direct Loan cohort default rates (CDRs) to expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or final CDR based on the institution's PRI. In addition, we are implementing changes to the FFEL Program regulations to streamline and enhance existing processes and provide support to borrowers by establishing new procedures for FFEL Program loan holders to identify servicemembers who may be eligible for benefits under the SCRA. The final regulations will also require guaranty agencies to provide FFEL Program borrowers who are in the process of rehabilitating a defaulted loan with information on repayment plans available to them after the loan has been rehabilitated, as well as additional financial and economic education materials. We have also made several technical changes to the loan rehabilitation provisions contained in § 682.405. In addition, the final regulations will add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to § 685.209. The REPAYE plan is modeled on the existing Pay As You Earn repayment plan, and will be available to all Direct Loan student borrowers regardless of when the borrower took out the loans. Finally, the regulations will allow lump sum payments made through student loan repayment programs administered by the DOD to count as qualifying payments for purposes of the Public Service Loan Forgiveness Program.

**Summary of the Major Provisions of This Regulatory Action:**

To expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or official CDR based on the institution's PRI, the final regulations—

- Permit an institution to bring a timely PRI challenge or appeal in any year in which the institution's CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years.

- Provide that an institution will not lose eligibility based on three years of official CDRs that are less than or equal to 40 percent, but greater than or equal

to 30 percent, and will not be placed on provisional certification based on two such rates, if it brings a timely appeal or challenge with respect to any of the relevant rates and demonstrates a PRI less than or equal to 0.0625, provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate.

- Provide that a successful PRI challenge with respect to a draft CDR is effective not only in preventing imposition of sanctions upon issuance of the official CDR for that year, but in preventing the institution from being placed on provisional certification or losing eligibility in subsequent years based on the official CDR for that year if the official rate is less than or equal to the draft rate.

To reduce the burden on military servicemembers who may be entitled to an interest rate reduction under the SCRA, the final regulations—

- Require FFEL Program loan holders to proactively use the authoritative database maintained by the DOD to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent.

- Permit a borrower to use a form developed by the Secretary to provide the loan holder with alternative evidence of military service to demonstrate eligibility when the borrower believes that the information contained in the DOD database may be inaccurate or incomplete.

In regard to loan rehabilitation, the final regulations—

- Assist with the transition to loan repayment for a borrower who rehabilitates a defaulted loan, by requiring a guaranty agency to: Provide each borrower with whom it has entered into a loan rehabilitation agreement with information on repayment plans available to the borrower after rehabilitating the defaulted loan; explain to the borrower how to select a repayment plan; and provide financial and economic education materials to borrowers who successfully complete loan rehabilitation.

- Amend § 682.405 with respect to the cap on collection costs that may be added to a rehabilitated loan when it is sold to a new holder and the treatment of rehabilitated loans for which the guaranty agency cannot secure a buyer, to conform with the Higher Education Act of 1965, as amended (HEA).

To establish a new, widely available income-contingent repayment plan targeted to the neediest borrowers, the REPAYE regulations—

- Provide that, for each year a borrower is in the REPAYE plan, the borrower's monthly payment amount is recalculated based on income and family size information provided by the borrower. If a process becomes available in the future that allows borrowers to give consent for the Department of Education (the Department) to access their income and family size information from the Internal Revenue Service (IRS) or another Federal source, the regulations will allow use of such a process for recalculating a borrower's monthly payment amount.

- In the case of a married borrower filing a separate Federal income tax return, use the adjusted gross income (AGI) of both the borrower and the borrower's spouse to calculate the monthly payment amount. A married borrower filing separately who is separated from his or her spouse or who is unable to reasonably access his or her spouse's income is not required to provide his or her spouse's AGI.

- Limit the amount of interest charged to the borrower of a subsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization). This limitation applies after the consecutive three-year period during which the Secretary does not charge the interest that accrues on subsidized loans during periods of negative amortization.

- Limit the amount of interest charged to the borrower of an unsubsidized loan to 50 percent of the remaining accrued interest when the borrower's monthly payment is not sufficient to pay the accrued interest (resulting in negative amortization).

- For a borrower who only has loans received to pay for undergraduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 20 years of qualifying payments.

- For a borrower who has at least one loan received to pay for graduate study, provide that the remaining balance of the borrower's loans that have been repaid under the REPAYE plan is forgiven after 25 years of qualifying payments.

- Provide that, if the borrower does not provide the income information needed to recalculate the monthly repayment amount, the borrower is removed from the REPAYE plan and placed in an alternative repayment plan. The monthly payment amount under the alternative repayment plan will equal the amount required to pay off the loan within 10 years from the date the

borrower begins repayment under the alternative repayment plan, or by the end date of the 20- or 25-year REPAYE plan repayment period, whichever is earlier.

- Allow the borrower to return to the REPAYE plan if the borrower provides the Secretary with the income information for the period of time that the borrower was on the alternative repayment plan or another repayment plan. If the payments the borrower was required to make under the alternative repayment plan or the other repayment plan are less than the payments the borrower would have been required to make under the REPAYE plan, the borrower's monthly REPAYE payment amount will be adjusted to ensure that the excess amount owed by the borrower is paid in full by the end of the REPAYE plan repayment period.

- Provide that payments made under the alternative repayment plan will not count as qualifying payments for purposes of the Public Service Loan Forgiveness Program, but may count in determining eligibility for loan forgiveness under the REPAYE plan, the income-contingent repayment plan, the income-based repayment plan, or the Pay As You Earn repayment plan (each of these plans may be referred to as an "income-driven repayment plan" or "IDR plan") if the borrower returns to the REPAYE plan or changes to another income-driven repayment plan.

*Costs and Benefits:* As further detailed in the *Regulatory Impact Analysis*, the benefits of these regulations, which will require guaranty agencies to provide additional information to borrowers in the process of rehabilitating a defaulted loan, include a reduction of the risk that a borrower will re-default on a loan after having successfully completed loan rehabilitation. Student borrowers will benefit from the availability of the REPAYE plan that makes an IDR plan with payments based on 10 percent of income available to borrowers regardless of when they borrowed. The changes to the SCRA provisions should reduce the burden on servicemembers and ensure the correct application of the six percent interest rate limit. Additionally, the changes to the PRI challenges and appeals process may encourage more institutions to participate in the loan program, giving their students additional options to finance their education at those institutions.

There will be costs incurred by guaranty agencies under these regulations. In particular, guaranty agencies will be required to make information about repayment plans

available to borrowers during the rehabilitation process.

On July 9, 2015, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register** (80 FR 39607).<sup>1</sup> The final regulations contain changes from the proposed regulations, which are fully explained in the *Analysis of Comments and Changes* section of this final rule.

*Implementation Date of These Regulations:* Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

Consistent with the Department's objective to ensure all borrowers with Federal student loans can use a loan repayment plan that caps their monthly payments at an affordable amount, the Secretary is exercising his authority under section 482(c) to implement the new and amended regulations specific to the REPAYE repayment plan included in this document in December 2015.

The implementation of the regulations that expand availability of PRI challenges and appeals from the potential consequences of an institution's CDR is predicated on the automated support that will be provided through the implementation of the Data Challenges and Appeals Solutions (DCAS) system within the Department's Federal Student Aid office. The DCAS system is slated for implementation in 2017. We will publish a separate **Federal Register** document to announce when we are ready to implement these regulations.

The Secretary has not designated any of the remaining provisions in these final regulations for early implementation. Therefore, the remaining final regulations included in this document are effective July 1, 2016.

*Public Comment:* In response to our invitation in the NPRM, 2,919 parties submitted comments on the regulations. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the final regulations to which they pertain. Generally, we do not address technical or other minor changes.

<sup>1</sup> The NPRM is available at [www.gpo.gov/fdsys/pkg/FR-2015-07-09/html/2015-16623.htm](http://www.gpo.gov/fdsys/pkg/FR-2015-07-09/html/2015-16623.htm).

We received many recommendations from commenters to make other changes to the Federal student loan programs. Generally, we do not address recommendations that are out of the scope of this regulatory action, or that would require statutory changes, in this preamble.

*Analysis of Comments and Changes:* An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

#### General

*Comment:* The majority of commenters expressed strong support for the proposed regulations. They stated that these regulations would: Protect colleges with low borrowing rates from sanctions triggered by high CDRs; increase the efficacy of PRI challenges and appeals to encourage colleges to continue offering Federal student loans; help ensure that military servicemembers benefit from the interest rate cap provided under the SCRA; help ensure that borrowers who are rehabilitating their loans make an informed decision about which repayment plan to select after successfully rehabilitating their loans; help borrowers by creating a repayment plan that allows all Direct Loan student borrowers to cap their monthly payments at 10 percent of their discretionary income, and prevents ballooning loan balances by limiting interest accrual for borrowers with low income relative to their debt; and provide that lump sum payments made on borrowers' behalf directly to the Department through student loan repayment programs administered by the DOD are counted as qualifying payments for public service loan forgiveness.

*Discussion:* We appreciate the support from the overwhelming majority of commenters.

*Changes:* None.

#### Implementation

*Comment:* Several commenters urged the Department to implement the change to the PRI challenge and appeal processes in 2015, rather than in February 2017. Some commenters suggested that delaying the implementation of the regulations to coincide with the launch of the DCAS system would decrease the effectiveness of the change and result in missed opportunities to assure institutions continue to participate in the Direct Loan program. Several commenters opined that the number of schools with borrowing rates low enough to qualify for a PRI challenge or appeal due to CDRs that would trigger sanctions was

so low as to suggest that the Department would not experience any increased burden in processing these challenges and appeals without the support of the DCAS system.

*Discussion:* We agree that only a relatively small number of institutions are likely to qualify to submit a PRI challenge or appeal due to CDRs that would trigger sanctions. At the current time, however, PRI challenges and appeals, as well as certain other types of challenges and appeals, must be handled through time-consuming manual processes. Due to the number of challenges and appeals that must be processed manually and the need to devote limited resources to processing a high volume of loan servicing appeals, it is not feasible for the Department to implement the regulatory changes to the PRI challenge and appeal process earlier than February 2017, when the DCAS system is scheduled to be implemented. The implementation of the DCAS system will allow the Department to handle PRI challenges and appeals in a timely manner through an automated process. While we appreciate the commenters' interest in accelerating the implementation of this change, we do not agree that the current implementation schedule decreases the effectiveness of the rule change or results in missed opportunities to protect students from having to take out private loans or having to drop out of school. Institutions are currently able to appeal a CDR based on PRI, which enables those institutions that do so successfully to continue to participate in the title IV student aid programs and ensure their students have access to Federal funds.

*Changes:* None.

#### *Draft Cohort Default Rates and Your Ability to Challenge Before Official Cohort Default Rates Are Issued (§ 682.204(c)(1)(ii))*

*Comment:* One commenter expressed concern that the regulations did not sufficiently ensure that protections for students are maintained when an institution's default rate has risen to 30 or 40 percent (*i.e.*, the point at which suspension or sanctions are imposed). While the commenter recognized the benefit this rule would provide to community colleges with low Federal student loan participation rates, the commenter was concerned that it may also allow unscrupulous schools with poor training outcomes the opportunity to delay their suspension or sanction under the title IV programs. The commenter recommended a limited pilot implementation of the PRI challenge and appeals processes with

only community colleges to assess the impact before considering expanding the scope of the rule to other institutional sectors.

*Discussion:* Section 435(a)(8) of the HEA requires PRI appeals and challenges, outlines how the PRI is to be computed, and establishes the PRI ceiling applicable to appeals or challenges from statutory sanctions based on three years of CDRs equal to or greater than 30 percent. The statute does not distinguish between institutional sectors with respect to appeals and challenges. The new regulations do not relax the standards for a successful challenge or appeal or change how the PRI is computed. Instead, they provide opportunities for schools to bring their challenges and appeals earlier than in the past, including before the point at which it becomes clear that sanctions would apply absent a successful challenge or appeal. The regulations do not purport to affect the timing of statutory sanctions in the event of an unsuccessful appeal or challenge; that timeline is also set by statute (section 435(a)(2)(A) of the HEA). Indeed, altering the PRI challenge or appeal required by statute to impose a higher hurdle for avoiding sanctions, or to impose sanctions sooner, whether for all institutions or for only some, in the manner suggested by the commenter, would require a statutory change. In addition, the Department would regard regulations providing differential treatment of institutions by sector, even as a pilot, as inappropriate given the absence of such a distinction in the statutory provisions regarding CDRs.

*Changes:* None.

#### *Due Diligence in Servicing a Loan (§ 682.208(j))*

*Comment:* One commenter noted that, in other areas of lending covered by the SCRA, creditors often extend voluntary "grace" periods to servicemembers. The commenter suggested that we consider extending application of the SCRA's six percent interest rate to servicemembers for a transitional period after the end of the servicemembers' military service.

*Discussion:* We appreciate the commenter's concern for servicemembers who are transitioning from the SCRA interest rate limit to the regular interest rate that applies to their Federal student loans. Section 427A(m) of the HEA provides that a FFEL lender may charge a borrower interest at a rate less than the rate that is applicable under statute. Accordingly, a FFEL lender may choose to continue to charge the SCRA interest rate for a period after the end of the servicemember's military

service. Under the HEA, the Department is required to charge the statutory interest rate on Direct Loans.

*Changes:* None.

*Comment:* One commenter suggested that if a borrower has multiple loans and the application of the SCRA's six percent interest rate limit to one of the loans results in an overpayment of the final remaining balance on the loan, the excess amount should be returned to the borrower rather than applied to his or her other outstanding loans.

*Discussion:* The commenter's suggested treatment of overpayments would be inconsistent with the way the Federal student loan programs are administered. If a borrower has multiple loans with the same servicer and a payment is made that exceeds the amount required to fully pay off one of the loans, the excess amount is not refunded to the borrower. Rather, it is applied to reduce the outstanding balance on the borrower's other loans. We believe this approach is more beneficial to the borrower, as it reduces the borrower's remaining loan debt.

*Changes:* None.

*Comment:* A few commenters suggested that we not use the term "active duty military service" when referring to borrowers who may be eligible for the SCRA six percent interest rate limit. The commenters recommended the regulation use the definition of "military service" in the SCRA at 50 U.S.C. App. 511(2).

*Discussion:* We appreciate the commenters' suggestion and agree that it is more appropriate to use the terminology used in the SCRA. We also agree that the regulations should clearly describe how the SCRA provisions in these regulations apply to National Guard members.

*Changes:* We have replaced the term "active duty" throughout §§ 682.202(a)(8), 682.208(j), and 685.202(a)(11) with the term "military service" and added the definition of the term "military service" in §§ 682.208(j)(10) and 685.202(a)(11). These changes will provide consistency with the language in the SCRA and clarify how the SCRA applies to National Guard members.

*Comment:* One commenter requested that consolidation loans made after a borrower has started a period of military service be made eligible for the SCRA interest rate limit of six percent if the underlying loans were originated prior to the start of the period of military service.

*Discussion:* We appreciate the commenter's concern. However, under the law, a consolidation loan is a new loan and new loans made after a period

of military service are not covered by the SCRA for that period of military service. We note that servicemembers who are eligible for the SCRA six percent interest rate limit are not disadvantaged by this treatment. If a borrower obtains a consolidation loan during a period of military service when the interest rate on the loans the borrower is consolidating is reduced to six percent under the SCRA, the interest rate used in determining the weighted average interest rate for the Direct Consolidation Loan will be the six percent SCRA rate rather than the higher statutory rate that would otherwise apply to the loans. Since the interest rate on a Direct Consolidation Loan is a fixed rate, this means that the borrower would effectively lock in the benefit of the lower SCRA interest rate for the life of the consolidation loan. If a borrower consolidates his or her loans prior to beginning a period of military service, the new consolidation loan is subject to the six percent SCRA interest rate limit during any future period of military service.

*Changes:* None.

*Comment:* One commenter suggested that a consolidation loan should not be treated as a new loan unless the loan holder has notified the servicemember of the impact of consolidation on his or her eligibility for the SCRA six percent interest rate limit.

*Discussion:* Under the HEA, borrowers who take out a consolidation loan may lose some benefits available on their prior loans while receiving other benefits offered by the consolidation loan. The current loan consolidation materials that we provide to borrowers include notification of this possibility. We are scheduled to update the Federal Direct Loan Consolidation promissory note during the first quarter of 2016. At that time, we will revise the disclosure regarding the potential loss of benefits to include a specific reference to the SCRA interest rate limit of six percent. However, it is unlikely that a borrower would lose SCRA benefits as a result of consolidation, as discussed in response to the previous comment.

*Changes:* None.

*Comment:* One commenter requested that the Department accept letters from commanders and other military documents as alternative evidence of military service so that servicemembers seeking to demonstrate an error in the information in the Defense Manpower Data Center (DMDC) database are not required to complete a special form.

*Discussion:* We consulted with the DOD and determined that DOD considers the information contained within the Defense Enrollment

Eligibility Reporting System (DEERS), which is accessed through the DMDC, to be the definitive record of servicemembers' military service. We also note that the letters or other documents suggested by the commenter could be vulnerable to fraud. Therefore, it is most appropriate that the servicemember work with the DOD to correct his or her DEERS data and, in the meantime, submit the online form to enable application of the SCRA interest rate limit of six percent.

*Changes:* None.

*Comment:* Two commenters requested that the regulation specifically state that loan holders, upon finding evidence of SCRA eligibility, must provide a refund for the benefit retroactive to at least August 14, 2008, or the first date of SCRA eligibility.

*Discussion:* The regulation requires loan holders to apply the SCRA interest rate limit of six percent for the longest period supported by the official electronic database, or by alternative evidence of military duty status provided by the borrower, using the combination of evidence that provides the borrower with the earliest military duty start date on or after August 14, 2008, and the latest military duty end date. In response to a search request, the DMDC provides data for the last 367 days. If the loan holder finds evidence in the database that a borrower had a period of military service within that 367-day period that began earlier, the loan holder would apply the SCRA six percent interest rate limit beginning on the day the period of military service began, but not earlier than August 14, 2008. The SCRA interest rate limit was established by the Higher Education Opportunity Act, which made the SCRA interest rate limit applicable as of the date of its enactment, August 14, 2008. As discussed previously, overpayments resulting from the application of the SCRA six percent interest rate limit will be applied to future loan payments (and these payments will be qualifying payments under the Public Service Loan Forgiveness Program). In the event the application of the SCRA six percent interest rate limit results in payment of all of the borrower's loans in full, any overpayment greater than the de minimus amount of \$25 for Federal student loan overpayments would be refunded to the borrower.

*Changes:* None.

*Comment:* One commenter requested clarification that a loan's disbursement date is only relevant to the military service period for which the loan holder is evaluating eligibility for the SCRA interest rate limit of six percent.

*Discussion:* The DOD database provides information regarding periods of military service within a 367-day window prior to the date on which the loan holder queries the database. As long as the loan disbursement date is before the beginning of the military service period reflected in the database, the loans are eligible for the SCRA six percent interest rate. However, if the loan holder has other information showing an earlier service period, the loan holder must apply the SCRA interest rate limit as of the earliest date, on or after August 14, 2008, supported by that evidence. The loan holder is not required to conduct multiple queries of prior periods to determine if the servicemember may have had a previous period of military duty service that coincides with the date(s) the loans were disbursed.

*Changes:* None.

*Loan Rehabilitation Agreement*  
(§ § 682.405(b)(1)(vi)(B))

*Comment:* One commenter asked the Department to provide guidance to guaranty agencies that are seeking to assign to the Department otherwise rehabilitated loans for which the guaranty agencies have been unable to secure a buyer.

*Discussion:* Guaranty agencies may continue to contact the Department with specific questions concerning this issue.

*Changes:* None.

*Revised Pay As You Earn Repayment Plan (REPAYE Plan) Repayment Plans*  
(§ 685.208(a)(2)(iii) and (iv))

*Comment:* Section 685.208(a)(1)(i)(D) of the regulations provides that Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation Loans, and Direct Unsubsidized Consolidation Loans may be repaid under the REPAYE plan. However, under § 685.208(a)(2)(iv)(D), a Direct PLUS Loan made to a parent borrower, or a Direct Consolidation Loan that repaid a parent PLUS loan, may not be repaid under the REPAYE plan. One commenter noted that, currently, the only way for parent PLUS borrowers to access an income-driven repayment plan is by consolidating their loan(s) into a Direct Consolidation Loan, and repaying that loan under the income-contingent repayment plan described in § 685.209(b). The commenter asserted that this option is often insufficient to meet the needs of many parent PLUS borrowers. The commenter disagreed with the Department's position that we are prohibited from making the REPAYE plan available to parent PLUS borrowers. The commenter argued that there is no basis in the HEA for

excluding consolidation loans that include parent PLUS loans from eligibility for the REPAYE plan. The commenter recommended that we modify the REPAYE plan regulations to allow consolidation loans that include parent PLUS loans to be repaid under the REPAYE plan. Several commenters echoed that recommendation.

As an alternative, one commenter recommended that we create a process under which a borrower who repaid a parent PLUS loan through a consolidation loan could somehow recreate the parent PLUS loan by removing it from the consolidation loan, so the consolidation loan can be repaid under the REPAYE plan, or be grandfathered into another more affordable repayment plan. The commenter argued that this would help borrowers who consolidated their student loans with parent PLUS loans without understanding the financial consequences.

*Discussion:* Section 455(d)(1)(D) of the HEA, which authorizes the income-contingent repayment (ICR) plans, specifically provides that the ICR plans are not available to parent PLUS borrowers. Although Direct Consolidation Loans that have repaid parent PLUS loans may be repaid through the original ICR plan, they may not be repaid through the income-based repayment (IBR) or Pay As You Earn repayment plans. To maintain consistency with those plans, we have retained that restriction in the REPAYE plan.

Contrary to the commenter's suggestion, there is no basis for the Department to "recreate" a PLUS loan that was intentionally repaid by the borrower through consolidation. A loan can be "backed out" of a consolidation loan and reconstituted only if the loan was included in the consolidation loan by error after the borrower requested that the loan not be included. Therefore, the situation described by the commenter would not qualify for this treatment.

*Changes:* None.

*Comment:* Commenters had a variety of suggestions for expanding REPAYE plan eligibility. These commenters recommended making the REPAYE plan available to:

- All borrowers, regardless of when they obtained student loans.
- Borrowers with government loans disbursed prior to October 2007.
- Borrowers with FFEL Program loans who are repaying the loans through the IBR repayment plan
- FFEL Stafford Loan borrowers.

*Discussion:* Under the regulations, Direct Loan student borrowers will be

able to select the REPAYE plan regardless of when they obtained their Direct Loans. The REPAYE plan does not include the requirement in the Pay As You Earn repayment plan limiting eligibility to loans disbursed after October 1, 2007.

While borrowers with FFEL loans may repay those loans under the IBR plan, REPAYE is an ICR plan and is only available to Direct Loan borrowers. Borrowers with FFEL loans may pay their loans under the REPAYE plan if they consolidate their loan(s) into a Direct Consolidation Loan, and then pay the consolidation loan under the REPAYE plan.

*Changes:* None.

*REPAYE Plan (§ 685.209(c))*

*Comment:* Thousands of student loan borrowers expressed strong support for the REPAYE plan, praising the Department for its efforts to let all Direct Loan borrowers cap their monthly payments at 10 percent of their income, and to prevent ballooning loan balances by limiting interest accrual for borrowers with low incomes relative to their debt.

One commenter stated that the REPAYE plan rightly reflects the Department's interest in expanding income-driven repayment to all borrowers, while ensuring that the benefits of an IDR plan remain targeted toward the most at-risk individuals. The commenter also noted that the regulations take important steps to keep the costs of income-based repayment reasonable. The commenter supported the decisions, discussed in more detail in the following sections, to: Not establish a cap on monthly payment amounts to ensure that high-income borrowers pay their fair share; require that payments for married borrowers be based on their combined income; and include provisions to discourage borrowers from intentionally failing to report their income accurately when they experience a significant increase in earnings.

Commenters also supported the decision not to require borrowers to have a partial financial hardship (PFH) to select the REPAYE plan. As one commenter noted, this decision allows borrowers to select the REPAYE plan regardless of their debt-to-income ratio, and provides all Direct Loan student borrowers with a repayment plan that allows their payments to reflect their income. Those who earn less will pay less, and those who earn more will pay more.

Not all commenters supported the REPAYE plan. One commenter believed that the REPAYE plan would have a

minimal beneficial impact on law school graduates. Another commenter questioned the need for establishing a complicated repayment plan, and recommended that the Department make case-by-case loan forgiveness determinations with regard to borrowers who cannot make payments on their loans.

Several commenters opposed to the REPAYE plan viewed the plan as a loan forgiveness plan, and argued that it would provide an incentive to institutions to continue the constant escalation of education costs. These commenters felt strongly that individuals should take responsibility for how they choose to pursue and fund their educations, and it should not be the taxpayers' responsibility to pay for those who choose to spend irresponsibly.

*Discussion:* We thank the commenters who expressed support for the REPAYE plan.

We acknowledge that the REPAYE plan might not be the best option for all borrowers and encourage law school graduates and all borrowers to learn about their options and select the repayment plan that they believe will work best for them.

We understand the desire for a more simplified approach to borrower repayment. But, with millions of student loan borrowers in repayment, it is not practical for the Department to make case-by-case loan forgiveness determinations.

We appreciate the concerns raised by several commenters who do not support REPAYE. We agree that borrowers are responsible for repaying their student loans, and we believe that most borrowers repaying their loans under the REPAYE plan will be successful in repaying their loans, in many cases before the end of the 20- or 25-year repayment period. However, we also believe the REPAYE plan will provide relief to struggling borrowers who experience financial difficulties that prevent them from repaying their loans. We note that the REPAYE plan requires 20 or 25 years of qualifying payments before a loan is forgiven. We also note that under the REPAYE plan, while lower-income borrowers will make reduced payments, higher-income borrowers will make increased payments. Given these characteristics of the REPAYE plan, we do not believe the plan will encourage irresponsible over-borrowing by students.

*Changes:* None.

*Comment:* Several commenters expressed significant concerns about the Department's proposal to create a new IDR plan instead of expanding the

current Pay As You Earn repayment plan. These commenters believed that adding a new IDR plan to the existing array of repayment plans adds unnecessary complication. The commenters noted that the Department already offers four separate income-driven student loan repayment plans with varying eligibility requirements, costs, and benefits. These commenters noted that the Direct Loan Program continues to generate significant revenue for the Federal government, estimated to total \$89 billion over the next ten years. In the commenters' view, regardless of the changes the Department makes to income-driven repayment options, the Federal government will undoubtedly continue to generate revenue from borrowers repaying their student loans. The commenters believed that the Department can and should channel a substantial portion of these revenues into expanding and improving the existing Pay As You Earn repayment plan. They asserted that the Department's goal should be to help as many borrowers as possible, not to maximize government revenue.

One commenter noted that, in 2014, President Obama announced his intention to make student loans more affordable by extending the current Pay As You Earn repayment option to an additional five million borrowers with loans too old to qualify under the Pay As You Earn rules. According to this commenter, many financial aid administrators thought that modifications would be made to the current Pay As You Earn repayment plan as a result of the President's announcement. Many commenters preferred this approach, urging the Department to support the extension of the existing Pay As You Earn repayment plan to cover additional borrowers, rather than create the REPAYE plan.

Several commenters expressed support for streamlining the multiple IDR plans into one improved IDR plan that would cap monthly payments at 10 percent of income, provide loan forgiveness after 20 years of payments, and target benefits to borrowers who need help the most. These commenters recognized that this would require statutory changes. The commenters believed that the REPAYE plan, with certain modifications, would become an excellent model for Congress to consider when developing a single, streamlined IDR plan. Similarly, another commenter recommended that, instead of creating new processes and options, the Department work towards a unified, simplified standard for borrowers going

forward that is less complex and burdensome.

Some commenters recommended reducing the number of repayment plans to two: A standard repayment plan and the REPAYE plan as the only income-driven repayment plan. They noted that this would simplify student loan repayment options.

One commenter noted that, with the addition of REPAYE, there will be eight different repayment plans with different terms and eligibility requirements. Borrowers will have to navigate many options that look similar but have complex differences that may not be immediately obvious. The commenter contended that an abundance of options with varying terms and benefits can confuse borrowers and make choosing a repayment plan difficult. This commenter believed that providing better information and assistance with making the best choice could help increase the benefits of the REPAYE plan and other income-driven plans. Commenters encouraged the Department to explore streamlining and improving the loan repayment and forgiveness programs that are already in place to ensure borrowers receive clear and thorough information regarding their repayment options.

*Discussion:* We appreciate the commenters' concerns but believe that the best approach is to establish the REPAYE plan as a new ICR repayment plan. If we only modified the existing Pay As You Earn repayment plan to reflect the provisions included in the REPAYE plan, the current Pay As You Earn repayment plan terms and conditions would continue to apply to borrowers who were in the plan before the REPAYE plan provisions became effective. We believe that having two versions of the Pay As You Earn repayment plan with different terms and conditions would be more confusing for borrowers and servicers than having two separate and distinct plans.

Contrary to the suggestion by some commenters, the Department's motivation in developing the REPAYE plan is not to maximize government revenue. If that were our goal, the simplest way to achieve it would be to not offer any income-driven repayment plans that provide for loan forgiveness. Instead, our goal with the REPAYE plan is two-fold: to create an income-driven repayment plan that requires a reasonable monthly payment amount from those borrowers who can afford it; and to provide relief to struggling borrowers who may still have large outstanding balances after years of making payments on their student loans.

We thank the commenters for their recommendation that the REPAYE plan be the model for a single income-driven repayment plan. However, as the commenters noted, such a change would require congressional action.

We reiterate our intention to provide clear, understandable information regarding the various Federal student loan repayment plans, to enable borrowers to make informed choices when selecting repayment plans.

*Changes:* None.

*Definition of “Adjusted Gross Income” (§ 685.209(c)(1)(i)(A) and (B))*

**AGI of Married Borrowers Filing Separately**

*Comment:* Under the proposed definition of “adjusted gross income (AGI)” in § 685.209(c)(1)(i), for a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount under the REPAYE plan. Several commenters supported this provision of the REPAYE regulations. The commenters noted that, under the REPAYE plan, married borrowers are treated consistently, regardless of how they file their Federal income taxes. In the Pay As You Earn, IBR, and ICR plans, married borrowers who file their Federal income taxes jointly have their eligibility and payment amounts based on their combined income and combined Federal debt. However, those who file separately exclude their spouse’s income from payment calculations, but still include their spouse in their family size, which could result in an artificially low monthly payment. In addition, a married borrower who earns a low income and files taxes separately could have very low or even \$0 monthly payments, even if the borrower’s spouse is a high income earner.

As noted by one commenter, the costs of the REPAYE plan to taxpayers will be kept reasonable by ensuring that married borrowers’ incomes are properly captured for purposes of determining the appropriate payment amount. The definition of AGI in the REPAYE regulations ensures that borrowers cannot manipulate the system to qualify for lower payments than other similarly-situated borrowers.

One commenter expressed concern that counting the AGI of the spouse for married borrowers who file separately could have unintended consequences. Because the treatment of married borrowers’ income under REPAYE would be inconsistent with the treatment in the other income-driven repayment plans, the commenter

expressed concern that this may lead to confusion, particularly among struggling borrowers who may already have difficulty navigating the characteristics of the different income-driven repayment plans. The commenter noted that the approach used in the REPAYE plan may lead to higher payments for some married borrowers who file taxes separately for a myriad of practical reasons, and who already accept significant financial consequences as a result of filing separate tax returns. The commenter supported the Department’s goal of ensuring that borrowers do not “game” the system. However, the commenter expressed concern that many borrowers whose tax filing decisions are not determined by their title IV loan repayment options will be hurt under the REPAYE plan. The commenter asked whether the Department could adopt for the REPAYE plan the methodology used in the other income-driven repayment plans, with some additional protections, if needed, to prevent abuse. Along these lines, the commenter proposed including an income threshold under which married borrowers filing separately may repay their loans under the REPAYE plan based on their individual incomes. This would ease the difficulty for struggling borrowers while closing a loophole for married borrowers who may be more financially secure than single borrowers.

Several commenters were opposed to the proposed definition of AGI. These commenters believed that combining the AGIs of spouses who file separately would encourage borrowers to divorce and continue to cohabitate with the former spouse in order to prevent their student loan payments from increasing. One commenter argued that the provision will lead to the degradation of the concept of marriage by encouraging people to live together unmarried and have children out of wedlock.

Another commenter believed that the proposed AGI definition would shift the burden of student loan payments to married couples from single borrowers, increasing married couples’ payment requirements under the REPAYE plan.

One commenter believed that the proposed AGI definition would, in effect, take the decision to file income taxes separately out of the married couple’s hands.

Several commenters noted that they acquired their student loan debt before they met their spouse, and did not believe the spouse should be held accountable for their debt. Several commenters noted that a married couple could easily have a financial arrangement in which one spouse does

not receive any financial benefit from the other, even if the other has taxable income. One commenter noted that student loan payments based on the combined AGI of borrowers who file separately may not be something that a married couple has budgeted or can afford.

Commenters noted that married borrowers who file a separate tax return already lose substantial tax benefits by filing separately with the elimination of various tax deductions and/or credits.

Another commenter recommended a uniform AGI calculation for both single and married borrowers, arguing that the tax penalty of filing taxes separately makes the REPAYE plan not helpful for married borrowers in most cases.

Some commenters offered counter-proposals to the proposed definition of AGI. One commenter proposed allowing a married borrower the same AGI calculation as a single borrower, provided that the married borrower would not qualify for any student loan forgiveness. Another commenter recommended allowing borrowers in public sector jobs to use their individual AGI for REPAYE calculations regardless of marital status.

One commenter proposed combining the AGI of two spouses and dividing that number by two instead of counting all of the spouse’s AGI. As an alternative to this proposal the commenter recommended adding one-half of the spouse’s AGI to the borrower’s AGI. The commenter believed that this approach would recognize that almost all spouses will have expenses of their own, so not all of their income is actually available for repayment of the borrower’s student loans. But it would also reflect the fact that, typically, some of a spouse’s income is available for this purpose.

Commenters also asserted that the spouse’s income should not be considered unless the married couple’s loans can be added together even if they are from different loan providers, or unless both spouses cosigned the loans.

One commenter stated that borrowers who qualify for the REPAYE plan will also qualify for IBR. A borrower who is married to a spouse with, for example, the same amount of AGI as the borrower, and who wanted to avoid the higher repayment under the Department’s formula could simply elect IBR instead of the REPAYE plan. The person would pay 15 percent rather than 10 percent of discretionary income, but would still save money compared to using the REPAYE plan. Many married borrowers would thereby be discouraged from using the REPAYE plan.



Some commenters suggested that the definition of AGI was not consistent with the law. These commenters asserted that computing the AGI of all married borrowers by adding the incomes of the spouses is inconsistent with 20 U.S.C. 1087e(e)(2), and beyond the statutory authority of the Department. According to the commenters, the Department is only authorized to base the repayment schedule on the AGI of the borrower, unless the borrower files a joint return.

Two commenters raised constitutional concerns, asserting that the approach under the REPAYE plan stigmatizes and disincentivizes marriage and is contrary to both the recent Supreme Court decision that finds a dignity right to marriage and to the classical equal protections afforded by the 14th Amendment.

*Discussion:* We agree with the commenters who supported using the AGI of both spouses when a married couple files separate Federal income tax returns. As noted by the commenters, this provides for more equitable treatment of married borrowers—most of whom file joint income tax returns.

As the commenters noted, married borrowers who file separately already lose some tax benefits by filing separately, as they are not able to take advantage of various tax deductions and/or tax credits. The treatment of a spouse's AGI for the purpose of determining the payment amount under the REPAYE plan would simply be another factor that a married couple considers when determining how to file their income tax return. Depending on the couple's circumstances, filing separately may or may not continue to be advantageous for the couple. Either way, a married couple always has the option to either file separately or file jointly.

While we acknowledge the commenters' concerns that the proposed treatment of married borrowers may incentivize divorce and cohabitation, it seems highly unlikely that a couple that wishes to marry (or remain married) would give that up for the 20- or 25-year REPAYE repayment period to lower their student loan payments. With regard to borrowers who are currently repaying their loans through IBR or the Pay As You Earn repayment plan, and have budgeted their student loan payments based on only counting the AGI of the borrower, the definition of AGI for purposes of those repayment plans is not changing. The only borrowers affected by the definition of AGI in the REPAYE regulations will be those borrowers who select the REPAYE plan.

With regard to some of the other comments that we received on the AGI definition:

- We agree that unless the borrowers have a joint consolidation loan, a borrower's spouse is not responsible for paying the borrower's student loan debt. The definition of AGI does not affect that.

- The definition of AGI does not shift the burden of student loan payments from single borrowers to married borrowers. The payments made by married borrowers have no impact on the payments made by single borrowers, and vice versa.

- There are many differences between the REPAYE plan and the other IDR plans. We believe that the difference with regard to the definition of AGI is fairly easily explained to borrowers, and will not be particularly confusing to struggling borrowers in their choice of an IDR plan.

- The definition of AGI recognizes the reality that, to one degree or another, most married borrowers operate as a single economic unit.

- We agree that the difference in the treatment of AGI for married borrowers may encourage some borrowers to select or stay in IBR or the Pay As You Earn repayment plan. Our intent in providing a choice of IDR plans is to provide borrowers with the option to choose among repayment plans. We encourage borrowers to select the repayment plan that the borrowers believe works best for them.

- We disagree that the treatment of a married couple's income because of a tax filing status chosen by the borrower for purposes of determining student loan payments under a repayment plan voluntarily chosen by the borrower has any impact on the borrower's rights.

We appreciate the comments we received suggesting alternative approaches to the treatment of married borrowers who file income taxes separately. The commenter who recommended establishing an income threshold above which married borrowers' payments would be based on their combined AGIs and below which payments would be based on individual AGIs didn't suggest a threshold amount. Any amount that we chose for this purpose could be deemed arbitrary. In addition, such an approach would potentially create a cliff effect, in which a borrower slightly above the threshold would have much higher payments than a borrower slightly below the threshold.

The commenter who recommended that we consider only one-half of the spouse's AGI provided no basis for the assumption that that half of a spouse's income would commonly be for the

spouse's own expenses. Neither did the commenter provide support for the claim that married couples tend to separate expenses such as food or health care between each spouse, rather than treat them as joint expenses for the married couple. With regard to the commenter's alternative suggestion that we add the AGI of both borrowers and divide by two, we note that, this would significantly reduce the calculated AGI for a high-income borrower with a low-income spouse.

We do not agree with the legal arguments made by some commenters. Section 455(e)(2) of the HEA provides that a repayment amount for a Direct Loan repaid under an ICR plan by a borrower who is married and files a joint Federal income tax return with his or her spouse is based on the AGI of both the borrower and the spouse. The statute does not address the situation in which the borrower and his or her spouse file separate Federal income tax returns. Moreover, section 455(e)(1) of the HEA provides that the Secretary may obtain information that is reasonably necessary regarding the income of a borrower and the borrower's spouse if applicable for the purpose of determining the annual repayment obligation of the borrower. Thus, the statute leaves it up to the Secretary to determine what AGI to consider in the case of a married borrower who files a separate income tax return. In fact, between July 1, 1996 and 2012, the payment amount under ICR for married borrowers who filed separate Federal income tax returns was based on the joint AGI. See 34 CFR 685.209(b)(1) (2009).

*Changes:* None.

*AGI of Married Borrowers Who Are Separated, or Are Unable To Access the Income Information of Their Spouse (§ 685.209(c)(1)(i)(A) and (B))*

*Comment:* Under proposed § 685.209(c)(1)(i)(A) and (B) of the REPAYE regulations, the monthly payment for married borrowers is calculated based on the combined income of the borrower and spouse regardless of how they file Federal tax returns, except for a borrower who is separated from his or her spouse or cannot reasonably access his or her spouse's income information.

As one commenter noted, the vast majority of married borrowers file joint tax returns due to the monetary advantage it provides. In this commenter's view, married borrowers who file separately are likely to be estranged from their spouses or otherwise unable to access their spouse's income. In some cases, these

tax filers may be survivors of domestic violence. This commenter believed that the Department struck the right balance by allowing these borrowers to self-certify that they are separated from their spouse or are otherwise unable to reasonably access the income information of their spouse, and therefore should have their monthly payments calculated based solely on their own income—but without including the spouse in their household size calculation.

Another commenter supported the Department's decision to allow vulnerable married borrowers who file their taxes separately to calculate their REPAYE payment based upon the borrower's adjusted gross income without a cumbersome appeal process.

One commenter expressed concern that, by requiring a borrower to certify that he or she is unable to reasonably access the spouse's income information, the requirements to qualify for this exception will place too heavy a burden on the borrowers it is meant to help. The commenter asked the Department to clarify this certification process and confirm that no additional documents or verification will be required for this exemption, to ensure that struggling borrowers are not faced with further hardship.

Another commenter expressed concern about the proposed exception, arguing that it would encourage two methods for evading the requirement to add spousal AGI. The commenter suggested that some sophisticated married couples will simply arrange to have separate and secret bank accounts, decline to share pay stubs, and file separate tax returns in order to reduce a borrower's student loan repayments without having to divorce. The commenter suggested that blogs will quickly spread suggestions for how to do this.

The commenter also suggested that borrowers who want to evade the requirement will not bother to have their spouse keep separate income information, but will falsely claim that they have no access to such information instead. According to the commenter, if the Department simply accepts such claims, some borrowers will unfairly benefit, and if the Department contests borrower claims that their spouse's income information cannot be accessed, it will lead to controversies and lawsuits at great expense to taxpayers.

*Discussion:* We thank the commenters for their support for the exceptions provided for borrowers who are separated from their spouse, or who are unable to obtain income information from their spouse. As we noted in the

NPRM, the certification form will be modeled on a similar certification for individuals completing the Free Application for Federal Student Aid (FAFSA), and we intend to make the process of certifying separation or inability to obtain income information simple and straightforward. The certification will be done through the standard process of applying for the REPAYE plan. It will not require the borrower to appeal an earlier decision, and will not add undue burden or complexity to that process.

We note that the strategies suggested by the commenter who raised concerns that some borrowers might try to evade higher payments by hiding income or falsifying the certification form would be fraudulent. We expect that most borrowers would be deterred from falsifying information on a Federal application form by the significant penalties that can be applied. We believe the benefits of providing these exceptions outweigh the costs that could result if some borrowers falsify information in violation of Federal law.

*Changes:* None.

#### *Treatment of Recently Separated Borrowers Who Filed Jointly*

*Comment:* One commenter asserted that the proposed REPAYE regulations may still cause a hardship for some recently separated borrowers. Under the proposed regulations, a married borrower who has filed a joint tax return but who subsequently separates from his or her spouse is not allowed to self-certify that they are separated at the time of applying for the REPAYE plan. That option is only available to a borrower who is married but files a separate tax return. The commenter argued that a married borrower who filed a joint Federal tax return, but who is separated from his or her spouse at the time of application for the REPAYE plan, should have the option to exclude the spouse's income from the monthly payment amount calculation.

The commenter acknowledged that the issue is not the borrower's inability to access income information of the spouse, since the spouses would have already filed a joint tax return. But, the commenter argued, if the borrower is separated from his or her spouse, the borrower would not have the joint resources with which to make the monthly payment amount that would be required under the REPAYE plan. In this situation, in the view of the commenter, the joint tax filing status would unfairly impact the monthly payment amount of the borrower.

To exclude the spouse's income from the monthly payment calculation in

these cases, the commenter recommended revising the definitions of "adjusted gross income" and "partial financial hardship" in § 685.209(c)(1) and the formula for calculating the monthly payment amount in § 685.209(c)(2)(i). The commenter also recommended that the definition of "family size" be modified to exclude a borrower's spouse if the borrower and the spouse are separated, regardless of whether the borrower and the spouse filed jointly or separately.

*Discussion:* We do not believe it is necessary to provide an exemption for borrowers who have their spouse's income information. It is possible that married borrowers who are separated have not necessarily separated their finances. As one of the non-Federal negotiators during the negotiated rulemaking process noted, sometimes married couples who are legally separated continue to live together.

In cases where couples have separated their finances and the joint AGI reported on the borrower's Federal tax return is no longer applicable to the borrower, the borrower may submit alternative documentation of income, as allowed by § 685.209(c)(4)(i)(B). The borrower would be required to provide alternative documentation to the borrower's loan servicer. If the documentation provided is approved by the Department, it would be used in place of the prior year's AGI. This process would most commonly be used in cases where a borrower has lost a job, but the process also would be used for the situation discussed by the commenter, with no need for changes to the regulation.

We agree with the commenter that a borrower's spouse should be excluded from the determination of the borrower's family size if the borrower is separated, regardless of the tax filing status of the borrower and the spouse.

*Changes:* We have revised the definition of "family size" in § 685.209(c)(1)(iii) to specify that "family size" does not include the borrower's spouse if the borrower is separated from his or her spouse.

#### *Terms of the REPAYE Plan (§ 685.209(c)(2)) Calculating Monthly Payment Amounts*

*Comment:* Commenters provided a wide variety of recommendations for modifying the formula for determining a borrower's monthly payment amount. One commenter recommended setting criteria for determining monthly payment amounts that take into consideration the borrowers' income levels, suggesting that we either protect a larger portion of income against which the payment is determined for

borrowers with lower wages, or establish progressive loan payment-to-income ratios for borrowers with higher incomes.

Other proposals included:

- Factoring in private student loan payments.
- Using take-home pay, after withholding of taxes, insurance, retirement payments, and other items.
- Exempting Social Security income from consideration.
- Taking into account judicial actions against the borrower that impact ability to repay (such as alimony or child support orders or Chapter 13 mandated payments).
- Factoring in child care costs.
- Taking into consideration the debt/loan ratio based on regional markets, such as city/state, instead of using the Federal poverty guidelines.
- Considering the cost of living, specifically in high-rent areas where yearly income may not be an adequate reflection of disposable income.
- Including house mortgages in the calculation of overall debt burden.
- Considering total debt-to-income ratio.

One commenter recommended that the REPAYE plan provide an option to reduce the payment amount to 5 percent of AGI, with a 40-year repayment period. Another commenter recommended that the Department lower the payment amount cap to five percent, and take other bills into account.

Several commenters recommended that, in establishing a formula for calculating the monthly payment amount, we consider the implications of loan repayment on those who retire at a normal retirement age. One of these commenters recommended restructuring repayment conditions for those who are of normal retirement age or older, to provide for a higher allowance of income not counted toward setting the loan repayment amount, for set-asides such as medical expenses.

One commenter noted that income may change from month to month, and suggested that borrowers should not have to file for a loan amount redetermination every month.

One commenter recommended excluding a spouse's eligible loans from the determination of the borrower's payment amount when a married borrower files a separate tax return because he or she is separated from his or her spouse or is unable to obtain his or her spouse's income at the time of application for the REPAYE plan.

*Discussion:* The REPAYE plan does take borrower income levels into account, basing payments on a formula

using the borrower's AGI and family size, and the poverty guidelines for the State in which the borrower lives.

We appreciate the many recommendations for modifications to the formula for determining monthly payment amounts. However, we believe each of the proposed revisions to the formula would be difficult to implement, and would create inconsistencies with the existing income-driven repayment plans that would be confusing for borrowers.

The recommendation for an option for a longer repayment period of 40 years would not be consistent with the HEA, which sets a maximum length for the repayment period in an ICR plan at 25 years.

Lowering the cap to five percent of disposable income without extending the repayment period, as one commenter suggested, would significantly increase the costs of the REPAYE plan. It would cut in half the monthly payment amounts the Department receives and would increase the amount of the outstanding loan balance that is forgiven at the end of the 20- to 25-year repayment period.

The recommendation to "take other bills into account" is too vague for us to address with specificity because the commenter does not identify which types of bills the Department should consider. But any process to reduce the monthly payment amount by subtracting all or some of the borrower's bills from the calculation would be complicated for the Department to administer, and would require borrowers to meet additional documentation requirements both in the initial application process and the recertification process.

We do not believe it is necessary to adjust the monthly payment amount formula for borrowers who retire at the standard retirement age. The determination of the monthly repayment amount uses AGI as a measure of income. After a borrower retires, the monthly payment amount calculated based on the borrower's income when the borrower was employed may no longer be applicable. However, the reduction in income will be reflected in the borrower's AGI and will result in a corresponding reduction in the monthly payment amount. Since the payment amount is already limited to 10 percent of the amount by which the AGI exceeds the applicable poverty guideline amount, we do not believe that reducing the payment amount further, by taking into consideration certain expenses for retirees that we do not take into consideration otherwise, is necessary.

The comment about incomes changing from month to month may be true in many cases. But some measure of income must be used to determine payments under an income-based repayment plan. We believe AGI is the simplest way to do that, and easiest for borrowers to report. It also accounts for borrowers who may have fluctuating month-to-month incomes, by relying on income for the complete calendar year.

We disagree with the comment that recommended excluding a spouse's eligible loans from the determination of the borrower's payment amount when a married borrower files a separate tax return because he or she is separated from his or her spouse or is unable to obtain his or her spouse's income at the time of application for REPAYE. While the spouse's income information may be unavailable to the borrower, the Department will be able to identify the eligible loans owed by the spouse, and take those loans into consideration when making its determinations. Although spouses are not responsible for repaying each other's loans unless the loans have been consolidated, under § 685.209(c)(2)(B), the Department adjusts the monthly payment amount for each borrower based on each borrower's percentage of the couple's total eligible debt.

*Changes:* None.

#### Payment Cap

*Comment:* Several commenters noted that, while the Pay As You Earn repayment plan caps a borrower's monthly payment at the amount the borrower would have paid under the 10-year standard repayment plan, the REPAYE plan does not have a cap on the monthly payment amount. A borrower in the REPAYE plan will pay 10 percent of his or her discretionary income, even if that leads to a higher payment than under a standard repayment plan. While noting that this provision is directed towards ensuring that borrowers pay equitably, commenters expressed concerns that the new regulation could have a negative effect on certain borrowers. One commenter recommended adding a provision requiring the Department to provide a specific and clear notice to borrowers in this situation. The notice would inform borrowers that they are paying more than they might under other payment plans and present them with their other options for repayment.

Several commenters supported not including a cap on the payment amount, believing that this change increases program fairness by requiring higher-income borrowers to pay the same share of their income as lower-income

borrowers, and by preventing high-debt, high-income borrowers from receiving substantial loan forgiveness when they could afford to pay more.

A commenter noted that one concern about the other income-driven payment plans is that individuals whose incomes rise dramatically over time may still receive loan forgiveness because they are never required to pay more than what they would owe under the 10-year standard plan. This raises the costs for the Federal government and targets benefits away from the most at-risk borrowers. The REPAYE plan addresses this issue by removing that payment cap so that high earners will still pay 10 percent of their discretionary income even if that amount is above what they would owe on the standard 10-year plan. The commenter further noted that borrowers in the REPAYE plan will have the option to switch to the standard 10-year plan if they desired, but payments under the standard plan will not count toward forgiveness. The commenter suggested that the REPAYE plan might also be a favorable option for higher-income earners wishing to pay off their loan balance faster than 10 years.

One commenter contended that the ability to switch to another repayment plan without penalty defeats the purpose of not having a payment amount cap. A borrower who has a dramatic rise in income could easily switch to another repayment plan to avoid the higher monthly payment. This commenter also noted that high-income borrowers can easily select a different plan at the outset of repayment.

One commenter suggested that it might not be beneficial to the Federal government for a high-income borrower to remain in the REPAYE plan. With no monthly payment amount cap, payments by high-income borrowers who remain in REPAYE will accelerate, and the borrower will pay off the loan faster. While this would benefit the borrower, it would correspondingly deprive the Department of additional revenue. The commenter argued that, given the government's low borrowing rates, it would be in the interest of the Department (and taxpayers) to keep these loans outstanding for as long as possible, particularly for borrowers in a negative amortization situation, who are paying the full interest charge.

Other commenters opposed the absence of a payment amount cap in the REPAYE plan. One commenter stated that the purpose of the REPAYE plan should be to help relieve the stress borrowers and their families experience from student loan debt. Without a cap on the monthly payment amount, as in

other income-driven repayment plans, a borrower will have to pay potentially ever-increasing amounts if the borrower receives a pay raise each year. The commenter contended that this reduces incentives for borrowers to seek higher incomes, especially when Federal and State tax brackets take higher percentages out at higher-income levels. The commenter further argued that a cap on monthly payments would give borrowers and families a better chance at buying other things, such as a house, which would in turn bring more money into local economies.

Another commenter proposed making a payment cap available to borrowers working in public service who will be eligible for forgiveness after 10 years.

*Discussion:* We agree with the commenters who supported not having a cap on the monthly payment amount. This feature of the REPAYE plan will help to ensure that the benefits of the plan are targeted to struggling borrowers and ensure that higher-income borrowers repay their loans.

We disagree with the comment that high-income earners will switch out of the REPAYE plan, or select a different repayment plan at the outset, rather than pay under the REPAYE plan. Both the IBR plan and the Pay As You Earn repayment plan require a borrower to have a PFH to qualify for the plan. It is unlikely that a high-income borrower would meet this requirement. The standard repayment plan does not have an eligibility criterion based on income but also does not provide for loan forgiveness.

Moreover, the Department is not trying to steer borrowers into one repayment plan over another. We believe borrowers should make informed decisions about the repayment plans that they choose, and we encourage borrowers to select the repayment plan that they believe will work best for them.

We disagree with the commenter who suggested that it would be more beneficial to the Federal government to keep borrowers in repayment as long as possible. It is not the Department's goal to use income-driven repayment plans to maximize revenues. Our goal for these plans is to provide options to borrowers that make it easier for them to repay their loans.

We also disagree with the comment that the absence of a payment cap will reduce incentives for borrowers to seek higher incomes. While a pay raise that results in increased AGI would increase a borrower's monthly payments under the REPAYE plan, few borrowers will forgo a pay raise for that reason. Pay raises frequently result in additional

expenses and tax withholding. The commenter did not provide any evidence demonstrating that individuals regularly make a conscious choice not to seek a higher-paying job to avoid the additional expenses that come with a higher income.

With regard to borrowers who are making qualifying payments under the Public Service Loan Forgiveness Program, we believe that such borrowers should make payments on their student loans commensurate with their income. High-income borrowers qualifying for public service loan forgiveness could conceivably receive extensive loan forgiveness at the end of their 10 years of qualifying payments. We do not believe such borrowers should have both the benefit of an income-driven repayment plan when their incomes are low, and then have their increased incomes shielded from the monthly payment calculation when their incomes increase.

We believe that a notice specifically informing borrowers of the option to switch to another repayment plan could be confusing for borrowers. It could result in borrowers switching to repayment plans that are less beneficial to them, or create misunderstandings and confusion among borrowers. Therefore, we disagree with the recommendation to provide such notices.

*Changes:* None.

#### *Negative Amortization*

*Comment:* Several commenters supported the proposal to limit the amount of interest charged to borrowers whose monthly payments do not cover accrued interest ("negative amortization"). As in the Pay As You Earn and IBR plans, for borrowers in a negative amortization situation, no unpaid interest accrues on subsidized loans during the first three years a borrower is in the REPAYE plan. In addition, under the REPAYE regulations, if the borrower is in negative amortization, only 50 percent of any unpaid interest will accrue on subsidized loans after the first three years, and only 50 percent of any unpaid interest on unsubsidized loans will accrue at any time.

The commenters noted that capping the accrual of unpaid interest for borrowers who are in negative amortization is a targeted benefit that helps minimize the growth of loan balances for borrowers with low incomes relative to their debt.

Other commenters believed that adding on 50 percent of the remaining interest cost would still be a hardship to people with incomes at the level of 150

percent to 200 percent of the poverty level.

One commenter stated that the assumption that amortization is taking place in the course of loan repayment, so that after several years the amount of interest is low, and that 50 percent of the interest would not be a large amount, is a false assumption. For some borrowers, the accumulation of interest means that after many years of making payments, the current balance is larger than the original amount borrowed. The commenter believed that, for borrowers in this situation, the new rules will result in a slight, but not very significant, discount.

As noted by one commenter, even with the amount of unpaid interest each month not covered by the minimum monthly payment being reduced by 50 percent, a borrower might still pay a lot more than the original principal of the loan. According to this commenter, this increase might more than offset the reduced monthly payment on the REPAYE plan (10 percent) versus IBR (15 percent).

One commenter believed that, as used in the regulations, the terms “charge,” “accrue,” and “capitalize” are unclear. The commenter expressed concerns that these rules could pose problems for loan servicers, or for borrowers dealing with issues around consolidation, economic hardship, and bankruptcy. Furthermore, the commenter believed that any confusion caused by the use of these terms may make it especially difficult for borrowers to make informed decisions when selecting repayment plans. The commenter proposed defining the terms “charge,” “accrue,” and “capitalize.”

Another commenter raised legal objections to proposed § 685.209(c)(2)(iii)(A), which would charge borrowers only half of the interest that accrues but is unpaid after the initial three-year period. According to this commenter, the proposed regulation conflicts with section 455(e)(5) of the HEA, which specifies that the balance due “shall equal the unpaid principal amount of the loan, any accrued interest . . .” The commenter believed that the Secretary’s regulatory authority is limited to specifying details of the capitalization of this interest. The commenter also claimed this proposal is moot, as negatively amortized borrowers will have the accrued but unpaid interest forgiven at the end of the repayment term. The commenter believed that this proposed aspect of the REPAYE plan merely adds complexity to an already complicated repayment plan.

*Discussion:* We appreciate the commenters’ support for the treatment of negatively amortizing loans in the REPAYE plan. We acknowledge that, even with the “discount” on interest payments provided for in the REPAYE regulations, some borrowers may have a greater amount of interest accrue over time. However, we believe that the treatment of negatively amortizing loans balances the goal of providing some relief to struggling borrowers, while protecting the interests of the taxpayers.

We believe the use of the terms “charge,” “accrue,” and “capitalize” in the regulations is clear and consistent with existing regulations and current operational processes. We see no need to define these longstanding student financial aid terms at this time.

We do not agree with the legal concerns raised by a commenter. Section 455(e)(5) of the HEA defines how to calculate the balance due on a loan repaid under the ICR plan but does not restrict the Secretary’s discretion to define or limit the amounts used in calculating the balance. These regulations reflect the Secretary’s regulatory authority to define those terms for purposes of the REPAYE plan.

We disagree with the suggestion that all negatively amortized loans will be forgiven at the end of the repayment period. The comment assumes a borrower in negative amortization will remain in that situation for the entire 20 or 25-year repayment period. However, a borrower’s income can change significantly over that period of time. A borrower who recovers from the financial difficulties that put the borrower into negative amortization may resume making payments towards principal, and may repay the loan in its entirety by the end of the repayment period.

*Changes:* None.

#### *Capitalization of Accrued Interest*

*Comment:* Several commenters recommended elimination of the capitalization of interest within the REPAYE plan. Under the proposed regulations, interest would capitalize when a borrower enrolled in the REPAYE plan no longer has a PFH and when he or she switches from the REPAYE plan to another repayment plan. A borrower no longer has a PFH when 10 percent of his or her discretionary income is greater than or equal to the permanent standard payment amount due to changes in his or her income and/or family size.

These commenters recommended eliminating the capitalization of interest while a borrower remains in the REPAYE plan because they believe that

it adds unnecessary complexity and can increase costs for borrowers whose incomes are low for extended periods of time.

In the view of these commenters, given the lack of a standard payment cap and of a PFH requirement for initial eligibility for the REPAYE plan, PFH is no longer a relevant benchmark, but rather is simply a carryover from other IDR plans with different eligibility requirements. Since borrowers’ monthly payments in the REPAYE plan are always based on income, there is no need to capitalize interest when their debt-to-income ratio falls below a particular threshold. Under the proposed regulations, the only reason the Department would have to calculate PFH would be to determine whether interest should capitalize at what will be an irrelevant threshold, adding, according to these commenters, unnecessary complexity for the Department and creating confusion for borrowers. The commenters postulated that removing interest capitalization within the REPAYE plan would simplify implementation of the program because the Department would no longer need to treat interest differently under specific scenarios or implement the current 10 percent interest capitalization cap in the REPAYE plan.

The commenters also argued that capitalizing interest when borrowers in the REPAYE plan lose their PFH status may increase costs for borrowers whose incomes are low for extended periods of time. The commenters said that borrowers with low incomes relative to their debt are more likely to have monthly payment amounts that do not cover accrued interest.

One commenter noted that capitalization is not required by Federal law. The commenter suggested that it is not necessary to charge borrowers additional interest and urged the Department to consider elimination of capitalization in the REPAYE plan, and in all Federal student loan programs.

One commenter noted that switching from one plan (such as IBR) to another (such as the REPAYE plan) would result in accrued interest capitalizing, and, as a result a borrower’s monthly interest payments could increase significantly.

A commenter currently enrolled in IBR with interest that has accrued (but not been capitalized) due to negative amortization asked for clarification regarding what happens to this type of interest if one switches from IBR to REPAYE. The commenter asked if it would be capitalized before the REPAYE monthly payment amount is calculated or if the interest would remain uncapitalized.

Another commenter recommended that we not capitalize interest on borrowers switching into the REPAYE plan from a similar income-driven repayment plan. The commenter argued that if it makes sense for someone to switch to the REPAYE plan, any unpaid interest that has accumulated under those programs should not capitalize, since the borrower is simply switching from one income-driven repayment plan to another.

As noted by one commenter, under the IBR repayment plan, interest that is accrued but unpaid (due to the payment amount being lower than the total interest due) is capitalized into the loan balance only upon a borrower leaving the IBR plan or ceasing to have a PFH. Thus, as long as a borrower continues to have a PFH and is in the IBR plan, the accrued interest will not be capitalized. However, under the current wording of § 685.221(b)(4), if an existing borrower who has been repaying under the IBR plan elects to take advantage of the new REPAYE plan, he or she would suffer the negative consequence of triggering full capitalization of all interest accrued up to such time. The commenter contended that this could be a significant deterrent to many borrowers in taking advantage of the new REPAYE plan and a potential “trap for the unwary.” One commenter requested that we specify that interest that accrued under the IBR plan would not be capitalized for a borrower who switches from the IBR plan to the REPAYE plan. The commenter asserted that failing to allow borrowers to switch to the REPAYE plan without capitalizing accrued interest will create a significant hardship for many of the borrowers that the REPAYE plan is designed to help.

One commenter recommended allowing a one-time switch into the REPAYE plan without capitalizing interest for those that are eligible for the new REPAYE plan. They suggested that a deadline could be added to this one-time switch opportunity. The commenter felt that it is unfair to offer a new repayment plan to people who have already begun repayment, but then penalize them for using it.

One commenter requested that we not allow interest to capitalize retroactively when a PFH is no longer demonstrated. The commenter believed that this point is vague in the proposed regulation, but that interest should never capitalize retroactively. The commenter suggested that anyone could no longer have a PFH at any point (e.g., if they received an inheritance one year), and given that many people have negatively amortizing loans, this could have disastrous consequences.

One commenter suggested that student borrowers under the REPAYE plan receive a notice regarding accrued interest in certain circumstances. Specifically, the commenter recommended that the regulations require the Department to clearly describe the role of PFH in the REPAYE plan, notify a borrower when the Department determines that he or she no longer has a PFH, and explain to the borrower whether and how accrued interest will be capitalized in such circumstances.

Several commenters recommended ending capitalized interest entirely. In addition, commenters recommended changing the regulations, variously, to eliminate the accrual of interest, lower the accruing interest, freeze the amount of interest, not accrue interest above minimal payments, waive accrued interest, or not accrue interest while the borrower is in school.

*Discussion:* We agree with the commenters who recommended eliminating capitalization of interest when a borrower paying under the REPAYE plan no longer has a PFH.

However, we have retained the requirement to capitalize interest at the time a borrower leaves the REPAYE plan. This is consistent with the treatment of accrued interest when a borrower leaves the IBR plan or the Pay As You Earn repayment plan. We also note that the removal of the provision for capitalizing interest when a borrower is determined to no longer have a PFH does not totally eliminate the possibility of interest capitalization while a borrower is in repayment under the REPAYE plan. As provided in § 685.202(b)(3), unpaid interest will be capitalized upon the expiration of a deferment or forbearance period.

As many commenters noted, if a borrower who is currently in the IBR plan or the Pay As You Earn repayment plan had accrued interest on his or her loan and chose to switch from the IBR plan or the Pay As You Earn repayment plan to the REPAYE plan, the interest would be capitalized at the time the borrower leaves the IBR plan or the Pay As You Earn repayment plan. Some commenters stated that this would be a deterrent to such borrowers entering the REPAYE plan. While this may be the case, we note that the primary goal of the REPAYE plan is to allow borrowers who do not qualify for the 10 percent IBR plan or the Pay As You Earn repayment plan to have access to an affordable income-driven repayment plan. In fact, we estimate that most borrowers in those repayment plans will stay in those repayment plans after the REPAYE plan becomes available. (See

“Net Budget Impacts.”) Borrowers who are currently in the IBR plan or the Pay As You Earn repayment plan may determine that it is not in their financial interest to switch to the REPAYE plan. Since these borrowers are already on track to have their loans forgiven, we do not believe that it significantly disadvantages these borrowers to retain the requirement that accrued interest be capitalized for borrowers switching from one of those plans to the REPAYE plan. For the same reasons, we do not believe that allowing a one-time switch without capitalizing interest is warranted.

With regard to some of the other comments we received relating to capitalization of accrued interest:

- When accrued interest is capitalized, it is always done retroactively. Some event, such as leaving a particular repayment plan, triggers capitalization of all interest that has accrued up to that point.
- With the elimination of the requirement to capitalize unpaid interest when a borrower ceases to have a PFH, there will be no necessity for the Department to make an annual determination of PFH status, or provide the borrower a notification if the borrower does not have a PFH.
- Modifications to how interest accrues on Direct Loans, or the elimination of capitalization of interest altogether, are outside the scope of this regulatory action.

*Changes:* We have removed the provision in proposed § 685.209(c)(2)(iv)(A)(1) that would have required capitalization of unpaid accrued interest when the Secretary determines that a borrower does not have a PFH. We have also removed proposed § 685.209(c)(2)(iv)(B), which would have limited the amount of unpaid interest that is capitalized when a borrower loses PFH status, and the reference to subsequent year PFH determinations in § 685.209(c)(4)(i)(A). In addition, we have removed proposed § 685.209(c)(4)(iv), which provided that the Secretary would send the borrower a written notification that unpaid interest would be capitalized each time the Secretary made a determination that a borrower did not have a PFH, and have redesignated paragraphs (c)(4)(v) through (ix) as paragraphs (c)(4)(iv) through (viii), respectively. Finally, we have made a conforming change to § 685.209(c)(1) by removing the definition of “partial financial hardship.”

*Comment:* Some commenters raised a concern that it would be inappropriate to allow the “importation” of existing accrued but uncapitalized interest into

the REPAYE plan, for borrowers who switch from another repayment plan to the REPAYE plan. The commenters noted that under proposed § 685.209(c)(2)(iv), the 10 percent limit on capitalization within the REPAYE plan provides more favorable treatment of unpaid accrued interest than other repayment plans. These commenters believed that requiring capitalization of interest for borrowers who switch to the REPAYE plan would be an appropriate safeguard to prevent “importation” of accrued interest when a borrower switches to the REPAYE plan. In the view of these commenters, the proposed rules provide adequate protection to ensure that a borrower with interest accrued under the IBR plan would not benefit from the more generous capitalization provisions of the REPAYE plan. *Discussion:* We agree with the commenters that the REPAYE regulations provide appropriate safeguards against accrued interest from other repayment plans being “imported” into the REPAYE plan, with the borrower being given more generous treatment as a result. However, we note that, with the elimination of the capitalization requirement for borrowers who no longer have a PFH, we have also eliminated the 10 percent cap on accrued interest that may be capitalized for such borrowers.

*Changes:* None.

*Application of Payments (34 CFR 685.209(c)(3))*

*Comment:* One commenter recommended that we mandate that any payments made by borrowers in excess of the monthly amount due be applied to the loan principal.

Another commenter recommended that the Department provide borrowers with accounts in good standing incentives for keeping loan payments current.

*Discussion:* The application of payments in the Direct Loan Program is specified in § 685.211. Under § 685.211(a)(3)(i), a prepayment is applied first to any accrued charges and collection costs, then to outstanding interest, and then to outstanding principal. We do not believe that establishing a different application of payments rule for Direct Loans paid under the REPAYE plan is warranted.

Under section 455(b)(8)(C) of the HEA, the Department has limited authority to provide payment incentives to certain categories of Direct Loan borrowers. The Department cannot expand on this statutory authority through our regulations.

*Changes:* None.

*Eligibility Documentation, Verification, and Notifications (§ 685.209(c)(4))*

*Comment:* An overwhelming majority of commenters urged the Department to implement a system whereby a borrower repaying under the REPAYE plan or another income-driven repayment plan could provide advance consent for the Department to automatically obtain the borrower’s AGI from the IRS for multiple tax years, so that it would not be necessary for the borrower to submit income documentation each year, as is currently required. Some commenters stated that borrowers should be able to revoke the consent at any time. The commenters believed that a multi-year consent approach would greatly simplify the annual income documentation requirement for borrowers, reduce burden for both borrowers and the Department, and significantly reduce the number of borrowers who fail to provide the required documentation on time and as a result lose eligibility to make payments based on income. Many commenters noted that in the past it was possible for borrowers to provide the Department with a multi-year consent to obtain income information directly from the IRS and believed that this process should be reinstated.

*Discussion:* For all of the reasons cited by the commenters, we strongly agree that allowing borrowers to provide advance consent for the Department to obtain their AGI directly from the IRS for multiple tax years would be preferable to the current process that requires borrowers to submit income documentation each year. As we noted in the NPRM, in an Executive Memorandum dated March 10, 2015, the President instructed the Department to work with the IRS and the U.S. Department of the Treasury to develop and create a multi-year consent process. The Department continues to work closely with these agencies to resolve the issues that currently preclude the use of a multi-year consent process and we intend to implement such a process in the future. We note that the regulations governing the REPAYE plan and the other income-driven repayment plans require a borrower to provide documentation “acceptable to the Secretary” of the borrower’s AGI. This language is sufficiently broad to allow for income information to be obtained through a multi-year consent process in the future without regulatory changes.

In response to the commenters who noted that borrowers were previously able to provide the Department with multi-year consent to obtain their income information from the IRS, we

note that when the process described by the commenters was in place, there was only one income-driven repayment plan (the original ICR Plan) and only one servicer for Direct Loans. After new income-driven repayment plans were established and the Department contracted with additional servicers for Direct Loans, the multi-year consent process was no longer feasible, due to the significant increased complexity.

As explained earlier in this discussion, we are working with the IRS and the Department of Treasury to address the issues that forced us to discontinue the prior multi-year consent process, so that a multi-year consent process will be possible for the REPAYE plan. As we do so, we will consider the issues raised by the commenters, including procedures for revocation of consent.

*Changes:* None.

*Comment:* A few commenters asked the Department to revise proposed § 685.209(c)(4)(iii)(B) to allow borrowers more than 10 days following the specified annual deadline to provide their required annual documentation of income and avoid the consequence of being removed from the REPAYE plan and being placed on the alternative repayment plan. One commenter believed that an extension of the deadline would allow for unforeseen delays that a borrower might face or possible deficiencies in notification procedures. Another commenter suggested that giving borrowers 30 days after the annual deadline to provide income documentation would be appropriate.

A few commenters expressed support for the Department’s plan, announced in the preamble to the NPRM, to conduct a pilot to test enhanced messaging techniques that would help the Department determine whether the current process for notifying borrowers of the annual deadline for providing income documentation should be modified to prevent more borrowers from missing the deadline. One commenter urged the Department to inform the public of the results of the pilot, and to move forward as soon as possible to implement changes based on those results.

*Discussion:* During the negotiated rulemaking sessions, some of the non-Federal negotiators recommended that the Department extend the time after the annual deadline during which a borrower may submit income documentation. As we explained in the NPRM, the Department declined to consider this recommendation, noting that the proposed regulations related to the annual deadline for submitting

income documentation were the same as the corresponding regulations for the Pay As You Earn repayment plan that were developed through negotiated rulemaking after extensive discussion.

We further noted that, because those regulations have been in effect for less than two years, we did not believe there was sufficient evidence to conclude that the existing timeframes for borrowers to submit income documentation should be modified. This continues to be our view. However, as we also noted in the preamble to the NPRM, we have initiated a pilot project to determine if there may be more effective means of communicating information about the annual deadline to borrowers. The pilot project is still ongoing and will not be completed until after these final regulations are published. Once the project has been completed and the results have been analyzed, the Department will issue an announcement with more information.

*Changes:* None.

*Comment:* One commenter recommended that the annual notification to the borrower described in proposed § 685.209(c)(4)(iii) should explain that a failure to provide income documentation by the annual deadline will result in capitalization of any unpaid accrued interest. The commenter noted that the comparable notification to borrowers in the Pay As You Earn repayment plan under § 685.209(a)(5)(iii)(B) includes this information.

*Discussion:* We agree with the commenter.

*Changes:* We have revised § 685.209(c)(4)(iii)(B) to specify that the notice's description of the consequences if the Secretary does not receive the required income information by the annual deadline will include capitalization of any unpaid accrued interest in accordance with § 685.209(c)(2)(iv).

*Comment:* One commenter asked the Department to confirm that a borrower who is repeatedly late in providing his or her required annual income documentation could be placed on the alternative repayment plan in accordance with proposed § 685.209(c)(4)(vi) more than once, and each time this occurs the borrower's required monthly payment amount under the alternative repayment plan would be recalculated.

*Discussion:* The commenter's understanding is correct.

*Changes:* None.

*Comment:* One commenter strongly recommended that, for greater clarity, the Department restructure proposed § 685.209(c)(4)(vii), which describes the

notice that is sent to a borrower who has been placed on an alternative repayment plan due to failure to provide required income documentation by the annual deadline. Specifically, the commenter suggested that we present the provisions in proposed § 685.209(c)(4)(vii)(D) through (G), which describe the requirements that apply to a borrower who wishes to return to the REPAYE plan after being removed from the plan or voluntarily leaving the plan, in a separate section of the regulations. In the commenter's view, the current structure of proposed

§ 685.209(c)(4)(vii) results in confusing cross-references elsewhere in the REPAYE plan regulations. The commenter noted that, as a result of these changes, we would need to renumber other paragraphs and update cross-references, as appropriate.

The same commenter also believed that proposed § 685.209(c)(4)(vii)(D) may be confusing in the context of the lead-in language in proposed § 685.209(c)(4)(vii), which explains the requirements that apply to a borrower who wishes to return to the REPAYE plan after having been removed from that plan due to a failure to provide income information or after voluntarily leaving the plan. The commenter noted that the lead-in language in proposed § 685.209(c)(4)(vii) refers only to borrowers who have been removed from the REPAYE plan and placed on an alternative repayment plan due to a failure to provide income information by the specified annual deadline, yet proposed § 685.209(c)(4)(vii)(D) also covers borrowers who voluntarily chose to leave the plan.

*Discussion:* Although we do not believe it is necessary to restructure proposed § 685.209(c)(4)(vii) as suggested by the commenter, we agree with the commenter that proposed § 685.209(c)(4)(vii)(D) may be confusing in the context of the lead-in language in proposed § 685.209(c)(4)(vii). We have made changes to address this concern.

*Changes:* We have revised redesignated § 685.209(c)(4)(vi)(D) by removing the references to borrowers who have voluntarily changed to a different repayment plan (including borrowers who changed to a different plan after being placed on the alternative repayment plan), and have added language to § 685.209(c)(2)(vi) explaining that borrowers who leave the REPAYE plan because they no longer wish to repay under that plan or borrowers who change to a different repayment plan after being placed on an alternative repayment plan may return to the REPAYE plan under the

conditions described in redesignated §§ 685.209(c)(4)(vi)(D) and (E).

*Comment:* One commenter noted that proposed § 685.209(c)(4)(vii)(B) implies, but does not explicitly state, that the notice sent to a borrower who has been placed on an alternative repayment plan will include the alternative repayment plan monthly payment amount. The commenter recommended that the Department revise § 685.209(c)(4)(vii) to clearly state that the notice will include the borrower's new monthly payment amount.

*Discussion:* We agree with the commenter's recommendation.

*Changes:* We have revised redesignated § 685.209(c)(4)(vi) to clarify that the notice sent to a borrower who has been placed on an alternative repayment plan will include the borrower's new monthly payment amount.

*Comment:* One commenter contended that the proposed treatment of borrowers who miss the annual deadline for providing updated income information, as described in proposed § 685.209(c)(4)(vi), is unnecessarily complex and will be difficult for borrowers to understand. The commenter stated that under the Department's proposed approach, a borrower who wishes to return to the REPAYE plan after having been removed due to their failure to provide income documentation would be required to provide what could be years of income documentation and to clear any delinquencies resulting from alternative repayment plan payments.

The commenter proposed an alternative approach under which borrowers who miss the annual income documentation deadline would not be removed from the REPAYE plan but instead would remain on the REPAYE plan with a recalculated monthly payment equal to the higher of the 10-year standard repayment plan payment amount based on the borrower's outstanding loan balance at the time he or she entered the REPAYE plan, or the borrower's previous income-driven payment amount under the REPAYE plan based on the most recent income documentation provided. In addition, the commenter proposed that any payments made in the absence of updated income information would not count toward loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program. The commenter noted that excluding such payments from counting toward loan forgiveness would encourage borrowers to submit income documentation on time, and would help prevent borrowers who miss the deadline for providing the



income documentation from receiving loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program sooner than they should. Borrowers who never recertify their income under the REPAYE plan would end up paying their loans in full and receiving no loan forgiveness.

The same commenter recommended that if the Department maintains the approach described in proposed § 685.209(c)(4)(vi), the calculation of the borrower's required monthly payment under the alternative repayment plan should be revised. Under proposed § 685.209(c)(4)(vi), the monthly payment amount under the alternative repayment plan would be the amount necessary to repay the borrower's loan in full within the *earlier of* 10 years from the date the borrower begins repayment under the alternative repayment plan, or the ending date of the borrower's 20- or 25-year repayment period as described in § 685.209(c)(5)(i) or (ii). The commenter believed that the alternative plan payment amount should instead be the amount needed to repay the borrower's loan in full by the *later of* 10 years from the date the borrower begins repayment under the alternative plan, or the ending date of the borrower's 20- or 25-year repayment period. The commenter stated that the Department's proposed approach could require borrowers to make monthly payments under the alternative repayment plan that are much higher than their previous income-based payments, particularly if they have a low income or are near the end of their 20- or 25-year repayment period. The commenter argued that their alternative approach, by providing for a longer repayment period under the alternative repayment plan, would give borrowers a lower alternative plan monthly payment amount than the Department's proposed approach and thus would help borrowers who fail to recertify their income from falling into delinquency due to their inability to afford the alternative plan payment amount.

*Discussion:* We believe it is important to provide a strong incentive for borrowers who wish to continue receiving the benefits offered by the REPAYE plan to provide their annual income information by the specified annual deadline, and to discourage borrowers from purposely withholding income information to avoid the consequences of a higher monthly payment amount resulting from an increase in income. The Department's proposed approach serves this purpose by removing borrowers from the REPAYE plan if they miss the deadline for providing income information,

placing them on an alternative repayment plan that requires them to pay the potentially higher amount that will repay their loans in full within the *earlier of* 10 years from the date the borrower begins repayment under the alternative plan or the ending date of the 20- or 25-year repayment period, and not allowing payments made under the alternative repayment plan to count toward public service loan forgiveness.

One alternative suggested by the commenter was to allow borrowers who fail to recertify income to remain on the REPAYE plan with a recalculated monthly payment equal to the higher of the 10-year standard plan payment or the borrower's last income-driven payment amount, and to not count payments made without income documentation toward loan forgiveness under the REPAYE plan or the Public Service Loan Forgiveness Program. However, under this approach, there would be no basis under the law for not counting payments made without income documentation toward REPAYE or public service loan forgiveness. Payments made under an ICR plan are qualifying payments for loan forgiveness purposes under an ICR plan and under the Public Service Loan Forgiveness Program in accordance with section 455(e)(7)(B)(v) and (m)(1)(A)(iv) of the HEA. Under the commenter's proposed alternative approach, payments made without income documentation would still be payments made under the REPAYE plan (an income-contingent repayment plan) and therefore would have to be counted as qualifying payments for loan forgiveness under both the REPAYE plan and the Public Service Loan Forgiveness Program. This would be contrary to the Department's intent of providing a strong incentive for borrowers to provide updated income information by the specified annual deadline. We also note that the Department's approach is more favorable to borrowers than the commenter's alternative in that payments made under an alternative repayment plan will still count as qualifying payments toward income-driven loan forgiveness, if the borrower later returns to the REPAYE plan or another income-driven repayment plan.

*Changes:* None.

*Comment:* One commenter believed that the REPAYE plan regulations will unduly penalize borrowers in public service jobs who miss the annual deadline for submitting income documentation and are placed on an alternative repayment plan, because any payments made by borrowers under the alternative repayment plan are not counted as qualifying payments toward

public service loan forgiveness. The commenter stated that the Department did not explain the reason for excluding these payments, and the commenter did not see any reason to exclude them, noting that payments made by borrowers under the Pay As You Earn repayment plan after they have missed the annual income documentation deadline continue to count toward public service loan forgiveness. The commenter added that there is no requirement in the Public Service Loan Forgiveness Program for all 120 qualifying monthly payments to be made under an income-driven repayment plan. The commenter recommended that the Department allow payments made by a borrower under the alternative plan after being removed from the REPAYE plan to count toward public service loan forgiveness.

*Discussion:* In the preamble to the NPRM, we explained our view that, in the absence of a process that allows borrowers to provide consent to access their income information for multiple years, the regulations should provide an incentive for borrowers to comply with the annual income documentation requirement in a timely manner, and should also provide a disincentive for borrowers who might intentionally withhold updated income information when there is a significant increase in their income. Not allowing alternative plan payments to count toward public service loan forgiveness serves these purposes. Moreover, the statutory provisions governing the Public Service Loan Forgiveness Program in section 455(m) of the HEA do not provide for counting payments made under an alternative repayment plan as qualifying payments.

In response to the commenter's observation that payments made by borrowers under the Pay As You Earn repayment plan after they have missed the annual income documentation deadline continue to count toward public service loan forgiveness, we note that under the Pay As You Earn repayment plan regulations, borrowers who do not submit their required income documentation by the annual deadline are not removed from the Pay As You Earn repayment plan. Rather, they remain on the Pay As You Earn repayment plan with a recalculated payment amount that is no longer based on their income. These recalculated payments are still made under the Pay As You Earn repayment plan and therefore count toward public service loan forgiveness. The commenter is correct in noting that there is no requirement in the Public Service Loan

Forgiveness Program for all 120 qualifying payments to be made under an income-driven repayment plan. Payments made under the standard repayment plan with a 10-year repayment period count toward public service loan forgiveness, as do payments made under other repayment plans, if the payment amount is not less than what would have been paid under the 10-year standard repayment plan. However, as explained earlier, there is no statutory authority for counting payments made under an alternative repayment plan toward public service loan forgiveness.

*Changes:* None.

*Comment:* A number of commenters urged the Department to clarify that payments made under the REPAYE plan will count as qualifying payments for purposes of the Public Service Loan Forgiveness Program. One commenter understood the proposed regulatory language to mean that borrowers employed in public service would have to give up their access to the Public Service Loan Forgiveness Program to reduce their monthly loan payments through the REPAYE plan. Another commenter said that the proposed regulations would discourage public service by excluding payments made under the REPAYE plan from counting toward public service loan forgiveness.

A couple of commenters asked the Department to clarify whether payments that a borrower previously made under the IBR plan would continue to count toward public service loan forgiveness if the borrower later changes to the REPAYE plan.

One commenter said that the regulations for the REPAYE plan should allow borrowers who received loans prior to October 1, 2007 to qualify retroactively for public service loan forgiveness.

*Discussion:* Some commenters may have misunderstood proposed § 685.209(c)(4)(vii)(G), which stated that payments made under the alternative repayment plan described in proposed § 685.209(c)(4)(vi) will not count toward public service loan forgiveness under § 685.219. This limitation applies only to payments made under the alternative repayment plan after a borrower has been removed from the REPAYE plan due to not meeting the annual income documentation deadline. Payments made under the alternative repayment plan are not REPAYE plan payments.

Section 685.219(c)(1)(iv)(B) of the regulations governing the Public Service Loan Forgiveness Program indicates that payments made under an income-contingent repayment plan in § 685.209 are qualifying payments. The REPAYE

plan is one of the income-contingent repayment plans in § 685.209, meaning that payments made under that plan, if they otherwise meet the requirements of the Public Service Loan Forgiveness Program, would count as qualifying payments for public service loan forgiveness. We do not believe it is necessary to state in the REPAYE regulations themselves that payments made under that plan count toward public service loan forgiveness, since the appropriate place to describe what constitutes a qualifying payment for public service loan forgiveness is in the regulations that govern the Public Service Loan Forgiveness Program. We note that the regulations governing the Pay As You Earn, ICR, and IBR plans do not specify that payments made under those plans count toward public service loan forgiveness.

If a borrower who made qualifying public service loan forgiveness payments on an eligible Direct Loan Program loan under the IBR plan later begins repaying that loan under the REPAYE plan, the prior payments that were made under the IBR plan will still count toward public service loan forgiveness.

In response to the commenter who believed that the REPAYE plan regulations should allow borrowers who received loans prior to October 1, 2007 to qualify retroactively for public service loan forgiveness, we note that there is nothing in the law or regulations that precludes borrowers who received loans prior to October 1, 2007 from receiving public service loan forgiveness. However, in accordance with section 455(m)(1)(A) of the HEA, only payments made after October 1, 2007 may be counted toward the 120 qualifying payments required to receive public service loan forgiveness.

*Changes:* None.

#### *Loan Forgiveness Under the REPAYE Plan (§ 685.209(c)(5))*

*Comment:* A large number of commenters strongly opposed the provisions in proposed § 685.209(c)(5)(ii)(A) and (B) under which a borrower would qualify for forgiveness after 20 years if the loans being repaid under the REPAYE plan include only loans the borrower received to pay for undergraduate study, whereas a borrower would qualify for forgiveness after 25 years if the loans being repaid under the REPAYE plan include a loan the borrower received to pay for graduate or professional study.

The commenters who objected to proposed § 685.209(c)(5)(ii)(A) and (B) believed that all borrowers who choose to repay their loans under the REPAYE

plan should qualify for loan forgiveness after 20 years of repayment. The reasons cited by these commenters included the following:

- Providing a 20-year repayment period for borrowers with only undergraduate loans and a 25-year repayment period for borrowers with one or more loans obtained for graduate study is inequitable and may serve as a disincentive for individuals considering post-graduate education, and could lead some students to take out private loans to pay for graduate school.

- The proposed longer repayment period for borrowers with loans received for graduate study further penalizes graduate and professional students, who contribute significantly to the success of our Nation. Graduate and professional students have already been negatively impacted by recent statutory changes such as the loss of eligibility for subsidized loans and higher interest rates on unsubsidized loans.

- The proposed 25-year repayment period for any borrower who received loans for graduate study is a punitive measure for those who seek to further their academic studies, and is especially harmful for those who are required to obtain a graduate degree to secure employment in their field.

- The proposed regulations establish a “degree-based” repayment plan that requires a longer repayment period for individuals who borrowed to pay for graduate studies, without taking into consideration the total amount borrowed or ability to repay.

- The proposed regulations do not differentiate between borrowers who receive loans for graduate study, but do not ultimately complete a graduate program, and those who are able to complete a graduate degree. As a result, a student with undergraduate loan debt who begins a graduate program and takes out additional loans, but who is ultimately unable to finish the graduate program, will not qualify for loan forgiveness until after 25 years of qualifying repayment. In contrast, other borrowers with only undergraduate degrees will qualify for loan forgiveness after 20 years of qualifying repayment.

- Requiring a different repayment period depending on whether a borrower received only loans for undergraduate study or received one or more loans for graduate study further complicates the REPAYE plan and will be difficult to explain to borrowers.

- Many individuals are older when they begin graduate or professional study. Establishing a maximum 20-year repayment period under the REPAYE plan for all borrowers will help individuals focus sooner on other

priorities, such as saving for retirement or paying for their children's education.

Some commenters believed that a borrower's age should be taken into account when establishing the maximum repayment period under the REPAYE plan. A few commenters suggested that loan forgiveness should be provided to all borrowers after a repayment period of less than 20 years.

One commenter noted that in the preamble to the NPRM the Department emphasized its goal of targeting the REPAYE plan to the neediest borrowers and contended that extending the repayment period under the REPAYE plan to 25 years for anyone who received a loan for graduate or professional study may harm the neediest borrowers. The commenter specifically noted that high-income borrowers with graduate loan debt will be able to repay their loans in less than 20 years, while those with graduate loan debt and low earnings will be required to make five additional years of payments. The commenter suggested that a better way of targeting the benefits of the REPAYE plan to the neediest borrowers would be to provide a maximum 20-year repayment period for all borrowers and continue to cap the monthly payment amount at 10 percent of income, but make certain changes to the way the monthly payment amount is calculated so that higher-income borrowers would be more likely to repay their debt in full within 20 years.

A couple of commenters believed that, if the Department requires a longer repayment period for certain borrowers under the REPAYE plan, it would be preferable to have a 25-year repayment period only for a borrower's loans that were received for graduate or professional study, while any loans received for undergraduate study would have a 20-year repayment period. One commenter believed that this approach would mitigate the "cliff effect" of the proposed regulations that establishes a 25-year repayment period for all of a borrower's loans if even one loan was received for graduate study, and would be less likely to encourage borrowers to rely on private education loans or discourage students from pursuing graduate study.

One commenter suggested that the Department may have made an assumption that borrowers who obtained loans for graduate or professional study will have higher loan balances and therefore should repay their loans over a longer period of time, but noted that this is not always the case. As an example, the commenter cited the case of a borrower who received significant scholarship aid for

both graduate and undergraduate study who might have a lower total loan balance than a student who only has loans that were obtained for an expensive undergraduate program. However, the borrower with both graduate and undergraduate loans would be required to repay for five more years than the undergraduate borrower.

Some commenters believed that the Department did not provide sufficient justification for requiring a longer repayment period for borrowers who received loans for graduate or professional study. One commenter contended that the preamble to the NPRM suggested that the Department and non-Federal negotiators believed that the availability of the Public Service Loan Forgiveness Program would provide a recourse to graduate and professional student borrowers, and asserted that, because the Public Service Loan Forgiveness Program is open to all Direct Loan borrowers, it is not an appropriate reason to require a longer repayment period for individuals who obtained loans for graduate or professional study.

One commenter expressed support for the Department's proposal to provide a maximum 20-year repayment period for borrowers with only undergraduate loans, but also believed that all borrowers, including those who take out loans for graduate study, should have access to income-driven repayment plans that provide for cancellation of any remaining loan balance after 20 years. The commenter noted that many critical professions, such as teaching, law, and medicine, require graduate degrees, and believed that imposing a maximum 25-year repayment period on borrowers who received loans for graduate study could have a substantial impact on their financial health.

*Discussion:* We appreciate the concerns expressed by the commenters and the suggested alternative approaches. However, we continue to believe, as we stated in the preamble to the NPRM, that it is important to have borrowers with higher loan balances make payments over a longer period of time before receiving loan forgiveness. Providing loan forgiveness after 20 years of repayment for all borrowers, regardless of loan debt, would be inconsistent with this goal and, equally importantly, would result in significant additional costs to taxpayers. In general, borrowers who receive loans for graduate or professional study will leave school with a higher total outstanding loan balance than borrowers who received loans only for undergraduate study. Therefore, we believe it is appropriate to provide loan forgiveness

only after 25 years of qualifying repayment if a borrower received any loans for graduate or professional study.

We disagree with the commenters who believed that the 25-year repayment period is a punitive measure for those who take out loans for graduate or professional study, and could have a substantial impact on their financial health. We believe that the many benefits of the REPAYE plan, including the possibility of loan forgiveness, mitigate the longer repayment period for these borrowers.

We note that the approach described in the proposed regulations was suggested by non-Federal negotiators during the negotiated rulemaking sessions as an alternative to the Department's original proposal, which would have set the repayment period at 25 years for any borrower with more than \$57,500 in outstanding loan debt. Although some non-Federal negotiators expressed concerns about the impact on graduate and professional students of the approach presented in the proposed regulations, all of the non-Federal negotiators ultimately supported this approach, noting that it was simpler than what the Department had originally proposed and avoided the consequence of an additional five years of repayment for any borrower with even one dollar in loan debt over the specified threshold.

With regard to the suggestions that the maximum repayment period under the REPAYE plan should in some way be based on the borrower's age or other life circumstances at the time they attend graduate school, or should be for a period of less than 20 years, we note that such approaches would be very costly to taxpayers. Similarly, the Department previously declined to consider the recommendation that the repayment period should be 20 years for all of a borrower's loans that were obtained for undergraduate study, and 25 years for any loans obtained for graduate study, noting that we had determined the costs to taxpayers associated with such an approach would be unacceptably high.

In response to the commenter who suggested that the Department's proposed approach may harm the neediest borrowers by requiring individuals with graduate loan debt and low earnings to repay for 25 years, while high-income borrowers with graduate loan debt will be able to repay their loans in less than 20 years, we note that a lower-income borrower would receive forgiveness of any remaining loan balance after 25 years of repayment, while a high-income borrower may end up repaying his her loans in full without

having any amount forgiven. We believe this is consistent with our goal of targeting the REPAYE plan at the neediest borrowers.

In response to the commenter who questioned the Department's assumption that borrowers who received loans for graduate study will have higher loan balances and therefore should repay their loans over a longer period, we agree that in some cases a borrower who received loans for graduate study may owe less than a borrower who received loans only for an undergraduate program. The commenter is correct in noting that in such cases the regulations would provide for a 25-year repayment period, despite the fact that the borrower may have smaller loan balances than other borrowers who received loans only for undergraduate study. However, a graduate student borrower with only a very modest amount of loan debt but a relatively high income would likely not be in repayment under the REPAYE plan for 25 years, but instead would repay his or her loans in full in less than 20 years.

With regard to the comment that the regulations do not distinguish between borrowers who receive loans for graduate study but are unable to complete their graduate studies, and those graduate student loan borrowers who complete their studies and receive graduate degrees, we note that the regulations make no such distinction for undergraduate borrowers, either. The 20- and 25-year REPAYE plan repayment periods are based on the type of study for which the borrower received the loan, not on whether the borrower obtained a degree. We believe that the 20-year repayment period is appropriate for undergraduate borrowers, who may not have a postsecondary education degree at all, and that the 25-year repayment period is appropriate for graduate-level borrowers who, at the very least, will have obtained an undergraduate degree.

We do not agree with the suggestion that the 25-year repayment period for graduate-level borrowers will lead those students to take out private loans rather than Direct Loans. The Direct Loan Program provides significant benefits to borrowers (including deferments, forbearances, and the possibility of forgiveness) that most private loan programs do not offer. For most borrowers, those benefits will far outweigh the costs associated with a 25-year repayment period as opposed to a 20-year repayment period.

Finally, neither the Department nor the non-Federal negotiators cited the availability of the Public Service Loan Forgiveness Program as justification for

establishing a 25-year repayment period for borrowers who received any loans for graduate or professional study. As we explained in the preamble to the NPRM, some of the non-Federal negotiators said that the fact that graduate and professional students would have the option of pursuing loan forgiveness under the Public Service Loan Forgiveness Program after making 10 years of qualifying payments persuaded them to support the Department's proposed approach.

*Changes:* None.

*Comment:* Many commenters noted that, under current tax law, any loan amount forgiven under the terms of the REPAYE plan or any other IDR plan is treated as taxable income, and urged that this be changed so that loan amounts forgiven under the IDR plans are not counted as income for tax purposes. Commenters noted that the consequences of the current tax policy could be significant for many borrowers, who may be unable to afford the tax burden on the forgiven loan amount.

*Discussion:* The Department shares the commenters' concerns and is supportive of a change in tax law so that loan amounts forgiven under the income-driven repayment plans would no longer be treated as income. However, such a change would require action by Congress.

*Changes:* None.

*Comment:* One commenter asked the Department to clarify whether the repayment period for a borrower repaying only Direct Loans received for undergraduate study under the REPAYE plan would be 20 years or 25 years if the borrower also had FFEL Program loans that he or she had received for graduate or professional study. The commenter also asked what the repayment period would be if the same borrower were to consolidate the FFEL Program loans obtained for graduate study into a Direct Consolidation Loan and then choose to repay the consolidation loan under the REPAYE plan.

*Discussion:* Under the REPAYE plan regulations in § 685.209(c)(5)(ii)(A) and (B), a borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may receive loan forgiveness after 20 years, and a borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

Accordingly, a borrower who is repaying only Direct Loans received as an undergraduate under the REPAYE plan, but who also has FFEL Program loans received for graduate study, would qualify for loan forgiveness after 20 years, because the determination of the 20- or 25-year period is based only on the loans that are being repaid under the REPAYE plan. FFEL Program loans are not eligible for repayment under the REPAYE plan and have no bearing on the determination of the 20- or 25-year period for a borrower who also has Direct Loans that are being repaid under the REPAYE plan.

However, if the same borrower were to consolidate the FFEL Program loans received for graduate study with the Direct Loans received for undergraduate study and then select the REPAYE plan for the new Direct Consolidation Loan, the borrower would qualify for loan forgiveness after 25 years. This is because the Direct Consolidation Loan would have repaid loans that the borrower received as a graduate or professional student.

*Changes:* None.

*Comment:* Several commenters suggested that the Department expand the definition of a qualifying payment for purposes of loan forgiveness under the REPAYE plan and other IDR plans to include payments previously made under any repayment plan. A few other commenters said that payments that were not made on time should count toward IDR plan loan forgiveness, as well as periods when borrowers are unable to make payments due to financial hardship. One commenter recommended that periods when borrowers are unable to make a payment due to hardship should also count toward loan forgiveness under the Public Service Loan Forgiveness Program.

*Discussion:* The statutory provisions that govern the ICR plans (which include the Pay As You Earn repayment plan, the ICR plan, and the REPAYE plan) and the IBR plan specify the types of payments that may be counted toward loan forgiveness under these plans. Generally, qualifying payments are limited to those made under one of the income-driven repayment plans, the standard repayment plan with a 10-year repayment period, or any other plan, if the payment amount is not less than the payment that would be required under the standard repayment plan with a 10-year repayment period. See sections 455(e)(7)(B) and 493C(b)(7) of the HEA. The Department does not have the authority to further expand the definition of a qualifying payment.

In response to the commenters who said that late payments should be counted, we note that otherwise qualifying monthly payments, as described in the preceding paragraph, do not have to be made on time to count toward loan forgiveness under the IDR plans. However, monthly payments do have to be made on time to count toward public service loan forgiveness.

Finally, we remind the commenters that calculated monthly payment amounts of \$0 under any of the IDR plans, including the REPAYE plan, count as qualifying payments toward loan forgiveness under those plans, and also count as qualifying payments toward public service loan forgiveness if the borrower is employed full-time by an eligible public service organization during any month when the borrower's required monthly payment is \$0. In addition, any month when a borrower is not required to make a payment due to receiving an economic hardship deferment counts as a qualifying payment toward loan forgiveness under all of the IDR plans.

*Changes:* None.

*Comment:* One commenter noted that proposed § 685.209(c)(5)(iv)(D) provides that any month during which a borrower was not required to make a payment due to receiving an economic hardship deferment counts as a qualifying monthly payment toward loan forgiveness under the REPAYE plan, without any restriction on the time period during which the borrower received the economic hardship deferment. In contrast, the commenter pointed out that the corresponding provisions for the Pay As You Earn repayment plan and the ICR plan in § 685.209(a)(6)(iii)(B)(2) and § 685.209(b)(3)(iii)(B)(8), respectively, specify that only periods of economic hardship after October 1, 2007 may be counted toward loan forgiveness. The commenter stated that § 685.209(c)(5)(iv)(D) should be revised to reflect the same limitation, if that limitation also applies in the REPAYE plan.

*Discussion:* The October 1, 2007 limit for periods of economic hardship deferment is applicable to the Pay As You Earn repayment plan because a borrower with loans that were received prior to that date would not be eligible for the Pay As You Earn repayment plan. However, since the REPAYE plan is available to borrowers regardless of the date the loans were received, the October 1, 2007 limitation is not applicable. We have determined that the limitation is also not applicable to the ICR regulations in § 685.209(b).

*Changes:* In redesignated paragraph § 685.209(b)(3)(iii)(B)(9) of the ICR regulations, we have removed reference to the date "October 1, 2007."

*Comment:* Many commenters urged the Department to count otherwise qualifying payments made on loans before the borrower repays those loans through a consolidation loan toward loan forgiveness under the REPAYE plan and the other income-driven repayment plans. The commenters noted that currently, if a borrower consolidates loans on which he or she has made qualifying payments under an IDR plan into a Direct Consolidation Loan, the borrower does not receive any credit toward loan forgiveness for the pre-consolidation payments and would be required to make an additional 20 or 25 years of qualifying payments before receiving loan forgiveness on the new Direct Consolidation Loan. The commenters argued that it was unfair to not give borrowers credit for what could potentially be several years of otherwise qualifying pre-consolidation payments.

One commenter further urged the Department to count qualifying pre-consolidation payments toward loan forgiveness under the Public Service Loan Forgiveness Program, as well as toward IDR plan loan forgiveness.

Two commenters noted that there are precedents for tracking payments made on loans that are repaid by a consolidation loan. As an example, the commenters pointed out that the Department's Federal loan servicers already track pre-consolidation Pay As You Earn and IBR plan payments on subsidized Stafford loans for purposes of determining a borrower's remaining eligibility for the three-year interest subsidy under the Pay As You Earn and IBR plans during periods when a borrower's calculated monthly payment is insufficient to cover all accruing interest on subsidized loans. The commenters also noted that the Department tracks pre-consolidation loans for purposes of determining the portion of a consolidation loan that qualifies for certain types of loan discharges, such as closed school or false certification discharges.

*Discussion:* We appreciate the commenters' concerns. However, a consolidation loan is a new debt with its own terms and conditions, and terms of the loans that were repaid by the consolidation loan generally do not carry over to the new consolidation loan. For example, if a borrower consolidates his or her loans, the consolidation loan has a new repayment period (regardless of the repayment plan selected by the borrower) that does not include prior periods of repayment on

the loans that were consolidated. Similarly, borrowers who consolidate Federal Perkins Loans lose eligibility for certain loan cancellation benefits that are available only in the Perkins Loan Program.

In response to the commenters who stated that there are precedents for tracking pre-consolidation payments, we note that the examples cited by the commenters represent special circumstances and do not involve the same degree of tracking that would be required if we were to track all of a borrower's pre-consolidation qualifying payments for purposes of loan forgiveness under the income-driven repayment plans and the Public Service Loan Forgiveness Program. In the case of the three-year interest subsidy period under the Pay As You Earn and IBR plans, tracking of pre-consolidation periods of repayment under the Pay As You Earn and IBR plans reflects the IBR statutory requirement (which was carried over to the Pay As You Earn repayment plan) that limits the subsidy period to the borrower's first three consecutive years of repayment, with only periods of economic hardship deferment being excluded from the three-year period. We have interpreted this to mean that if a borrower consolidates loans that were being repaid under the Pay As You Earn or IBR plans, the consecutive three-year period carries over to the consolidation loan. The loan discharge examples involve circumstances where the borrower either received no benefit from the underlying loan or the underlying loan should not have been made in the first place. Therefore, it is appropriate to discharge the portion of a consolidation loan attributable to underlying loans that otherwise would have qualified for discharge.

We also note that tracking all of a borrower's qualifying pre-consolidation payments toward loan forgiveness under the IDR plans or the Public Service Loan Forgiveness Program would require much more than what is currently being done in connection with the Pay As You Earn and IBR plan interest subsidy period or loan forgiveness. It would not be possible to make the significant changes to consolidation loan processing that would be required to perform this increased level of tracking in time for the scheduled implementation of the REPAYE plan. Further, the Department would not have the capability to retroactively track qualifying pre-consolidation payments on existing Direct Consolidation Loans. Finally, we note that counting pre-consolidation qualifying payments toward IDR plan or public service loan

forgiveness would result in significant additional costs to taxpayers, as in some cases this could significantly shorten the period of time required for a borrower to qualify for loan forgiveness.

We note that certain factors may mitigate the impact of not counting pre-consolidation payments toward IDR plan or public service loan forgiveness. Going forward, more and more borrowers will have only Direct Loans and, if all of a borrower's loans are Direct Loans, loan consolidation currently provides no particular benefit to the borrower. Even without consolidating, Direct Loan borrowers have just one monthly payment for all of their Direct Loans, and by not consolidating borrowers preserve the qualifying payments made on the undergraduate loans.

We acknowledge that consolidation provides a means for borrowers with only FFEL Program loans or with a mix of FFEL and Direct Loan program loans to obtain benefits that are only available in the Direct Loan Program, such as the REPAYE plan and public service loan forgiveness, and that borrowers who consolidate FFEL Program loans will lose credit for any pre-consolidation payments they may have made under the IBR Plan. Such borrowers will need to weigh the potential advantages of consolidating versus keeping their current FFEL Program loans and continuing to make qualifying payments under the IBR Plan. We note that counting pre-consolidation payments for purposes of public service loan forgiveness would offer no benefit to borrowers who consolidate FFEL Program loans, since only qualifying payments made on Direct Loan Program loans are counted under the Public Service Loan Forgiveness Program. Borrowers who have both FFEL Program loans and Direct Loan Program loans on which they have made qualifying payments may wish to consider consolidating only their FFEL Program loans so as to avoid losing credit for qualifying payments made on the Direct Loans.

For the reasons explained above, we decline to accept the recommendation to count qualifying pre-consolidation loan payments toward loan forgiveness under the IDR plans and the Public Service Loan Forgiveness Program. However, during the next revision of the Direct Consolidation Loan Application and Promissory Note and related documents we will make changes to more prominently explain to consolidation loan applicants the consequences of consolidation for borrowers who have made qualifying

payments on the loans they plan to consolidate.

*Changes:* None.

*Comment:* Several commenters asked the Department to provide loan forgiveness to borrowers under other circumstances. The suggestions included forgiving the remaining loan balance for veterans who are unable to finish college within 10 years of leaving military service; forgiving the remaining loan balance for borrowers who have already repaid an amount equal to what they originally borrowed but still have outstanding loan debt due to accumulated interest; forgiving all interest and only requiring repayment of principal; forgiving the loans of borrowers who have been through bankruptcy several times; and forgiving the remaining loan balance for borrowers who are able to make a lump sum payment equal to a specified percentage of the total amount owed. A number of commenters recommended that loan forgiveness be granted to all borrowers who have reached a certain age, such as age 55 or 60, or who are retired.

*Discussion:* We appreciate the comments. However, the recommendations for establishing additional conditions for loan forgiveness are outside the scope of these regulations. We also note that the Department does not have the statutory authority to grant loan forgiveness based on some of the suggested forgiveness conditions.

*Changes:* None.

#### *Public Service Loan Forgiveness Program Borrower Eligibility (§ 685.219(c)(1)(iii))*

*Comment:* Several commenters expressed support for expanding the acceptance of lump sum payments. Several commenters also suggested that we not restrict the treatment of lump sum payments to specific programs or agencies and instead allow lump sum payments from any Federal agency to count as the number of payments they represent. One commenter specifically suggested that we expand the treatment of lump sum payments to include payments made under the Department of State's Student Loan Repayment Assistance program. Another commenter requested inclusion of lump sum payments made on behalf of those employed in health professions.

Multiple commenters also noted the negative consequences of receiving a lump sum payment applied to a borrower's account when counted as one payment. The payment raises a borrower's income (and tax liability) for that year, resulting in higher monthly

income-based payments the following year.

*Discussion:* We appreciate the support from commenters for expanding the acceptance of lump sum payments made on a borrower's behalf and applying them as the number of payments they represent for purposes of the Public Service Loan Forgiveness Program. The regulations provide for the treatment of payments made under student loan repayment programs administered by the DOD in the same manner as lump sum payments made by borrowers using Segal Education Awards after AmeriCorps service or Peace Corps transition payments after Peace Corps service.

One commonality in the programs we address in our regulations is that the lump sum payments are submitted to the Department. In addition, similar to borrowers receiving lump sum payments associated with service in the Peace Corps or AmeriCorps, §§ 682.211(h)(2)(ii)(C) and 685.209(a)(9) provide that borrowers performing the type of service that would qualify them for a lump sum payment under the Student Loan Repayment Programs administered by the DOD are entitled to forbearance in anticipation of that third party payment. The Department will explore accepting additional lump sum payments from other agencies that are made directly to the Department.

*Changes:* None.

#### **Executive Orders 12866 and 13563**

##### *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 final regulatory action will have an annual effect on the economy of more than \$100 million because the availability of the REPAYE plan is estimated to cost approximately \$15.4 billion over loan cohorts from 1994 to 2025. Therefore, this action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and determined that the benefits justify the costs.

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 final 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 will not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

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.

This regulatory impact analysis is divided into six sections. The "Need for Regulatory Action" section discusses why amending the current regulations is necessary.

The "Summary of Changes from the NPRM" section summarizes the most important revisions the Department made in these final regulations since publication of the NPRM. These changes were informed by the Department's consideration of the comments of 2,919 parties who submitted comments on the proposed regulations. The changes are intended to clarify the regulations and benefit the affected borrowers. In these final regulations, the Department is making 2 major changes in the proposed rules since the NPRM: (1) Using a definition of military service consistent with the SCRA; and (2) eliminating the loss of PFH status as a basis for interest capitalization. Additionally, we clarified that overpayments resulting from the application of the six percent interest rate to borrowers will be applied to future loan payments and refunded when all the borrower's loans are paid in full.

The "Discussion of Costs and Benefits" section considers the cost and benefit implications of these regulations for student loan borrowers, the public, and the Federal Government.

Under "Net Budget Impacts," the Department presents its estimate that the regulations will have a significant net budget impact on the Federal Government of approximately \$15.4 billion, \$8.3 billion of which relates to existing loan cohorts from 1994 to 2015 and \$7.1 billion relates to loan cohorts from 2016 to 2025 (loans that will be made in the future).

In "Alternatives Considered," we describe other approaches the Department considered for key provisions of the regulations, including

basing the determination of whether a borrower could qualify for loan forgiveness after 20 or 25 years on the amount borrowed, the treatment of married borrowers who file taxes separately, and the appropriate handling of borrowers who do not certify their income as required to remain in the REPAYE plan.

Finally, the "Regulatory Flexibility Act Certification" considers the effect of the regulations on small entities.

#### *Need for Regulatory Action*

The regulations address several topics related to the administration of the title IV, HEA student aid programs and benefits and options for borrowers. The changes to the PRI appeals process to allow more timely challenges and appeals will provide institutions with more certainty about whether they will be subject to sanctions or the loss of title IV aid eligibility as a result of their CDRs. This increased certainty could encourage some institutions, especially community colleges with low borrowing rates, to continue participating in the title IV loan programs.

In the regulations the Department seeks to reduce the burden on military servicemembers and help ensure that those eligible for an interest rate reduction receive it.

As mentioned in the NPRM, the Department has developed these regulations in response to a June 9, 2014, Presidential Memorandum for the Secretary of Treasury and the Secretary of Education that instructed the Secretary to develop regulations that will allow additional students who borrowed Federal Direct Loans to cap their Federal student loan payments at 10 percent of their income. The Secretary was instructed to target this option towards borrowers who would otherwise struggle to repay their loans.

In 2012, the Department established a new income-contingent repayment plan called the Pay As You Earn repayment plan, which limited loan payments to 10 percent of the borrower's discretionary income and forgave any remaining balance after 20 years of qualifying payments for borrowers who first borrowed on or after October 1, 2007, with a loan disbursement made on or after October 1, 2011.

However, while the Pay As You Earn repayment plan offered relief to qualifying recent borrowers, it did not help millions of existing borrowers with older student loan debt. As the concerns about American student loan debt burdens continue to build, the Department seeks to offer payment relief to a larger group of borrowers than is currently possible under the Pay As You

Earn repayment plan. To achieve that goal, the Department has created the REPAYE plan. This plan will offer borrowers many of the same benefits as the original Pay As You Earn repayment plan, regardless of when they originally borrowed.

As noted in the Consumer Finance Protection Bureau’s 2013 report, “Public Service & Student Debt: Analysis of Existing Benefits and Options for Public Service Organizations,”<sup>2</sup> the current process of applying “lump sum payments” made through student loan

repayment programs administered by the DOD can be detrimental to the overall value of the eligible borrower’s benefits. When such payments are counted as one single payment in lieu of the borrower being given credit for the equivalent number of monthly payments covered by the amount, the additional number of payments that would have been made do not count toward the 120 qualifying payments required for public service loan forgiveness.

Under these regulations, the Department will count lump sum payments made by the DOD under certain loan repayment programs towards public service loan forgiveness.

**Summary of Changes From the NPRM**

The table below briefly summarizes the major provisions of the proposed regulations, including any significant changes from the proposed regulations in the NPRM.

TABLE 1—SUMMARY OF FINAL REGULATIONS

Provision	Reg Section	Description of provision
Participation rate index challenges and appeals.	§§ 668.16, 668.204, 668.208, and 668.214.	An institution may bring a timely PRI challenge or appeal in any year in which its draft or official CDR is greater than or equal to 30 percent and less than or equal to 40 percent for any of the three most recent fiscal years, not just in the year that the institution faces sanctions. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent. As under existing law, a successful PRI challenge will preclude sanctions from being imposed following publication of the corresponding official rate. However, under the final rule, the successful challenge will also preclude imposition of sanctions in subsequent years based in part on the official rate if the official rate is less than or equal to the draft rate.
SCRA .....	§§ 682.202, 682.208, 682.410, 685.202.	Loan holders must proactively consult the authoritative DOD DMDC database to apply the SCRA interest rate limit of six percent. Allows borrowers to supply alternative evidence of military service to demonstrate eligibility for the SCRA interest rate limit through a form developed by the Secretary when the borrower believes the database is inaccurate or incomplete. Conforms definition of military service with the SCRA. Refunds overpayments resulting from the application of the 6 percent interest rate to borrowers who have paid their loans in full, over the de minimus amount of \$25. For borrowers with loans outstanding, overpayments will be applied to future loan payments.
Loan rehabilitation .....	§ 682.405, § 682.410(b)(2).	Makes changes to reflect a statutory change to the maximum collection costs that may be added to the balance of a loan upon rehabilitation from 18.5 percent to 16 percent and to reflect the requirement that guaranty agencies assign a loan to the Secretary if it qualifies for rehabilitation and the guaranty agency cannot find a buyer. Requires guaranty agencies to provide information to borrowers about their repayment options during and after loan rehabilitation.
Treatment of Department of Defense lump sum payments for public service loan forgiveness.	§ 685.219 .....	Lump sum payments made under DOD loan repayment programs would be applied as the number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have otherwise been required to make or twelve payments.
<b>REPAYE Plan</b>		
Eligibility .....	§ 685.209 .....	Available to all Direct Loan student borrowers.
Repayment period .....	§ 685.209 .....	For a borrower who has loans for undergraduate education only, the balance of the loans will be forgiven after 20 years of qualifying payments. For a borrower who has at least one loan for graduate study, the balance of the loans will be forgiven after 25 years of qualifying payments. Payments made under the alternative repayment plan would count towards forgiveness under income-driven plans if the borrower returns to such a plan, but not towards public service loan forgiveness.
Treatment of married borrowers’ income for determining payment.	§ 685.209 .....	For married borrowers filing jointly, AGI includes the borrower’s and spouse’s income.

<sup>2</sup> [http://files.consumerfinance.gov/f/201308\\_cfpb\\_public-service-and-student-debt.pdf](http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf).



TABLE 1—SUMMARY OF FINAL REGULATIONS—Continued

Provision	Reg Section	Description of provision
Treatment of borrowers who do not provide income documentation annually.	§ 685.209 .....	For married borrowers filing separately, the spouse's income would be included unless the borrower certifies that the borrower is separated from the spouse or is unable to reasonably access the spouse's income information. In the case of separation or inability to access income information, the family size for the payment calculation would not include the spouse. Borrowers who do not supply income information can choose to leave the REPAYE plan and select another repayment plan for which they are eligible. Borrowers who do not supply income information within 10 days of the deadline are placed on the alternative repayment plan with the monthly payment equaling the amount necessary to repay the loan in full within 10 years or the end of the 20-year or 25-year period applicable to the borrower under the REPAYE plan, whichever is earlier. The borrower may return to the REPAYE plan if income documentation is provided for the time the borrower was on a different repayment plan. Borrowers whose income increased during that period would be required to make an adjusted monthly payment so the difference between what they paid under the other plan and would have paid under the REPAYE plan is paid in full by the end of the 20-year or 25-year period.
Interest accrual in periods of negative amortization.	§ 685.209 .....	For borrowers in negative amortization whose payments are not sufficient to pay the accrued interest in that period, the Department will: <ul style="list-style-type: none"> <li>• In the first three years of repayment, not charge the remaining interest on Direct Subsidized Loans, with any periods of economic hardship deferment not included in the three year period; and</li> <li>• For Direct Unsubsidized Loans, Direct PLUS loans to graduate or professional students, the unsubsidized portion of Direct Consolidation Loans, Direct Subsidized and subsidized portions of Direct Consolidation Loans after the three-year period, charge the borrower 50 percent of the remaining accrued interest for the period.</li> </ul>
Interest Capitalization .....	.....	Eliminates loss of PFH status as a basis for interest capitalization. Capitalization occurs when a borrower leaves the REPAYE plan or when the borrower leaves a forbearance or a deferment on unsubsidized or PLUS loans.

*Discussion of Costs, Benefits, and Transfers*

These final regulations in large part affect loan repayment options and processes, so they would largely affect student borrowers, the Federal government, and loan servicers. The changes to the PRI appeal process affect institutions and the Federal government. The following discussion describes the costs and benefits of the final regulations by key topic area.

*REPAYE Plan*

The REPAYE plan will make available to borrowers an IDR plan with payments based on 10 percent of discretionary income and, for borrowers with only undergraduate loans, a 20-year repayment period. In contrast, under the current regulations, only borrowers who received loans during specific time periods are eligible for an IDR plan with these benefits, and borrowers who had loans before FY 2008 cannot take advantage of those plans. Additionally, the REPAYE plan will not include the PFH requirement that is part of the Pay As You Earn repayment plan for the purpose of eligibility, further increasing access to IDR plans. The extension of the plan to a broader pool of borrowers would be a primary benefit of the REPAYE plan and would give student

borrowers another tool to manage their loan payments. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, we estimate that two million borrowers will choose to enroll. Borrowers repaying under the REPAYE plan will also benefit from the plan's 50 percent reduction in the accrual of interest for borrowers in negative amortization. This limits the rate at which loan balances increase and the amount ultimately owed. The change from the regulations as proposed in the NPRM to eliminate loss of PFH as a basis for interest capitalization could result in certain borrowers benefitting from a reduced number of payments over the life of their loans. Those who would have experienced a capitalization event related to loss of PFH status and would eventually pay off their loan will have a lower balance to pay off. The other group that will benefit from the change is married borrowers whose spouses have title IV, HEA student loan debts. Payments for these borrowers are based on the percentage of the total debt held by the IDR borrower. This calculation is just based on the principal owed and does not include accrued interest. The elimination of capitalization when the borrower does not have a PFH means that the percentage of debt attributable

to a REPAYE borrower whose spouse is in a non-IDR plan will be lower because the interest is never capitalized, and therefore their payments will also be lower.

In offering this increased access to the REPAYE plan, while targeting the plan to the neediest borrowers, some features were changed from Pay As You Earn repayment plan. In particular, there is no cap on the amount of the borrower's payment, so borrowers whose income results in a payment greater than under the standard repayment plan would have to pay the higher amount to maintain eligibility for future loan forgiveness. Borrowers who leave the REPAYE plan because they did not meet the requirement to annually recertify their income may reenter the REPAYE plan at any time, but must provide the income documentation for the relevant period and make additional payments if they would have paid more under the REPAYE plan.

To the extent the REPAYE plan reduces payments collected from borrowers, there is a cost to the Federal government. This is described in greater detail in the *Net Budget Impacts* section of this analysis.

### Other Provisions

The regulatory changes to require loan holders to proactively use the DOD's DMDC database and to allow borrowers to supply alternative evidence of military service through a form developed by the Secretary would benefit borrowers who are or have been in military service, reducing the burden on military servicemembers in obtaining application of the SCRA interest rate limit to their Federal student loans. These changes are intended to ensure the six percent interest rate limit is applied for the correct time period and that borrowers receive the benefit to which they are entitled.

Similarly, the treatment of lump sum payments made by the DOD on behalf of borrowers as the equivalent monthly payments for the purpose of public service loan forgiveness would ensure that borrowers who are otherwise entitled to public service loan forgiveness do not fail to qualify based on the way the DOD loan repayment programs are administered. Based on National Student Loan Data System (NSLDS) data, the Department estimates that less than one percent of student loan borrowers are affected by this issue.

The final regulations requiring guaranty agencies to provide information to FFEL Program borrowers transitioning from rehabilitating defaulted loans to loan repayment would benefit borrowers who struggle with repayment and could help to prevent those borrowers from defaulting again. The final regulations require guaranty agencies to inform borrowers about different repayment plan options and how the borrower can choose a plan. This assistance may help borrowers avoid additional negative credit events and allow them to enroll in a repayment plan that supports ongoing repayment of their loans.

Finally, the changes to the PRI challenges and appeals process would permit some institutions to challenge their rate in any year, not just the one that could result in a loss of eligibility. Some non-Federal negotiators and community college advocates suggested these changes would encourage more community colleges to participate in the title IV loan programs, thus giving students additional options to finance their education at those institutions.

The final regulations would have administrative costs for guaranty agencies and loan holders that are detailed in the *Paperwork Reduction Act* section of this preamble. As detailed in the *Net Budget Impacts* section of this Regulatory Impact Analysis, the

Department does not expect that these regulations would have a significant net budget impact.

### Net Budget Impacts

We estimate that these regulations will have a net budget impact of \$15.4 billion, of which \$8.3 billion is a modification for existing cohorts from 1994 to 2015 and \$7.1 billion is related to future cohorts from 2016 to 2025. The change from the \$15.3 billion estimated in the NPRM results from the lack of interest capitalization based on loss of PFH status. Consistent with the requirements of the Credit Reform Act of 1990 (CRA), 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.

These estimates were developed using the OMB's Credit Subsidy Calculator. The OMB 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. In developing the following Accounting Statement, the Department also 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 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: for-profit institutions (less than two-year), two-year 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 of borrowers in each category—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits.

### REPAYE Plan

As described in the NPRM, the budget impact associated with these final regulations comes from the establishment of the REPAYE plan, which extends a plan with payments based on 10 percent of the borrower's discretionary income to borrowers with no restriction on when they borrowed. The REPAYE plan will differ from the existing Pay As You Earn repayment plan in several ways to better target the plan to the neediest borrowers and to reduce the costs in some areas to allow for the extension of the plan to additional borrowers. Of the provisions described in the *Summary of the Regulations*, the lack of a cap on the borrower's payment amount, the requirement for 25 years of payments to have loan forgiveness for any borrower with debt for graduate education, and the treatment of married borrowers who file taxes separately are important provisions to reduce the costs of the REPAYE plan, while the reduced interest accrual for borrowers in negative amortization and opening the plan to all student borrowers are significant drivers of the estimated costs. The availability of the REPAYE plan, with its extension of reduced income percentage and shorter forgiveness period to earlier cohorts of borrowers, no standard repayment cap, limited accrual of interest for borrowers in negative amortization, 20-year forgiveness period for undergraduate debt and 25-year forgiveness period for graduate debt, a process for handling borrowers who do not recertify their income annually, treatment of married borrowers filing separately, and lack of interest capitalization for borrowers without a PFH is estimated to cost \$15.4 billion.

To establish the baseline and to evaluate proposals related to IDR plans, the Department uses a micro-simulation model consisting of borrower-level data obtained by merging data on student loan borrowers derived from a sample of the NSLDS with income tax data from the IRS. Interest and principal payments are calculated according to the regulations governing the IDR plans, and the payments are adjusted for the likelihood of deferment or forbearance; default and subsequent collection; prepayment through consolidation;

death, disability, or bankruptcy discharges; or public service loan forgiveness. The adjusted payment flows are aggregated by population and cohort and loaded into the Student Loan Model (SLM). The SLM combines the adjusted payment flows with the expected volume of loans in income-driven repayment to generate estimates of Federal costs.

As stated in the NPRM, in evaluating the costs of the REPAYE plan, the Department assumes that, if possible, borrowers will elect the most beneficial plan for which they are eligible. One commenter criticized the Department's estimate of the number of borrowers who will choose the REPAYE plan on the basis that the Department included borrowers switching from the Pay As You Earn repayment plan and or the IBR plan for new borrowers after July 1, 2014 into REPAYE. The commenter pointed out that both of these programs cost borrowers less than REPAYE in almost all scenarios, and borrowers in those plans would have no incentive to switch to REPAYE. For the purpose of our estimates, we assume that all borrowers who are eligible for the Pay As You Earn repayment plan or the IBR plan for new borrowers after July 1, 2014 select those plans. All borrowers estimated to choose the REPAYE plan are borrowers who are ineligible for the Pay As You Earn repayment plan or the IBR plan for new borrowers after July 1, 2014. Based on this, the Department estimates that for cohorts from 1994 to 2025, approximately six million borrowers will be eligible for the REPAYE plan. We maintain our estimate that approximately two million borrowers will choose the REPAYE plan. Borrowers assumed to choose REPAYE in future cohorts are those borrowers who have loans made prior to 2008 and who are thus not eligible for the Pay As You Earn repayment plan or the IBR plan.

The commenter also indicated that the estimate of two million borrowers who would choose REPAYE was overstated based on the number of

borrowers in the existing IDR plans (0.60 million in ICR, 2.33 million in the IBR plan, and 0.53 million in the Pay As You Earn repayment plan). As discussed above, we do not assume borrowers in Pay As You Earn or IBR for new borrowers after July 1, 2014 will choose REPAYE. The commenter argues that those in ICR did not switch to IBR when doing so might reduce their monthly payments, so the Department should not assume they will switch into REPAYE. The commenter notes that many borrowers currently in IBR have monthly payments of zero, limiting their incentive to switch. According to the commenter, the prospect of a shorter time to forgiveness would not be an incentive to switch since the ultimate forgiveness that may come earlier in REPAYE is taxable and the borrower would trade loan debt for tax debt. The commenter estimates that no more than one million borrowers would choose REPAYE, half of the Department's estimate. The Department recognizes that predicting student borrower behavior and repayment plan choice is complicated. The Department's estimated number of REPAYE borrowers includes a number of borrowers who are not in repayment yet or who have not consolidated their loans to take advantage of an IDR plan and who therefore would not be in the portfolio the commenter evaluated. Additionally, as indicated in the NPRM, the Department assumes that borrowers choose the best plan for them. No borrowers with zero payments in IBR are assumed to change to REPAYE. While it is possible that some students will not switch into or take their optimal repayment plan, the Department believes that the estimate of two million borrowers is reasonable and that assumption provides a conservative estimate of the costs of the regulations.

Finally, the commenter contended that, while our estimate of the number of affected borrowers was, in their opinion, high, they believe the costs of REPAYE are underestimated by tens of billions of dollars based on the REPAYE

payment being two-thirds of the IBR payment and the 20 instead of 25-year forgiveness period for undergraduate borrowers. The commenter concluded that this would result in REPAYE payments being 53 percent of what would have been received by the Department under IBR. However, the commenter's analysis does not account for several factors that reduce the difference between the present value of payments expected to be received under IBR and REPAYE including increased payments under REPAYE as borrowers' payments exceed the standard repayment cap. Additionally, many borrowers are not in the plan for the full term as used in the commenter's comparison, and therefore we are collecting smaller payments for a longer period of time, reducing the difference in net present value. The difference in total payments over the life of the loan is further reduced in any year that borrowers with incomes below 150 percent of the poverty line have zero payments under both plans.

When the assumption for loan forgiveness is increased as a result of a policy, the cash flow impact is a reduction in principal and interest payments. The subsidy cost is derived from comparing the baseline payments to the policy payments (on a net present value basis) and comparing the two resulting subsidy rates. The outlays are calculated by subtracting the new subsidy rate with the policy cash flows from the baseline subsidy rate and multiplying by the volume for the cohort. As stated above, compared to the baseline, the availability of the REPAYE plan is estimated to cost approximately \$15.4 billion, of which \$8.3 billion is a modification for existing cohorts from 1994 to 2015 and \$7.1 billion is related to future cohorts from 2016 to 2025 as shown in Table 2. The change from the estimate of \$15.3 in the NPRM results from the additional \$80 million estimated cost of eliminating capitalization related to partial financial hardship status.

TABLE 2—ESTIMATED OUTLAYS FOR COHORTS 2015–2025

Cohorts	MOD (1994–2015)	2016	2017	2018	2019	2020	2021
Outlays .....	.....	1,105	1,012	902	785	692	614
Total .....	8,306	1,105	1,012	902	785	692	614

Cohorts	2022	2023	2024	2025	Total
Outlays .....	546	498	481	420	7,055
Total .....	546	498	481	420	15,361

**Other Provisions**

The other provisions of the regulations are not estimated to have a significant net budget impact. The changes to the SCRA servicing requirements so that lenders and loan servicers utilize the authoritative DOD database to ensure the SCRA interest rate limit is applied appropriately and allowing for alternative evidence will make it easier for eligible borrowers to receive the benefit of the SCRA interest rate limit. However, it does not extend eligibility to a new set of borrowers and the costs associated with eligible borrowers will be in the budget baseline for the President's FY 2016 budget. The treatment of lump-sum payments for borrowers who qualify for loan repayment under DOD loan repayment programs may allow some additional borrowers to qualify for public service loan forgiveness. Less than one percent of borrowers are expected to be affected by this change, and the lump sum payment must equal the amount owed by the borrower for however many months for which the borrower receives credit toward forgiveness, so the change in cash flows from those estimated to

receive public service loan forgiveness for military careers is not expected to be significant. We believe it is appropriate to allow these borrowers to receive credit towards months of payments for public service loan forgiveness in this instance so active duty military members receive the forgiveness to which they are entitled and already estimated to receive. The PRI challenges and appeals will expand the number of such actions the Department will be involved with and may result in some schools retaining their participation in title IV, HEA programs, but we do not expect this to affect program volumes and costs in a significant way. Finally, the requirement that guaranty agencies provide information to assist borrowers in transitioning from rehabilitation of defaulted loans to loan repayment should benefit borrowers and may result in improved repayment behavior, but we do not expect this to materially affect the amount collected from borrowers.

**Assumptions, Limitations and Data Sources**

In developing these estimates, a wide range of data sources were used,

including data from the NSLDS; operational and financial data from Department of Education and Department of the Treasury systems; 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 [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these regulations. Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

Category	7%	3%
	Benefits	
Creation of income-driven repayment plan with payment based on 10 percent of income and a 20/25-year repayment and available to all cohorts of borrowers. Transition assistance for borrowers rehabilitating loans. Easier access for military borrowers to SCRA and public service loan forgiveness benefits.	Not Quantified	
	Costs	
Costs of compliance with paperwork requirements .....	\$5.95	\$5.99
	Transfers	
Reduced payments collected from some borrowers who choose the REPAYE plan .....	\$1,854	\$1,670

**Alternatives Considered**

In the NPRM, we discussed the regulatory alternatives that were considered. Further, as discussed in the *Analysis of Comments and Changes* section of this document, we received comments from 2,919 parties during the comment period following publication of the NPRM. These comments covered a range of issues, including providing forgiveness to all REPAYE borrowers after 20 years of payments, including payments made before consolidation as

qualifying payments for IDR plan forgiveness, not using the spouse's AGI for married borrowers filing separately, and eliminating interest capitalization based on the loss of PFH status. Issues raised with respect to the SCRA provisions included using a definition of military service consistent with the SCRA, refunding of overpayments, the treatment of consolidation loans, and additional options for evidence of military service. Other issues that were raised were expanding the application

of lump sum payments for PSLF beyond DOD, Peace Corps, and AmeriCorps and accelerating the implementation data for PRI challenges and appeals. We also clarified the discussion of several other issues to address some of the concerns expressed by commenters.

**Final Regulatory Flexibility Analysis**

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These

regulations concern the relationship between certain Federal student loan borrowers and the Federal government, with some of the provisions modifying the servicing and collection activities of guaranty agencies and other parties. The Department believes that the entities affected by these regulations do not fall within the definition of a small entity. Additionally, the changes to the PRI challenges and appeals process may affect a small number of institutions that will qualify as small entities and potentially allow some to continue participating in title IV programs, but we do not expect the effect to be economically significant for a substantial number of small entities. The U.S. Small Business Administration 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, and defines “non-profit 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.

#### **Paperwork Reduction Act of 1995**

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these regulations at the end of the affected sections of the regulations.

Sections 668.16, 668.204, 668.208, 668.214, 682.202, 682.208, 682.405, 685.208, and 682.209 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, related forms, and Information Collection Requests to OMB for its review.

*Sections 668.16, 668.204, 668.208, and 668.214—Participation Rate Index Challenges and Appeals*

*Requirements:* Timelines for submitting a challenge or appeal to the potential consequences of an institution’s CDR on the basis of its PRI.

The regulations will permit an institution to bring a timely PRI challenge or appeal in any year the institution’s draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided

that the institution has not brought a PRI challenge or appeal from that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. In addition, if the institution brought a successful PRI challenge with respect to a draft CDR that was less than or equal to the corresponding official CDR, this will preclude provisional certification and loss of eligibility from being imposed based on the official CDR, without the institution needing to bring a PRI appeal in later years.

*Burden Calculation:* Because the regulations will not fundamentally change an institution’s basis for challenging or appealing its CDR, and will only alter the timeline in which an institution may submit its challenge or appeal, we do not believe that these regulations will significantly alter the burden on institutions. However, they will prevent a school from needing to appeal a final CDR on the basis of its PRI if the final CDR is less than or equal to the draft CDR on which a PRI challenge was successful.

We estimate that the change in the need to appeal a final CDR on the basis of PRI when a challenge to a comparable rate on the same basis was successful will prevent 50 appeals per year—15 from public institutions, 10 from not-for-profit institutions, and 25 from proprietary institutions. We have previously estimated that an appeal takes each institution 1.5 hours per response.

Under §§ 668.16, 668.204, 668.208, and 668.214, therefore, for public institutions, we estimate burden will decrease by 23 hours per year (15 public institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For not-for-profit institutions, we estimate burden will decrease by 15 hours per year (10 not-for-profit institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal). For proprietary institutions, we estimate that burden will decrease by 38 hours per year (25 proprietary institutions multiplied by 1 appeal multiplied by 1.5 hours per appeal).

Collectively, the total decrease in burden under §§ 668.16, 668.204, 668.208, and 668.214 will be 76 hours under OMB Control Number 1845–0022.

*Sections 682.202, 682.208, and 682.410—Servicemembers Civil Relief Act in the FFEL Program*

*Requirements:* Matching borrower identifiers in a loan holder’s servicing system against the DOD’s DMDC database.

Under § 682.208(j)(1), (6), and (7), a FFEL Program loan holder, including a

guaranty agency, must match information in its servicing system, including the identifiers of borrowers and endorers, against the DOD’s DMDC database to determine whether borrowers are eligible to receive an interest rate reduction under the SCRA.

Under § 682.208(j)(5), any FFEL Program loan holder, including a guaranty agency, must notify a borrower if an interest rate reduction under the SCRA is applied as a result of the loan holder having received evidence of the borrower’s or endorser’s qualifying status having begun within 30 days of the date that the loan holder applies the interest rate reduction.

Under § 682.208(j)(8), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction to a loan that was in the process of being paid in full through loan consolidation at the time the interest rate reduction was applied by returning the overpayment to the holder of the consolidation loan.

Under § 682.208(j)(9), any FFEL Program loan holder, including a guaranty agency, must refund overpayments resulting from the application of the SCRA interest rate reduction by returning the overpayment to the borrower.

*Burden Calculation:* There are approximately 53 public loan holders that hold loans for approximately 557,341 borrowers, 151 not-for-profit loan holders that hold loans for approximately 2,738,171 borrowers, and 3,204 proprietary loan holders that hold loans for approximately 10,524,463 borrowers. We estimate that one percent of borrowers are actually eligible for the SCRA interest rate limit.

Section 682.208(j) will result in a shift in burden from borrowers to loan holders. Under the current regulations, a borrower is required to submit a written request for his or her loan holder to apply the SCRA interest rate limit and a copy of his or her military orders to support the request. Because, under the regulations, a borrower will no longer be required to submit a written request or a copy of his or her military orders, the burden on borrowers will be almost completely eliminated. While borrowers will still be able to submit other evidence that they qualify for the SCRA interest rate limit and loan holders will be required to evaluate that evidence, the Department has no data on the likelihood that erroneous or missing data in the DMDC database will give rise to the need for a borrower to submit alternative evidence of his or her military service. However,

anecdotal accounts suggest that the error rate of the DMDC database is de minimus. Therefore, the regulations will eliminate all but 20 hours of burden on borrowers associated with the current regulation.

However, because the Department plans to create a form for borrowers to use to certify their military service in cases in which the borrower believes that the information in the DMDC database is incorrect, we estimate that 59 FFEL Program borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form will increase burden by 20 hours (59 borrowers multiplied by 0.33 hours per response).

For § 682.208(j)(1), (6), and (7), we estimate that it will take each loan holder approximately three hours per month to extract applicable data from their servicing system, format it to conform to the DMDC database file layout, perform quality assurance, submit the file to the DMDC database, retrieve the result, import it back into their systems, perform quality assurance, and then, to the extent that a borrower or endorser is or was engaged in qualifying military service, apply, extend, or end the SCRA interest rate limitation.

Under § 682.208(j)(1), (6), and (7), therefore, for public loan holders, we estimate that this regulation will increase burden by 1,908 hours per year (53 public loan holders multiplied by 3 hours per month multiplied by 12 months). For not-for-profit loan holders, we estimate that this regulation will increase burden by 5,436 hours per year (151 not-for-profit loan holders multiplied by 3 hours per month multiplied by 12 months). For proprietary loan holders, we estimate that this regulation will increase burden by 115,344 hours per year (3,204 proprietary loan holders multiplied by 3 hours per month multiplied by 12 months).

For § 682.208(j)(8), if the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan. We estimate that it will take each loan holder one hour per borrower to refund overpayments in this circumstance. We estimate that, over the past six months, 69 percent of the borrowers who consolidated loans included a loan with an interest rate in excess of 6 percent. We further estimate that 0.1 percent of those consolidation loans will create an overpayment that

will require a loan holder to issue a refund to the holder of the consolidation loan.

Under § 682.208(j)(8), therefore, for public loan holders, we estimate that this regulation will increase burden by 4 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For not-for-profit loan holders, we estimate that this regulation will increase burden by 19 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent). For proprietary loan holders, we estimate that this regulation will increase burden by 73 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 69 percent of borrowers who have consolidated multiplied by 0.1 percent).

For § 682.208(j)(9), we estimate that it will take each loan holder one hour per borrower to refund overpayments for borrowers for whom the application of the SCRA interest rate limit caused their loan to be overpaid. We estimate that an overpayment will result for 0.05 percent of borrowers who have the SCRA interest rate limit applied.

Under § 682.208(j)(9), therefore, for public loan holders, we estimate that this regulation will increase burden by 3 hours per year (557,341 borrowers with loans held by public loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For not-for-profit loan holders, we estimate that this regulation will increase burden by 14 hours per year (2,738,171 borrowers with loans held by not-for-profit loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent). For proprietary loan holders, we estimate that this regulation will increase burden by 53 hours per year (10,524,463 borrowers with loans held by proprietary loan holders multiplied by 1 percent of borrowers who are eligible for the SCRA interest rate limit multiplied by 0.05 percent).

Collectively, the total increase in burden under § 682.405 will be 122,873 hours under OMB Control Number 1845-0093. The burden associated with

the form (20 hours) will be associated with OMB Control Number 1845-0135.

#### *Section 682.405—Loan Rehabilitation Agreement*

*Requirements:* Providing information to borrowers about repayment options.

Under § 682.405(b)(1)(xi) and (c), guaranty agencies will be required to provide information to borrowers with whom they have entered into a loan rehabilitation agreement to inform them of the repayment options available to them upon successfully completing their loan rehabilitation.

*Burden Calculation:* There are approximately 2,611,504 borrowers of FFEL Program loans who are in default, of which 799,904 have loans held by public guaranty agencies and 1,811,600 have loans held by not-for-profit guaranty agencies. Approximately 4.79 percent of those borrowers have entered into a loan rehabilitation agreement with a guaranty agency to rehabilitate their defaulted FFEL Program loans. Therefore, public guaranty agencies administer loan rehabilitation agreements with approximately 38,315 borrowers and not-for-profit guaranty agencies administer loan rehabilitation agreements with approximately 86,776 borrowers.

We estimate that it will take a guaranty agency 10 minutes (0.17 hours) per borrower to send the required communication to a borrower and respond to borrower inquiries generated by the communication.

Under § 682.405(c), therefore, for public guaranty agencies, we estimate that this regulation will increase burden by 6,514 hours per year (38,315 borrowers multiplied by 0.17 hours per borrower). For not-for-profit guaranty agencies, we estimate that this regulation will increase burden by 14,752 hours per year (86,776 borrowers multiplied by 0.17 hours per borrower).

Collectively, the total increase in burden under § 682.405 will be 21,266 hours under OMB Control Number 1845-0020.

#### *Section 685.202—Servicemembers Civil Relief Act in the Direct Loan Program*

*Requirements:* Borrowers will no longer be required to submit a written request and a copy of their military orders to receive an interest rate reduction under the SCRA; instead, the Department will, like loan holders in the FFEL Program, query the DMDC database to determine whether a borrower is eligible.

Section 685.202(a)(11) will shift the burden from borrowers to the Secretary. Under the current regulations, borrowers are required to submit a

written request for the Secretary to apply the SCRA interest rate limit and a copy of their military orders to support the request. Because, under the regulations, borrowers will no longer be required to submit a written request or a copy of their military orders, the burden on borrowers will be eliminated. While borrowers will still be permitted to submit other evidence that they qualify for the SCRA interest rate limit, and the Secretary will evaluate it, the Department has no data on the likelihood that erroneous or missing data in the DMDC database will give rise to a borrower needing to submit alternative evidence of his or her military service, but anecdotal accounts suggest that the error rate of the DMDC database is de minimis. Therefore, the regulations will eliminate all but five hours of burden on borrowers that are associated with the current regulation.

However, because the Department has created a form for borrowers to provide a certification of the borrower's authorized official in cases where the borrower believes the DMDC database is inaccurate or incomplete, we estimate that 141 Direct Loan borrowers will submit such a form, and that it will take a borrower 20 minutes (0.33 hours) per response. We estimate that this form will increase burden by 47 hours (141 borrowers multiplied by 0.33 hours per response).

Collectively, the total decrease in burden for § 685.202 will be 681 hours under OMB Control Number 1845-0094. This will eliminate all but 47 hours of burden in OMB Control Number 1845-0094. The burden associated with the form (47 hours) will be associated with OMB Control Number 1845-0135.

*Sections 685.208 and 685.209—Revised Pay As You Earn Repayment Plan*

*Requirements:* Application, recertification, documentation of income, and certification of family size.

Under § 685.209(c)(4), a borrower selecting the REPAYE plan will apply for the plan, provide documentation of his or her income and, as applicable, his or her spouse's income, and provide a certification of family size. The borrower must provide this information annually. If a borrower who repays his or her Direct Loans under the REPAYE plan leaves the plan and subsequently wishes to return to the REPAYE plan, the borrower must provide income documentation and family size certifications for each year in which the borrower was not repaying his or her loans under the REPAYE plan after having left the plan before being allowed to re-enter the REPAYE plan.

*Burden Calculation:* These information collection requirements are calculated as part of the Income-Driven Repayment Plan Request, under OMB Control Number 1845-0102. This collection is associated with this rulemaking because the regulations require that the collection be modified to encompass the REPAYE plan. Currently, we estimate that it takes 20 minutes (0.33 hours) to complete the Income-Driven Repayment Plan Request and that 3,159,132 Direct Loan and FFEL Program borrowers complete the form. Even though this form will be revised to include the REPAYE plan, we do not believe that it will take any additional time for a borrower to complete it. Therefore, we expect the burden hours per response to remain 20 minutes (0.33 hours). However, we are making an adjustment to the number of borrowers who complete the form based on new data and an overall increase in the borrower population. The adjustment to the number of borrowers

who complete the form increases that number from 3,159,132 borrowers to 4,840,000 borrowers. However, because the REPAYE plan will be available to all Direct Loan borrowers, regardless of when the borrowers took out their loans, and because there will be no requirement for the borrowers to demonstrate PFH to enroll in the REPAYE plan, we estimate that the number of respondents will increase by 1,250,000 borrowers. This will bring the total number of respondents to 6,090,000 borrowers, of which only 1,250,000 of the increase will be attributable to the REPAYE plan.

Collectively, the total increase in burden for §§ 685.208 and 685.209 will be 967,186 hours (2,930,868 additional borrowers multiplied by 0.33 hours per response), of which 412,500 hours (1,250,000 additional borrowers multiplied by 0.33 hours per response) will be attributable to the REPAYE plan under OMB Control Number 1845-0102. Collectively, the total increase in burden under §§ 685.208 and 685.209 under OMB Control Number 1845-0021 will be 967,186 hours.

Consistent with the discussion above, the following chart describes the sections of the regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using wage data developed using U.S. Bureau of Labor Statistics data, available at [www.bls.gov/ncs/ect/sp/ecsuhst.pdf](http://www.bls.gov/ncs/ect/sp/ecsuhst.pdf), is \$11,969,649 as shown in the chart below. This cost was based on an hourly rate of \$36.55 for institutions, lenders, and guaranty agencies and \$16.30 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
668.16, 668.204, 668.208, 668.214—PRI challenge and appeal.	This regulation will permit an institution to bring a timely PRI challenge in any year the institution's draft or official CDR is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years (for challenges, counting the draft rate as the most recent rate), provided that the institution has not brought a PRI challenge or appeal with respect to that rate before, and that the institution has not previously lost eligibility or been placed on provisional certification based on that rate. Institutions will not lose eligibility based on three years of official CDRs or be placed on provisional certification based on two years if the timely appeal with respect to any of the relevant rates demonstrates a PRI less than or equal to .0625 percent. As under existing law, a successful PRI challenge will preclude sanctions from being imposed following publication of the corresponding official rate. However, under the final rule, the successful challenge will also preclude imposition of sanctions in subsequent years based in part on the official rate if the official rate is less than or equal to the draft rate.	OMB 1845–0022 This will be a revised collection. We estimate that burden on institutions will decrease by 76 hours.	\$–2,778
682.202 and 682.208—SCRA in the FFEL Program.	Will revise current regulations to require loan holders to determine a borrower's military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the DOD.	OMB 1845–0093 This will be a revised collection. We estimate that burden on loan holders will increase by 122,873 hours and that all except 20 hours of burden on borrowers will be eliminated. OMB 1845–0135 This will be a new collection. We estimate that burden on borrowers will increase by 20 hours.	\$4,480,876
682.405—Loan rehabilitation .....	This change will require a guaranty agency to provide information to a FFEL Program borrower with whom it has entered into an agreement to rehabilitate a defaulted FFEL Program loan.	OMB 1845–0020 This will be a revised collection. We estimate that burden on guaranty agencies will increase by 21,266 hours.	\$777,272
685.202 .....	Will modify current regulations to require the Department to determine a borrower's military status for application of the SCRA maximum interest rate based on information from the authoritative electronic database maintained by the DOD.	OMB 1845–0094 This collection will be revised. We estimate that all but 47 hours of burden on borrowers will be eliminated.. OMB 1845–0135 This will be a new collection. We estimate that burden on borrowers will increase by 47 hours.	–\$9,471



COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
685.208 and 685.209—REPAYE plan.	Will add a new income-contingent repayment plan, called the Revised Pay As You Earn repayment plan (REPAYE plan), to §685.209 of the Direct Loan Regulations. The REPAYE plan is modeled on the Pay as You Earn repayment plan, and will be available to all Direct Loan student borrowers regardless of when the student borrowers received their Direct Loans.	OMB 1845–0021 This collection will not change because all burden associated with the collection requirements is contained in 1845–0102. OMB 1845–0102 This will be a revised collection. We estimate that burden will increase on borrowers by 967,186 hours, of which 412,500 hours will be attributable to the regulation.	\$15,764,838, of which \$6,723,750 will be attributable to the regulation.
685.219—Public Service Loan Forgiveness.	Will permit lump sum payments made on a borrower's behalf by the DOD to be treated like certain other payments made on behalf of borrowers who have served in AmeriCorps or the Peace Corps.	OMB 1845–0021 This provision contains no collection requirements.	\$0

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations follows:

Control number	Total burden hours	Change in burden hours
1845–0020 .....	8,241,898	+ 21,266
1845–0022 .....	2,216,044	– 76
1845–0093 .....	122,873	+ 122,275
1845–0094 .....	47	– 634
1845–0102 .....	2,009,700	+ 967,186
1845–0135 .....	67	+ 67
<b>Total</b> .....	<b>12,590,630</b>	<b>= 1,110,086</b>

**Assessment of Educational Impact**

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not 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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**List of Subjects**

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective

Service System, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 21, 2015.

**Arne Duncan,**

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 668, 682, and 685 of title 34 of the Code of Federal Regulations 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. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.16 is amended by:  
■ a. Revising paragraph (m)(2)(ii)(B).

- b. Adding paragraph (m)(2)(ii)(C).
- c. Revising paragraphs (m)(2)(iv) and (v).

The revisions and addition read as follows:

**§ 668.16 Standards of administrative capability.**

\* \* \* \* \*

- (m) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(1) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(2) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

\* \* \* \* \*

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

\* \* \* \* \*

- 3. Section 668.204 is amended by revising paragraphs (c)(1)(ii) and (iii) and (c)(5) to read as follows:

**§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.**

\* \* \* \* \*

- (c) \* \* \*
- (1)(i) \* \* \*

(ii) Subject to § 668.208(b), you may challenge a potential loss of eligibility under § 668.206(a)(2), based on any cohort default rate that is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years, if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on any cohort default rate that fails to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your

participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

\* \* \* \* \*

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. Unless that next official cohort default rate is less than or equal to your draft cohort default rate, a successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, or if the next official cohort default rate published is less than or equal to the draft rate you successfully challenged, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2), or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

\* \* \* \* \*

- 4. Section 668.208 is amended by revising paragraphs (a)(2)(ii) and (b)(2) and (3) to read as follows:

**§ 668.208 General requirements for adjusting official cohort default rates and for challenging or appealing their consequences.**

- (a) \* \* \*
- (2) \* \* \*

(ii) A participation rate index challenge or appeal submitted under this section and § 668.204 or § 668.214;

\* \* \* \* \*

- (b) \* \* \*

(2) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, more than once on that cohort default rate.

(3) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

\* \* \* \* \*

- 5. Section 668.214 is amended by revising paragraphs (a) and (c)(2) to read as follows:

**§ 668.214 Participation rate index appeals.**

(a) *Eligibility.* (1) You do not lose eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if you bring an appeal in accordance with this section that demonstrates that your participation rate index for that cohort's fiscal year is equal to or less than 0.0832.

(2) Subject to § 668.208(b), you do not lose eligibility under § 668.206(a)(2) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for any of the three most recent cohorts' fiscal years is equal to or less than 0.0625.

(3) Subject to § 668.208(b), you are not placed on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for either of those two cohorts' fiscal years is equal to or less than 0.0625.

\* \* \* \* \*

- (c) \* \* \*

(2) Notice under § 668.205 of a cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent.

\* \* \* \* \*

**PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM**

- 6. The authority citation for part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071—1087–4, unless otherwise noted.

- 7. Section 682.202 is amended by revising paragraph (a)(8) to read as follows:

**§ 682.202 Permissible charges by lenders to borrowers.**

\* \* \* \* \*

- (a) \* \* \*

(8) *Applicability of the Servicemembers Civil Relief Act (SCRA)* (50 U.S.C. 527, App. sec. 207).

Notwithstanding paragraphs (a)(1) through (4) of this section, a loan holder must use the official electronic database maintained by the Department of Defense to identify all borrowers with an outstanding loan who are members of the military service, as defined in § 682.208(j)(10) and ensure the interest rate on a borrower's qualified loans with an outstanding balance does not exceed the six percent maximum interest rate under 50 U.S.C. 527, App. section

207(a) on FFEL Program loans made prior to the borrower entering military service status. For purposes of this paragraph (a)(8), the interest rate includes any other charges or fees applied to the loan.

\* \* \* \* \*

■ 8. Section 682.208 is amended by adding paragraph (j) to read as follows:

**§ 682.208 Due diligence in servicing a loan.**

\* \* \* \* \*

(j)(1) Effective July 1, 2016, a loan holder is required to use the official electronic database maintained by the Department of Defense, to—

(i) Identify all borrowers who are military servicemembers and who are eligible under § 682.202(a)(8); and

(ii) Confirm the dates of the borrower's military service status and begin, extend, or end, as applicable, the use of the SCRA interest rate limit of six percent.

(2) The loan holder must compare its list of borrowers against the database maintained by the Department of Defense at least monthly to identify servicemembers who are in military service status for the purpose of determining eligibility under § 682.202(a)(8).

(3) A borrower may provide the loan holder with alternative evidence of military service status to demonstrate eligibility if the borrower believes that the information contained in the Department of Defense database is inaccurate or incomplete. Acceptable alternative evidence includes—

(i) A copy of the borrower's military orders; or

(ii) The certification of the borrower's military service from an authorized official using a form approved by the Secretary.

(4)(i) When the loan holder determines that the borrower is eligible under § 682.202(a)(8), the loan holder must ensure the interest rate on the borrower's loan does not exceed the SCRA interest rate limit of six percent.

(ii) The loan holder must apply the SCRA interest rate limit of six percent for the longest eligible period verified with the official electronic database, or alternative evidence of military service status received under paragraph (j)(3) of this section, using the combination of evidence that provides the borrower with the earliest military service start date and the latest military service end date.

(iii) In the case of a reservist, the loan holder must use the reservist's notification date as the start date of the military service period.

(5) When the loan holder applies the SCRA interest rate limit of six percent to a borrower's loan, it must notify the borrower in writing within 30 days that the interest rate on the loan has been reduced to six percent during the borrower's period of military service.

(6)(i) For PLUS loans with an endorser, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan based on the borrower's or endorser's military service status, regardless of whether the loan holder is currently pursuing the endorser for repayment of the loan.

(ii) If both the borrower and the endorser are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest military service start date of either party and the latest military service end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(7)(i) For joint consolidation loans, the loan holder must use the official electronic database to begin, extend, or end, as applicable, the SCRA interest rate limit of six percent on the loan if either of the borrowers is eligible for the SCRA interest rate limit under § 682.202(a)(8).

(ii) If both borrowers on a joint consolidation loan are eligible for the SCRA interest rate limit of six percent on a loan, the loan holder must use the earliest military service start date of either party and the latest military service end date of either party to begin, extend, or end, as applicable, the SCRA interest rate limit.

(8) If the application of the SCRA interest rate limit of six percent results in an overpayment on a loan that is subsequently paid in full through consolidation, the underlying loan holder must return the overpayment to the holder of the consolidation loan.

(9) For any other circumstances where application of the SCRA interest rate limit of six percent results in an overpayment of the remaining balance on the loan, the loan holder must refund the amount of that overpayment to the borrower.

(10) For purposes of this section, the term "military service" means—

(i) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(A) Active duty, meaning full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the

Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(B) In the case of a member of the National Guard, including service under a call to active service, which means service on active duty or full-time National Guard duty, authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(ii) In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(iii) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

\* \* \* \* \*

■ 9. Section 682.405 is amended:

■ a. In paragraph (a)(2)(ii), by adding the words "or assigned to the Secretary" after the word "lender".

■ b. In paragraph (b)(1)(vi), by adding the words "or assignment to the Secretary" after the words "repurchase by an eligible lender" and removing the word "other" after the words "The agency may not impose any".

■ c. By revising paragraph (b)(1)(vi)(B).

■ d. In paragraph (b)(1)(xi), by removing the word "During", and adding, in its place, the words "Except as provided in paragraph (c) of this section, during".

■ e. By redesignating paragraph (b)(2) as paragraph (b)(2)(i).

■ f. By adding paragraph (b)(2)(ii).

■ g. In paragraph (b)(3) introductory text, by adding the words "or assignment to the Secretary" after the words "to an eligible lender".

■ h. In paragraph (b)(3)(i), by adding the words "or assignment" after the words "of the sale".

■ i. In paragraph (b)(3)(i)(A), by adding the words "or assignment" after the words "such sale".

■ j. In paragraph (b)(4), by removing the citation "\$ 682.209(a) or (h)", and adding, in its place, the citation "\$ 682.209(a) or (e)".

■ k. By revising paragraph (c).

The addition and revisions reads as follows:

**§ 682.405 Loan rehabilitation agreement.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) \* \* \*

(B) Of 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 or assigned to the Secretary, which may not exceed 16 percent of the unpaid principal and accrued interest on the loan at the time of the sale or assignment; and

\* \* \* \* \*

(2) \* \* \*

(ii) If the guaranty agency has been unable to sell the loan, the guaranty agency must assign the loan to the Secretary.

\* \* \* \* \*

(c) A guaranty agency must make available to the borrower—

(1) During the loan rehabilitation period, information about repayment plans, including the income-based repayment plan, that may be available to the borrower upon rehabilitating the defaulted loan and how the borrower can select a repayment plan after the loan is purchased by an eligible lender or assigned to the Secretary; and

(2) After the successful completion of the loan rehabilitation period, financial and economic education materials, including debt management information.

\* \* \* \* \*

■ 10. Section 682.410 is amended by revising paragraph (b)(3) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

\* \* \* \* \*

(b) \* \* \*

(3) Interest charged by guaranty agencies. (i) Except as provided in paragraph (b)(3)(ii) of this section, the guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of—

(A) The rate established by the terms of the borrower’s original promissory note; or

(B) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(ii) If the guaranty agency determines that the borrower is eligible for the interest rate limit of six percent under § 682.202(a)(8), the interest rate described in paragraph (b)(3)(i) shall not exceed six percent.

\* \* \* \* \*

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 11. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C 1070g, 1087a, et seq., unless otherwise noted.

■ 12. Section 685.202 is amended by revising paragraph (a)(11) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) \* \* \*

(11) Applicability of the Servicemembers Civil Relief Act (SCRA)(50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (10) of this section, upon the Secretary’s receipt of evidence of the borrower’s military service, the maximum interest rate under 50 U.S.C. 527, App. section 207(a), on Direct Loan Program loans made prior to the borrower entering military service status is six percent while the borrower is in military service. For purposes of this paragraph, the interest rate includes any other charges or fees applied to the loan. For purposes of this paragraph (a)(11), the term “military service” means—

(i) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(A) Active duty, meaning full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(B) In the case of a member of the National Guard, including service under a call to active service, which means service on active duty or full-time National Guard duty, authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(ii) In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(iii) Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

\* \* \* \* \*

■ 13. Section 685.208 is amended:

■ a. By revising paragraph (a)(1)(i)(D).

■ b. In paragraph (a)(4)(i), by removing the word “the” before the words “income-contingent” and adding, in its place, the word “an”.

■ c. In paragraph (a)(5), by removing the word “or” after the words “income-contingent” and adding, in its place, the words “repayment plans and the”.

■ d. By redesignating paragraphs (k)(3) and (4) as paragraphs (k)(4) and (5), respectively.

■ e. By adding paragraph (k)(3).

The revision and addition read as follows:

§ 685.208 Repayment plans.

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) The income-contingent repayment plans in accordance with paragraph (k)(2) or (3) of this section; or

\* \* \* \* \*

(k) \* \* \*

(3) Under the income-contingent repayment plan described in § 685.209(c), a borrower’s required monthly payment is limited to no more than 10 percent of the amount by which the borrower’s AGI exceeds 150 percent of the poverty guideline applicable to the borrower’s family size, divided by 12, unless the borrower’s monthly payment amount is adjusted in accordance with § 685.209(c)(4)(vi)(E).

\* \* \* \* \*

■ 14. Section 685.209 is amended:

■ a. By revising the introductory text of paragraph (a)(1).

■ b. In paragraph (a)(1)(iii)(A), by removing the words “Direct Loan Program Loan” and adding, in their place, the words “Direct Loan Program loan”.

■ c. In the second sentence of paragraph (a)(2)(iii), by adding the words “or the Revised Pay As You Earn repayment plan” immediately after the words “the income-based repayment plan”.

■ d. In paragraph (a)(6)(i)(E), by adding the punctuation and words “, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,” immediately after the words “this section”.

■ e. By redesignating paragraph (a)(6)(i)(F) as paragraph (a)(6)(i)(G).

■ f. By adding paragraph (a)(6)(i)(F).

■ g. In paragraphs (a)(6)(iii)(A) and (B) introductory text, by adding the punctuation and words “, the Revised Pay As You Earn repayment plan described in paragraph (c) of this section,” immediately after the words “this section”.

■ h. In paragraph (b)(3)(iii)(B)(3), by adding the words “or the Revised Pay As You Earn repayment plan” after the words “repayment plan”.

■ i. By redesignating paragraphs (b)(3)(iii)(B)(4) through (8) as paragraphs (b)(3)(iii)(B)(5) through (9), respectively.

■ j. By adding paragraph (b)(3)(iii)(B)(4).

■ k. In newly redesignated paragraph (b)(3)(iii)(B)(9), by removing the words “after October 1, 2007”.

■ l. By adding paragraph (c).

The revision and additions read as follows:

**§ 685.209 Income-contingent repayment plans.**

(a) \* \* \*

(1) *Definitions.* As used in this section, other than as expressly provided for in paragraph (c) of this section—

\* \* \* \* \*

(6) \* \* \*

(i) \* \* \*

(F) Made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(B) \* \* \*

(4) Periods in which the borrower made monthly payments under the alternative repayment plan described in paragraph (c)(4)(v) of this section prior to changing to a repayment plan described under this section or § 685.221;

\* \* \* \* \*

(c) *Revised Pay As You Earn repayment plan.* The Revised Pay As You Earn repayment plan (REPAYE plan) is an income-contingent repayment plan under which a borrower's monthly payment amount is based on the borrower's AGI and family size.

(1) *Definitions.* As used in this paragraph (c)—

(i) *Adjusted gross income (AGI)* means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income and is used to calculate the monthly payment amount. For a married borrower filing separately, the AGI for each spouse is combined to calculate the monthly payment amount, unless the borrower certifies, on a form approved by the Secretary, that the borrower is—

(A) Separated from his or her spouse; or

(B) Unable to reasonably access the income information of his or her spouse.

(ii) *Eligible loan* means any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid

a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower;

(iii) *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 year the borrower certifies family size, if the children receive more than half their support from the borrower. Family size does not include the borrower's spouse if the borrower is separated from his or her spouse, or if the borrower is filing separately and is unable to reasonably access the spouse's income information. A borrower's family size includes other individuals if, at the time the borrower certifies family size, 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; and

(iv) *Poverty guideline* refers to the income categorized by State and family size in the poverty guidelines published annually by the United States 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.

(2) *Terms of the Revised Pay As You Earn repayment plan.* (i) The aggregate monthly loan payments of a borrower who selects the REPAYE plan are limited to no more than 10 percent of the amount by which the borrower's AGI exceeds 150 percent of the poverty guideline applicable to the borrower's family size, divided by 12, unless the borrower's monthly payment amount is adjusted in accordance with paragraph (c)(4)(vi)(E) of this section.

(ii) The Secretary adjusts the calculated monthly payment if—

(A) Except for borrowers provided for in paragraph (c)(2)(ii)(B) of this section, the borrower's eligible loans are not solely Direct Loans, in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the calculated payment by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(B) Both the borrower and borrower's spouse have eligible loans, in which case the Secretary determines—

(1) Each borrower's percentage of the couple's total eligible loan debt;

(2) The adjusted monthly payment for each borrower by multiplying the calculated payment by the percentage determined in paragraph (c)(2)(ii)(B)(1) of this section; and

(3) If the borrower's loans are held by multiple holders, the borrower's adjusted monthly Direct Loan payment by multiplying the payment determined in paragraph (c)(2)(ii)(B)(2) of this section by the percentage of the total outstanding principal amount of the borrower's eligible loans that are Direct Loans;

(C) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is less than \$5.00, in which case the borrower's monthly payment is \$0.00; or

(D) The calculated amount under paragraph (c)(2)(i) or (c)(2)(ii)(A) or (B) of this section is equal to or greater than \$5.00 but less than \$10.00, in which case the borrower's monthly payment is \$10.00.

(iii) If the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan—

(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan, the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed three consecutive years from the established repayment period start date on that loan under the REPAYE plan. Following this three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on the Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan.

(B) For a Direct Unsubsidized Loan, a Direct PLUS Loan made to a graduate or professional student, the unsubsidized portion of a Direct Consolidation Loan, or for a Direct Subsidized Loan or the subsidized portion of a Direct Consolidation Loan for which the borrower has become responsible for accruing interest in accordance with § 685.200(f)(3), the Secretary charges the borrower 50 percent of the remaining accrued interest.

(C) The three-year period described in paragraph (c)(2)(iii)(A) of this section—

(1) Does not include any period during which the borrower receives an economic hardship deferment;

(2) Includes any prior period of repayment under the income-based repayment plan or the Pay As You Earn repayment plan; and

(3) For a Direct Consolidation Loan, includes any period in which the underlying loans were repaid under the

income-based repayment plan or the Pay As You Earn repayment plan.

(iv) Any unpaid accrued interest is capitalized at the time a borrower leaves the REPAYE plan.

(v) If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the REPAYE plan or the Secretary determines the borrower does not have a partial financial hardship.

(vi) A borrower who no longer wishes to repay under the REPAYE plan may change to a different repayment plan in accordance with § 685.210(b). A borrower who changes to a different repayment plan in accordance with this paragraph or paragraph (c)(4)(vi)(C) of this section may return to the REPAYE plan pursuant to the requirements in paragraphs (c)(4)(vi)(D) and (E) of this section.

(3) *Payment application and prepayment.* (i) The Secretary applies any payment made under the REPAYE plan in the following order:

- (A) Accrued interest.
- (B) Collection costs.
- (C) Late charges.
- (D) Loan principal.

(ii) The borrower may prepay all or part of a loan at any time without penalty, as provided under § 685.211(a)(2).

(iii) If the prepayment amount equals or exceeds a monthly payment amount of \$10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of § 685.211(a)(3).

(iv) If the prepayment amount exceeds a monthly payment amount of \$0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of paragraph (c)(3)(i) of this section.

(4) *Eligibility documentation, verification, and notifications.* (i)(A) For the year the borrower initially selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary determines the borrower's monthly payment amount for that year. To make this determination, the Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower's AGI.

(B) If the borrower's AGI is not available, or if the Secretary believes that the borrower's reported AGI does not reasonably reflect the borrower's current income, the borrower must provide other documentation to verify income.

(C) Unless otherwise directed by the Secretary, the borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for that year.

(ii) After making the determination described in paragraph (c)(4)(i)(A) of this section for the initial year that the borrower selects the REPAYE plan and for each subsequent year that the borrower remains on the plan, the Secretary sends the borrower a written notification that provides the borrower with—

(A) The borrower's scheduled monthly payment amount, as calculated under paragraph (c)(2) of this section, and the time period during which this scheduled monthly payment amount will apply (annual payment period);

(B) Information about the requirement for the borrower to annually provide the information described in paragraph (c)(4)(i) of this section, if the borrower chooses to remain on the REPAYE plan after the initial year on the plan, and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

(C) An explanation of the consequences, as described in paragraphs (c)(4)(i)(C) and (c)(4)(v) and (vi) of this section, if the borrower does not provide the required information; and

(D) Information about the borrower's option to request, at any time during the borrower's current annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in paragraphs (c)(4)(ii)(A) through (D) of this section.

(iii) For each subsequent year that a borrower remains on the REPAYE plan, the Secretary notifies the borrower in writing of the requirements in paragraph (c)(4)(i) of this section no later than 60 days and no earlier than 90 days prior to the date specified in paragraph (c)(4)(iii)(A) of this section. The notification provides the borrower with—

(A) The date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation

described in paragraph (c)(4)(i) of this section (annual deadline); and

(B) The consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described in paragraphs (c)(2)(iv), (c)(4)(v), and (c)(4)(vi) of this section.

(iv) If a borrower who is currently repaying under another repayment plan selects the REPAYE plan but does not provide the documentation described in paragraph (c)(4)(i)(A) or (B) of this section, the borrower remains on his or her current repayment plan.

(v) Except as provided in paragraph (c)(4)(vii) of this section, if a borrower who is currently repaying under the REPAYE plan remains on the plan for a subsequent year but the Secretary does not receive the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline, the Secretary removes the borrower from the REPAYE plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's loan in full within the earlier of—

(A) Ten years from the date the borrower begins repayment under the alternative repayment plan; or

(B) The ending date of the 20- or 25-year period as described in paragraphs (c)(5)(i) and (ii) of this section.

(vi) If the Secretary places the borrower on an alternative repayment plan in accordance with paragraph (c)(4)(v) of this section, the Secretary sends the borrower a written notification containing the borrower's new monthly payment amount and informing the borrower that—

(A) The borrower has been placed on an alternative repayment plan;

(B) The borrower's monthly payment amount has been recalculated in accordance with paragraph (c)(4)(v) of this section;

(C) The borrower may change to another repayment plan in accordance with § 685.210(b);

(D) The borrower may return to the REPAYE plan if he or she provides the documentation, as described in paragraph (c)(4)(i)(A) or (B) of this section, necessary for the Secretary to calculate the borrower's current REPAYE plan monthly payment amount and the monthly amount the borrower would have been required to pay under the REPAYE plan during the period when the borrower was on the alternative repayment plan or any other repayment plan;

(E) If the Secretary determines that the total amount of the payments the

borrower was required to make while on the alternative repayment plan or any other repayment plan is less than the total amount the borrower would have been required to make under the REPAYE plan during that period, the Secretary will adjust the borrower's monthly REPAYE plan payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20- or 25-year period described in paragraphs (c)(5)(i) and (ii) of this section;

(F) If the borrower returns to the REPAYE plan or changes to the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the REPAYE plan will count toward forgiveness under the REPAYE plan or the other repayment plans under paragraph (a) or (b) of this section or § 685.221; and

(G) Payments made under the alternative repayment plan described in paragraph (c)(4)(v) of this section will not count toward public service loan forgiveness under § 685.219.

(vii) The Secretary does not take the action described in paragraph (c)(4)(v) of this section if the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

(viii) If the Secretary receives the documentation described in paragraph (c)(4)(i)(A) or (B) of this section within 10 days of the specified annual deadline—

(A) The Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined.

(1) If the new monthly payment amount is less than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period, the Secretary makes the appropriate adjustment to the borrower's account. Notwithstanding the requirements of § 685.211(a)(3), unless the borrower requests otherwise,

the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (c)(3)(i) of this section.

(2) If the new monthly payment amount is equal to or greater than the borrower's previously calculated REPAYE plan monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account.

(3) Any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of § 685.219, provided that the payments otherwise meet the requirements described in § 685.219(c)(1).

(B) The new annual payment period begins on the day after the end of the most recent annual payment period.

(5) *Loan forgiveness.* (i) A borrower who meets the requirements specified in paragraph (c)(5)(iii) of this section may qualify for loan forgiveness after 20 or 25 years, as determined in accordance with paragraph (c)(5)(ii) of this section.

(ii)(A) A borrower whose loans being repaid under the REPAYE plan include only loans the borrower received as an undergraduate student or a consolidation loan that repaid only loans the borrower received as an undergraduate student may qualify for forgiveness after 20 years.

(B) A borrower whose loans being repaid under the REPAYE plan include a loan the borrower received as a graduate or professional student or a consolidation loan that repaid a loan received as a graduate or professional student may qualify for forgiveness after 25 years.

(iii) The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's Direct Loans that are being repaid under the REPAYE plan after—

(A) The borrower has made the equivalent of 240 or 300, as applicable, qualifying monthly payments as defined in paragraph (c)(5)(iv) of this section; and

(B) Twenty or 25 years, as applicable, have elapsed, beginning on the date determined in accordance with paragraph (c)(5)(v) of this section.

(iv) For the purpose of paragraph (c)(5)(iii)(A) of this section, a qualifying monthly payment is—

(A) A monthly payment under the REPAYE plan, including a monthly

payment amount of \$0.00, as provided under paragraph (c)(2)(ii)(C) of this section;

(B) A monthly payment under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, including a monthly payment amount of \$0.00;

(C) A monthly payment made under—

(1) The Direct Loan standard repayment plan described in § 685.208(b);

(2) The alternative repayment plan described in paragraphs (c)(4)(v) of this section prior to changing to a repayment plan described in paragraph (a), (b), or (c) of this section or § 685.221;

(3) Any other Direct Loan repayment plan, if the amount of the payment was not less than the amount required under the Direct Loan standard repayment plan described in § 685.208(b); or

(D) A month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on his or her eligible Direct Loans.

(v) For a borrower who makes payments under the REPAYE plan, the beginning date for the 20-year or 25-year repayment period is—

(A) If the borrower made payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221, the earliest date the borrower made a payment on the loan under one of those plans; or

(B) If the borrower did not make payments under the Pay As You Earn repayment plan described in paragraph (a) of this section, the income-contingent repayment plan described in paragraph (b) of this section, or the income-based repayment plan described in § 685.221—

(1) For a borrower who has an eligible Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower began repayment under the REPAYE plan;

(2) For a borrower who has one or more other eligible Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower began repayment under the REPAYE plan;

(3) For a borrower who did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(B)(1) or (2) of this section, the date the borrower

made a payment on the loan under the REPAYE plan;

(4) If the borrower consolidates his or her eligible loans, the date the borrower made a qualifying monthly payment on the Direct Consolidation Loan; or

(5) If the borrower did not make a qualifying monthly payment on the loan under paragraph (c)(5)(v)(A) or (B) of this section, the date the borrower made a payment on the loan under the REPAYE plan.

(vi) Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year or 25-year forgiveness period.

(vii)(A) When the Secretary determines that a borrower has satisfied the loan forgiveness requirements under paragraph (c)(5) of this section on an eligible loan, the Secretary cancels the outstanding balance and accrued interest on that loan. No later than six months prior to the anticipated date that the borrower will meet the forgiveness requirements, the Secretary sends the borrower a written notice that includes—

(1) An explanation that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness;

(2) A reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

(3) General information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

(B) The Secretary determines when a borrower has met the loan forgiveness requirements in paragraph (c)(5) of this section and does not require the borrower to submit a request for loan forgiveness.

(C) After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

(1) Notifies the borrower that the borrower's obligation on the loans is satisfied;

(2) Provides the borrower with the information described in paragraph (c)(5)(vii)(A)(3) of this section; and

(3) Returns to the sender any payment received on a loan after loan forgiveness has been granted.

■ 15. Section 685.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§ 685.210 Choice of repayment plan.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) If a borrower changes repayment plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income-contingent repayment plan under § 685.209(a), the income-contingent repayment plan under § 685.209(b), the income-contingent repayment plan under § 685.209(c), or the income-based repayment plan under § 685.221, the repayment period is calculated as described in § 685.209(a)(6)(iii), § 685.209(b)(3)(iii), § 685.209(c)(5)(v), or § 685.221(f)(3), respectively.

\* \* \* \* \*

■ 16. Section 685.219 is amended:

■ a. In paragraph (c)(1)(iii), by adding the words and punctuation “or who qualifies for partial repayment of his or her loans under the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,” after “Peace Corps position”.

■ b. In paragraph (c)(1)(iv)(D), by removing the word “Any” and adding, in its place, the words “Except for the alternative repayment plan, any” and removing the word “paid” immediately after the words “monthly payment amount”.

■ c. In paragraph (c)(2) introductory text, by adding the words and punctuation “or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by

the Department of Defense,” after the words “leaving the Peace Corps”.

■ d. By adding paragraph (c)(3).

The addition reads as follows:

**§ 685.219 Public Service Loan Forgiveness Program.**

\* \* \* \* \*

(c) \* \* \*

(3) The Secretary considers lump sum payments made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense, to be qualifying payments in accordance with paragraph (c)(2) of this section for each year that a lump sum payment is made.

\* \* \* \* \*

■ 17. Section 685.221 is amended:

■ a. In the second sentence of paragraph (b)(3), by adding the words “or the Revised Pay As You Earn repayment plan” immediately after the words “the Pay As You Earn repayment plan”.

■ b. By redesignating paragraph (f)(1)(vi) as paragraph (f)(1)(vii).

■ c. By adding paragraph (f)(1)(vi).

■ d. In paragraph (f)(3)(i), by adding the punctuation and words “, the Pay As You Earn repayment plan, or the Revised Pay As You Earn repayment plan,” immediately after the words “repayment plan”.

■ e. In paragraph (f)(3)(ii) introductory text, by removing the words “the income-contingent repayment plan” and adding, in their place, the words “one of the repayment plans described in paragraph (f)(3)(i) of this section”.

The addition reads as follows:

**§ 685.221 Income-based repayment plan.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(vi) Made monthly payments under the alternative repayment plan described in § 685.209(c)(4)(v) prior to changing to a repayment plan described under § 685.209 or this section;

\* \* \* \* \*