

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 674, 675, 676, 682, 685, 686, 690, 692, and 694

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Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, National Direct Student Loan Program, Teacher Education Assistance for College and Higher Education Grant Program, Federal Pell Grant Program, Leveraging Educational Assistance Partnership Program, and Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: In response to the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (Trinity Lutheran), and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order No. 13798 (Attorney General's memorandum), the Department of Education (Department or we) amends the current regulations regarding the eligibility of faith-based entities to participate in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), and the eligibility of students to obtain certain benefits under those programs. The Department also amends the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program regulations to minimize the number of TEACH Grants that are converted to Federal Direct Unsubsidized Loans, and to update, strengthen, and clarify other areas of the TEACH Grant Program regulations.

DATES:

Effective date: These regulations are effective July 1, 2021.

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 information about the provisions of this regulation, contact Sophia McArdle at (202) 453-6318 or by email at Sophia.McArdle@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Through this regulatory action, the Department responds to the United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer* (Trinity Lutheran), 137 S. Ct. 2012 (2017), and the United States Attorney General's October 7, 2017 Memorandum on Federal Law Protections for Religious Liberty pursuant to Executive Order No. 13798 (Attorney General's memorandum)¹ in order to ensure that members of religious orders are not denied access to title IV funding or benefits under the title IV programs. The Department also amends the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program regulations to minimize the number of TEACH Grants that are converted to Federal Direct Unsubsidized Loans, and to update, strengthen, and clarify other areas of the TEACH Grant Program regulations. A more detailed summary can be found in the *Summary of the Major Provisions of This Regulatory Action* section.

Summary of the Major Provisions of This Regulatory Action:

To restore religious liberty to faith-based institutions and religious students, these regulations—

- Restore the ability of members of religious orders, who also are pursuing courses of study at institutions of higher education, to participate in the title IV programs by eliminating regulatory provisions that treat members of religious orders as having no financial need in certain circumstances.
- Allow certain borrowers, who serve as full-time volunteers in tax-exempt organizations and give religious instruction, conduct worship service, proselytize, or fundraise to support religious activities as part of their official duties, to defer repayment of Federal Perkins Loans, National Direct Student Loans (NDSLs), and Federal Family Education Loan Program (FFEL) loans.
- Provide an interpretation of the PSLF regulations that permits borrowers who work for employers that engage in

religious instruction, worship services, or proselytizing to qualify for PSLF.

- Clarify requirements for private secondary and postsecondary faith-based institutions' participation in the GEAR UP program.
 - Conform language in the Leveraging Educational Assistance Partnership Program (LEAP) and Federal Work-Study Programs (FWSP) regulations regarding allowable program activities to statutory language.
- For the TEACH Grant Program, the regulations—
- Clarify that grant recipients may satisfy the TEACH Grant service obligation by teaching for an educational service agency that serves low-income students.
 - Clarify the beginning date of the eight-year period for completing the TEACH Grant service obligation.
 - Revise the definition of "highly qualified."
 - Update and expand the conditions under which a TEACH Grant recipient may satisfy the TEACH Grant service obligation by teaching in a high-need field listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) at <https://tsa.ed.gov>.
 - Clarify the service obligation requirements for TEACH Grant recipients who withdraw from the institution where they received a TEACH Grant before completing the program for which they received the grant, then later re-enroll in the same program or in a different TEACH Grant eligible program at the same academic level.
 - Provide that a TEACH Grant recipient may request reversal of a voluntary grant-to-loan conversion so that the recipient can complete the service obligation, as long as the service obligation is completed within eight years from when the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution, excluding periods of suspension, which the recipient could apply for retroactively.
 - Expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling, and add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.
 - Provide counseling requirements for TEACH Grant recipients who receive

¹ U.S. Att'y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017) (hereinafter "Mem."), <https://www.justice.gov/opa/press-release/file/1001891/download>.

reversals of voluntary grant-to-loan conversions.

- Add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the eight-year period for completing the service obligation and for grant recipients whose grants were converted to loans in error and who need additional time to complete the teaching service obligation once the error is corrected.

- Remove the current regulatory requirement for TEACH Grant recipients to certify, within 120 days of completing the program for which they received TEACH Grants, that they have begun qualifying teaching service, or that they have not yet begun teaching, but they intend to satisfy the service obligation.

- Simplify the regulations specifying the conditions under which TEACH Grants are converted to Direct Unsubsidized Loans so that for all grant recipients, loan conversion will occur only if the recipient asks the Secretary to convert his or her TEACH Grants to loans, or if the recipient fails to begin or maintain qualifying teaching service within a timeframe that would allow the recipient to satisfy the service obligation within the eight-year service obligation period.

- Specify that the Secretary will send grant recipients, at least annually, a notice containing detailed information about the TEACH Grant service obligation requirements, a summary of the grant recipient's progress toward satisfying the service obligation, and an explanation of the process by which a grant recipient whose TEACH Grants are converted to Direct Unsubsidized Loans may request reconsideration of the conversion if he or she believes that the grants were converted in error.

- Provide that grant recipients will be automatically provided with a "statement of error" when a grant that was incorrectly converted to a loan is later reconverted to a TEACH Grant.

- Describe the actions that the Secretary will take if a grant recipient's request for reconsideration of the conversion of the grant to a loan is approved or denied.

- Specify that the Secretary will notify a grant recipient in advance of the date by which he or she will be subject to loan conversion for failure to begin or maintain qualifying teaching service within a timeframe that would allow the recipient to complete the service obligation within the eight-year service obligation period, and inform the recipient of the final date by which he or she must provide documentation of teaching service to avoid having his or her grants converted to loans.

- Incorporate statutory changes and update, simplify, and clarify various areas of the TEACH Grant Program regulations.

Costs and Benefits

As discussed in the *Regulatory Impact Analysis* section of this notice, the Department estimates that these final regulations would not result in significant costs. Changes regarding faith-based institutions and religious students have minimal impacts on financial aid costs to the Federal government because these provisions affect relatively few students and borrowers. Changes regarding the PSLF program to comply with the Religious Freedom Restoration Act (RFRA) carry potential costs related to a relatively small increase in the population of eligible recipients. Changes regarding the GEAR UP program have no estimated costs as participation in the Department's competitive grant programs is voluntary, and the program currently serves a small number of religiously affiliated schools. While changes to the TEACH Grant Program improve the reporting and documentation process for recipients and increase the number of teaching positions in which TEACH Grant recipients could satisfy their service obligations, we do not believe that the changes would result in a significant increase in the number of grant recipients.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that we publish regulations affecting programs under title IV of the HEA 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.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the regulatory changes to regulations at title 34, parts 600, 674, 675, 676, 682, 685, 686, 690, 692, and 694, of the Code of Federal Regulations included in this document for early implementation beginning on August 14, 2020, at the discretion of each institution, or each agency, as appropriate. The Department will implement the regulations as soon as possible after the implementation date and will publish a separate notice announcing the timing of the implementation. Otherwise, the final regulations included in this document are effective July 1, 2021.

Public Comment: In response to our invitation in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on December 11, 2019 (84 FR 67778), we received 46 comments on the proposed regulations. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee reached consensus on the proposed regulations that we published on December 11, 2019 (84 FR 6778). The Secretary requested comments on the proposed regulations by January 10, 2020, and 46 parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

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 regulations to which they pertain. Generally, we do not address minor, non-substantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Faith-Based Entities

General Comments

Comments: Many commenters supported the proposed changes, because the proposed revisions better reflect the demands of the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution and the current understanding of the Establishment Clause of the First Amendment. One commenter noted that even if *Trinity Lutheran* had not been decided and the Attorney General's memorandum had not been issued, the Department's proposed changes would be necessary to bring the Department's regulations into

compliance with four decades of Supreme Court jurisprudence, including *Widmar v. Vincent*,² *Rosenberger v. University of Virginia*,³ and *Witters v. Washington Department of Services for the Blind*.⁴ In particular, the commenter noted that the Free Exercise Clause prohibits the government from imposing “special disabilities” on individuals or institutions based on their religious views or status. The commenter also noted that RFRA prohibits the Federal government from substantially burdening a person’s religious exercise unless it can demonstrate a compelling interest unachievable by less restrictive means. Another commenter stated that the proposed regulations would provide relief to qualified student borrowers while maintaining critical safeguards to prevent Federal funds from being diverted to religious purposes.

Discussion: We appreciate the commenters’ support.

Changes: None.

Comments: Some commenters supported the faith-based provisions of the proposed regulations and encouraged the Department to early implement the new provisions.

Discussion: We agree that institutions should have the ability to early implement the faith-based provisions of the final regulations where possible, and that borrowers should similarly benefit from early implementation by the Department of regulatory changes that affect their ability to qualify for certain loan repayment benefits. Instructions regarding early implementation are discussed in the *Implementation Date of These Regulations* section of this preamble.

Changes: The Department provides instructions regarding early implementation in the *Implementation Date of These Regulations* section of this preamble.

Comments: Several commenters opposed the Department’s faith-based proposed regulations, arguing that the regulations misapply Supreme Court precedent. These commenters expressed concerns that the Department ignored relevant case law in the NPRM,

including *Mitchell v. Helms*⁵ and *Locke v. Davey*.⁶ Commenters also asserted that RFRA does not apply to the Department’s current regulations, since a borrower who desires to perform non-qualifying work should not receive public benefits.

Commenters opined that the current regulations are sufficient to protect citizens’ religious freedoms, and that the proposed regulations regarding title IV programs would subsidize religious activities. These commenters expressed concern that the Department’s proposed regulations would favor religious institutions over their secular counterparts and would therefore violate the Establishment Clause. Commenters pointed to the facts in *Locke v. Davey* and argued that the State in that case refused to extend government funding to Davey, not because of his religious status, but because of how he proposed to use the funding—to study theology. These commenters argued that, because the grantees and recipients at issue in the Department’s regulations are religious, they will use grants or deferments in a manner similar to Davey and will therefore violate the Establishment Clause. One commenter also pointed out that the Establishment Clause still prohibits the government from awarding funds for a religious purpose or with an effect of advancing religion.

Other commenters stated that *Trinity Lutheran* has no precedential value with respect to the Department’s regulations. They claimed that the Court in that decision limited its holding to discrimination based on religious identity *only* with respect to playground resurfacing. One commenter disapproved of the Department’s reliance on *Trinity Lutheran* to justify its changes but recognized that the Department’s changes would not require public funds to be used for religious purposes, and therefore expressed support for the changes. But that commenter stated that the Department did not need to cite *Trinity Lutheran* to support its final regulations.

Discussion: The Department agrees with commenters that it must not violate the Establishment Clause’s

prohibition on government advancement of religion. The Department agrees that Congress may bar the use of government funds for religious purposes consistent with the Supreme Court’s holding in *Locke v. Davey* if it wished to do so. We also agree that the Department may provide direct aid to religious institutions without having the effect of advancing religion as long as there is no governmental indoctrination, religion is not used to define recipients, and there is no excessive governmental entanglement with religion, consistent with *Mitchell v. Helms*.⁷

The Department does not agree, however, with those commenters who argued that the Establishment Clause requires the Department’s previous prohibitions in order to bar the use of government funds to advance religion or for religious purposes. Those commenters urged the Department to go beyond the requirements of the Establishment Clause. The Supreme Court has made it clear that a “policy preference” of “achieving greater separation of church and State than is already ensured under the Establishment Clause” is insufficient to justify excluding religious organizations from generally available benefits. *Trinity Lutheran*, 137 S. Ct. at 2024 (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981)). Indeed, there is substantial Supreme Court precedent supporting the proposition that the government must not discriminate against individuals or entities on the basis of their religious identity. *See, e.g., Trinity Lutheran*, 137 S. Ct. at 2019; *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533, 542 (1993); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 16 (1947).

Some commenters also stated the Department’s changes to eligibility requirements for certain aid would have the effect of advancing religion. The Department’s aid will not advance religion, nor do the Department’s changes require aid to be used for religious purposes. In the final regulations, the Department is correcting prior rules that disfavored faith-based institutions and students—not, as some commenters worried, to favor them over their secular counterparts. The changes affecting faith-based institutions and individuals in the final regulations fall into two broad categories: First, the eligibility of faith-based entities to participate in Federal Student Aid programs under title IV of the HEA; and second, the

² 454 U.S. 263 (1981)(holding unconstitutional a university’s exclusion of religious groups from the use of school facilities made available to other student groups and holding that such use would not have the “primary effect” of advancing religion in violation of the Establishment Clause).

³ 515 U.S. 819 (1995) (finding that, to abide by the Establishment Clause, it was not necessary for a university to deny eligibility to a student publication seeking to print religious viewpoints).

⁴ 474 U.S. 481 (1986) (holding that the Establishment Clause permitted a State to extend assistance to a blind person who chose to study at a religious college to become a pastor, missionary, or youth director).

⁵ These commenters cited Justice O’Connor’s concurrence, in which she disagreed with “the plurality’s conclusion that actual diversion of government aid to religious indoctrination is consistent with the Establishment Clause” and explained “that we have long been concerned that secular government aid not be diverted to the advancement of religion.” 530 U.S. 793, 840 (2000) (O’Connor, J., concurring in the judgment).

⁶ 540 U.S. 712, (2004) (finding that preventing the use of public funds for devotional theology instruction does not violate the Free Exercise Clause).

⁷ 530 U.S. 793 at 808.

eligibility of students to obtain benefits under those programs. Accordingly, the final rules permit members of a religious order to receive aid under title IV programs, including the Federal Pell Grant Program, the Federal Perkins Loan Program, the FWSP, the Federal Supplemental Educational Opportunity Grant Program (FSEOG) Program, the FFEL Program, and the Direct Loan Program. Also, the rules allow private secondary and postsecondary faith-based educational institutions to participate in GEAR UP. The final regulations set religious individuals and entities on equal footing with their secular counterparts by allowing such individuals and entities to qualify for the same aid already available to nonreligious individuals and entities. Therefore, such treatment is correcting an inequality, not creating one.

Because of such inequality, the Department does not agree with the commenter who argued that RFRA is not implicated by the Department's current rules excluding religious individuals and entities from the ability to participate in generally available benefit programs. Congress has tasked the Department with the duty to ensure that the Department's actions, including its regulatory actions, do not substantially burden a person's exercise of religion (absent a compelling government interest and a showing that the burden is the least restrictive means of furthering that interest). 42 U.S.C. 2000bb, *et seq.* Because the current regulations discriminate against religious groups and deny individuals the ability to participate in important government programs on the basis of their religious status, the current regulations likely amount to a substantial burden on those entities' exercise of religion.

RFRA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. 2000bb-2(4) (citing 42 U.S.C. 2000cc-5). The current rules impose a "penalty" on these individuals' free exercise of religion, *Trinity Lutheran*, 137 S. Ct. at 2021—which they engage in by becoming members of religious orders, attending religious institutions, participating in or working at religious organizations, among other ways—by requiring them to "choose between their religious beliefs and receiving a government benefit." *Id.* at 2023 (quoting *Locke*, 540 U.S. at 720–21); *see Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (finding a substantial burden where it was "apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion,"

forcing her "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand"); *see also* 42 U.S.C. 2000bb(b)(1) ("The purposes of this chapter are—(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened . . .").

And the Department's status-based restrictions are neither necessary to further a compelling government interest, nor are they the least restrictive means of furthering any such interest. Therefore, RFRA would require the Department to alleviate the substantial burden imposed by its regulations.

The Department also disagrees with one commenter's suggestion that RFRA does not apply at all; the statute binds the "Government" which includes the Department in its regulating capacity, 42 U.S.C. 2000bb-1(a), and further "applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. 2000bb-3(a).

The Department disagrees with commenters who claimed that the Department's current rules are sufficiently protective of religious freedom. The Supreme Court has upheld some religious-funding restrictions,⁸ but those decisions are in considerable tension with more recent Supreme Court cases that recognized that the First Amendment permits—and in some situations, requires—the government to provide religious organizations with access to government property under neutral and generally applicable rules. Additionally, the Supreme Court has repudiated the principle that the Establishment Clause bars government aid from flowing from religiously neutral government programs to religious institutions. *See, e.g., Mitchell v. Helms*, 530 U.S. at 835 (plurality opinion) (overruling *Wolman v. Walter*, 433 U.S. 229 (1977) and *Meek v. Pittenger*, 421 U.S. 349 (1975)); *id.* at 837 (O'Connor, J., concurring in the judgment) (same); *Agostini v. Felton*, 521 U.S. 203, 235 (overruling *Aguilar v. Felton*, 473 U.S. 402 (1985) and *School*

⁸ *See Tilton v. Richardson*, 403 U.S. 672, 683 (1971), and *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 762 (1973).

District of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985)).

The Supreme Court has made it clear that the government should be "neutral in its relations with groups of religious believers and non-believers; [the Establishment Clause] does not require the state to be their adversary." *Everson v. Board of Education*, 330 U.S. 1, 18 (1947). And a law that burdens religious practice that is not neutral and not generally applicable "must undergo the most rigorous of scrutiny" under the Free Exercise Clause. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

In *Trinity Lutheran*, the Court reiterated that this nondiscrimination principle of the Free Exercise Clause applies to government benefits and funding. The Court in that case rejected the State's interest in "skating as far as possible from religious establishment concerns" as a basis for categorically excluding a religious organization from a generally available funding program. *Trinity Lutheran*, 137 S. Ct. at 2024. The Court applied "the most exacting scrutiny" to the government program, finding that it "expressly discriminate[d]" against an entity that would be otherwise eligible for the government grant but for that entity's religious character. *Id.*

That same basic defect is present in the Department's current regulations: But for the entities' and individuals' religious character, they would have qualified for government aid under title IV. For example, under current 34 CFR 674.9(c)(1), a student is prohibited from receiving a Federal Perkins Loan if that student was a "member of a religious order" that has as its primary objective "the promotion of ideals and beliefs regarding a Supreme Being" and which required its members to forego monetary support and receive subsistence support from the order. Because the restriction only applies to individuals based on an individual's membership in a religious order, that restriction is based on the individual's religious status. The Department believes that otherwise-eligible students and institutions should not be denied participation in title IV programs based solely on their religious identities and, furthermore, that the Free Exercise Clause prohibits such status-based religious discrimination.

The Department considered commenters' concerns that its changes amount to government subsidies for religious activities. These commenters included discussions of *Locke v. Davey*, which the Supreme Court distinguished in *Trinity Lutheran* as a case in which the recipient was denied a scholarship not because of who he was, but because

of how he proposed to use the government funding—to prepare for ministry. See *Trinity Lutheran*, 137 S. Ct. at 2023. Under this analysis, the Court demonstrated that the constitutionality of an aid restriction depends on whether the restriction is predicated on the recipient's religious status (which is presumptively unconstitutional), or whether it is based upon how the Federal aid will be used (which is a permissible restriction under *Locke* but not required under the Free Exercise Clause). Thus, a state could disallow or allow federal aid to be used for religious instruction under *Locke*.

Some commenters argued that the current regulations fall within the latter category—that allowing religious individuals and entities to qualify for Federal aid would amount to promoting religion, because the recipients would use their aid to practice their religion. But those regulations deny eligibility based on a person's membership in a religious order (see, e.g., 34 CFR 674.9), or because a person chose to perform volunteer work for a religious organization providing services to the community (see, e.g., 34 CFR 674.35(c)(5)(iv)). These restrictions are on the basis of a person's or entity's religious identity; they are not use-based restrictions. Additionally, *Locke v. Davey* held that the government may refuse to use government funds for a degree in devotional theology; that decision does not require the government to refuse to do so. The Department's determination of how to use any leeway allowed under *Locke v. Davey* must be guided by policy and legal considerations, including the statutory mandate of RFRA.

The Supreme Court has long held that the government may furnish “general . . . benefits to all its citizens without regard to their religious belief.” *Everson*, 330 U.S. at 16. In cases following *Everson*, the Court consistently affirmed that an important factor in upholding Government aid programs against an Establishment Clause attack is those programs’ “neutrality towards religion.” *Good News Club v. Milford Central School*, 533 U.S. 98, 114 (2001) (quoting *Rosenberger*, 515 U.S. at 839). The Constitution is “respected, not offended,” when the Government employs neutral criteria and extends benefits to “recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Rosenberger*, 515 U.S. at 839 (emphasis added). In *Mitchell*, a plurality of justices endorsed the bright-line rule that neutral, generally available Government aid does not violate the Establishment Clause. See 530 U.S. at

809–14. Later, in *Zelman v. Simmons-Harris*, the Supreme Court held that a school voucher program did not need to exclude religious recipients to comply with the Establishment Clause. See *Zelman*, 536 U.S. 639, 653–60 (2002). The U.S. Department of Justice, Office of Legal Counsel has likewise held that, in some circumstances, the Government may provide aid to sectarian or religious entities.⁹ And finally, the Establishment Clause does not prohibit religious organizations from receiving Government benefits such as tax deductions and exemptions, which direct significant economic benefits to both religious and secular organizations, on an equal basis with secular organizations. See *Walz*, 397 U.S. at 674; *Zelman*, 536 U.S. at 665–68 (O'Connor, J., concurring) (discussing tax deductions and exemptions).

Commenters also argued that the Department errs in relying on *Trinity Lutheran*. They argued that, according to footnote 3 in the decision, *Trinity Lutheran* applies only to the narrow factual circumstance of a church-run school seeking to compete for a playground resurfacing grant.

But footnote 3 is not part of the majority opinion in *Trinity Lutheran*, because two of the six Justices in the majority opinion joined the opinion “except as to footnote 3.” *Trinity Lutheran*, 137 S. Ct. at 2016. In any event, footnote 3 does not limit the force of the Court's reasoning.

The Court has long held that “[w]hen an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound.” *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996). And even broadly applicable principles discussed by the Supreme Court often lead to the creation of generally applicable legal rules. See Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Review 1175, 1175–81 (1989). Indeed, in explaining why he did not join footnote 3, Justice Gorsuch asserted that the court's cases are governed by general principles, rather than ad hoc improvisations.” *Trinity Lutheran*, 137 S. Ct. at 2023 (quoting *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 25 (2004) (Gorsuch, J., concurring in part)). Here,

⁹ See *Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church*, 27 Op. O.L.C. 91, 114 (2003) (concluding that the Department of the Interior could provide historic preservation grants to renovate a still-active house of worship); *Authority of FEMA to Provide Disaster Assistance to Seattle Hebrew Academy*, 26 Op. O.L.C. 114, 129 (2002) (opining that FEMA could provide disaster relief funds for reconstruction after an earthquake to a Hebrew secondary school).

the majority opinion in *Trinity Lutheran* recognized that the Court had “repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order.” *Id.* at 2019 (majority op.). It confirmed that this principle applies to “the refusal to allow [a Church plaintiff]—solely because it is a church—to compete with secular organizations for a grant,” *id.* at 2022, and it rejected the argument that a “policy preference for skating as far as possible from religious establishment concerns” could justify such refusal, *id.* at 2024. This reasoning is persuasive and applicable here.

Changes: None.

Comments: One commenter raised concerns that the Department subjected constitutional principles to negotiated rulemaking inappropriately and that there were few stakeholders with expertise in church and State issues on the negotiated rulemaking committee.

Discussion: The HEA requires the Department to regulate all issues relating to title IV of the HEA through a negotiated rulemaking process. The Department followed the requirements of the HEA when negotiating these issues. To ensure adequate expertise on church and State issues, the Department created a subcommittee that met three times for a total of six days to discuss thoroughly the issues relating to church and State, including extensive discussion regarding the constitutional issues implicated by the proposed regulations. The subcommittee consisted of nine members, all of whom had extensive knowledge and experience with respect to church and State issues. Representatives of national organizations that have litigated both sides of these issues in Federal courts served on the subcommittee.

Subcommittee representatives presented their proposals and analysis to the full committee multiple times during the negotiated rulemaking. Both sides of issues, those for and against the Department's proposed amendments to the regulations, were presented to the full committee. Additionally, multiple members of the full committee worked for faith-based organizations or otherwise had experience working on church and State issues.

The Department agrees with the commenters that the work of the negotiated rulemaking committee cannot overrule the Constitutional opinions of the U.S. Supreme Court, including cases like *Trinity Lutheran*. As a result, the Department has tailored

the final rule to be consistent with those opinions, as further described herein.

Changes: None.

Student Eligibility (§ 674.9); Student Eligibility (§ 675.9); Student Eligibility (§ 676.9); Eligibility of Borrowers for Interest Benefits on Stafford and Consolidation Loans (§ 682.301); Borrower Eligibility (§ 685.200); Determination of Eligibility for Payment (§ 690.75)

Comments: The Department received comments on its proposal to remove provisions in §§ 674.9, 675.9, 676.9, 682.301(a)(2), 685.200, and 690.75 that specify that a member of a religious order is considered to have no financial need if the religious order has as its primary objective the promotion of ideals and beliefs regarding a supreme being, requires its members to forgo monetary or other support substantially beyond the support it provides, and directs the member to pursue the course of study or provides subsistence support to its members.

Some commenters agreed with the proposed removal, indicating that the current language violates the Free Exercise and the Free Speech Clauses. Specifically, commenters noted that religious observance, including vows of poverty and obedience, are protected by the First Amendment of the United States Constitution and should not be cited as a reason for exclusion from Federal student aid programs.

Other commenters opposed the proposed removal, because they believe that without the current regulatory language, the Department would be subsidizing inherently religious activities, such as religious education and proselytizing, in violation of the Establishment Clause. One commenter further indicated that the procedural history of the regulations indicates that the rationale for the current regulations is not based on belief but on real-world considerations of financial status of individuals in religious orders who may receive financial subsidies even if they do not have an income.

Discussion: The Department thanks commenters who supported the proposed change. The Department disagrees that the proposed regulations would cause the Department to subsidize inherently religious activities. The Department would merely be providing financial aid for otherwise eligible students to attend postsecondary education regardless of their membership in a religious order and without considering that order's primary objective. Financial aid funds would go to individual students who have demonstrated financial need to

attend postsecondary education and would not fund religious activities. An independent decision by a student aid recipient to participate in inherently religious activities does not create a government subsidy of those activities.

The formulas for determining financial need in U.S. Code Part F consider subsidies received by students from any entity, including religious and non-religious entities. The current regulatory language that specifies that members of religious orders are presumed not to have need singles out such members for differential treatment and is likely not narrowly tailored to address a compelling interest. Such a provision also unnecessary for determining financial need as the formulas are themselves sufficient.

Changes: None.

Deferment of Repayment—Federal Perkins Loans Made Before July 1, 1993; Deferment of Repayment—NDSLs Made on or After October 1, 1993

Comments: Many commenters supported proposed changes to §§ 674.35 and 674.36 that would remove language that denies deferment of repayment of certain Federal loans for borrowers working as volunteers if their volunteer duties include giving religious instruction, conducting worship services, proselytizing, or fundraising to support religious activities. Many commenters agreed with the Department that in some cases the provision of secular services is inextricably intertwined with inherently religious activities and that deferment provisions in the current regulations may violate the Free Exercise and Free Speech Clauses and RFRA. These commenters noted that the Federal government will not violate the Establishment Clause if it permits volunteers engaged in religious activities to defer loan repayment based on religiously neutral criteria. The commenters cited *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), *Mitchell v. Helms* 530 U.S. 793 (2000), and other Supreme Court cases in support of their position.

Other commenters opposed the removal of these provisions, indicating that allowing a borrower to be eligible for subsidies if the borrower works on inherently religious activities would be directly subsidizing individuals engaged in religious activities in violation of the Establishment Clause.

Discussion: The Department thanks the commenters for their support. The Department agrees with the commenters who argued that the Establishment Clause would not be violated by the removal of these provisions. The Department believes that removal of

these provisions is necessary to avoid violations of individuals' rights to freely exercise their religions and their free speech rights. These provisions do not violate the Establishment Clause because the Supreme Court has long held that the government may furnish general benefits to all its citizens without regard to their religious belief or their membership in a particular religious organization or sect. *See Everson*, 330 U.S. at 16 (holding that the State "cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation."). In cases following *Everson*, the Court consistently affirmed that an important factor in upholding Government aid programs against an Establishment Clause attack is those programs' "neutrality towards religion." *Good News Club v. Milford Central School*, 533 U.S. 98, 114 (2001) (quoting *Rosenberger*, 515 U.S. at 839). The Constitution is "respected, not offended," when the Government employs neutral criteria and extends benefits to "recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Rosenberger*, 515 U.S. at 839 (emphasis added). In *Mitchell*, a plurality of justices endorsed the bright-line rule that neutral, generally available government aid does not violate the Establishment Clause. *See* 530 U.S. at 809–14.

Under the current regulations, a borrower may be eligible for deferment if working as a full-time volunteer for a tax-exempt organization providing services to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions for at least one year. However, the regulation disqualifies that same borrower from deferment if he or she, as part of his or her duties, gives religious instruction, conducts worship services, engages in religious proselytizing, or engages in fundraising to support religious activities. The regulations thus disfavor borrowers participating in otherwise-eligible public services merely because that public service is performed from a religious perspective. For some borrowers, these restrictions may also impose a substantial burden on their free exercise of religion by forcing them to choose between such religious exercise and eligibility for loan deferments. No compelling government

interest warrants the imposition of such burdens. Ultimately, the eligibility requirements in these final regulations maintain the government's stance of neutrality towards religion by not disfavoring a particular type of public service.

The Supreme Court has noted the distinction, for Establishment Clause purposes, between direct provision of government aid to a religious programs and indirect government aid that flows to religious programs based on private choice in its Establishment Clause cases. For example, in *Zelman v. Simmons-Harris*, the Supreme Court held that a school voucher program did not need to exclude religious recipients to comply with the Establishment Clause where funding would only reach such recipients following the private choice of the individual using the voucher. *See Zelman*, 536 U.S. 639, 653–60 (2002). Likewise, in this case, the borrower receiving the benefit of loan deferment under the regulation makes a private choice between different volunteer options in the community and therefore does not create an Establishment Clause problem by choosing to volunteer with a religious entity performing religious tasks. As a result of the intervening private choice of the borrower, “no imprimatur of state approval can be deemed to have been conferred on any particular religion, or on religion generally” by the borrower’s receipt of a deferment for volunteer work. *See Zelman*, 536 U.S. at 650 (internal citations, quotation marks omitted).¹⁰

Changes: None.

Eligible Employers and General Conditions and Limitation on Employment (§ 675.20)

Comments: The Department received comments on proposed changes to § 675.20 that would replace language in the FWSP regulations with language from § 443(b)(1)(C) of the HEA to clarify that work performed under the FWSP may “not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship.” Several commenters stated that the statutory language is problematic but is clearer than the current regulatory language.

One commenter indicated that both the statute and the regulation fail to define “sectarian instruction.” That commenter wondered whether the term

includes only inherently religious instruction or whether it also includes efforts to integrate religious convictions into other subjects.

Several commenters indicated that the statutory language includes unjustified discrimination against religion, religious individuals, and religious activities in violation of the Free Exercise and Free Speech Clauses as well as RFRA. One commenter noted that the Department has the authority and an independent duty to obey the Constitution and RFRA regardless of the statutory language in the HEA.

One commenter contended that the changes would allow FWSP students to serve in facilities dedicated solely to religious functions which would violate the separation of church and State.

Discussion: The Department agrees with commenters that it has an independent duty to obey the Constitution and RFRA. The Department does not believe the statute is clearly unconstitutional under current Supreme Court precedent. Even when the Government has established a secular, neutral aid program, it may retain an interest in defining the program to exclude certain religious uses. *See Religious Restrictions on Capital Financing for Historically Black Colleges and Universities*, 2019 WL 4565486 O.L.C. at 19. Under *Locke v. Davey*, the government—in this case, Congress—may lawfully decline to subsidize religious activity. *See Locke*, 540 at 720–21. It therefore does not appear that the FWSP restriction violates the Free Exercise Clause.

Nor does the Department believe that the restriction necessarily runs counter to RFRA. It is true that RFRA applies retrospectively and prospectively to “all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after” its effective date, 42 U.S.C. 2000bb–3(a), including the FWSP restriction here. On the one hand, because the restriction is religious in nature, it is possible that the restriction could substantially burden the exercise of religion by institutions of higher education and/or individual student participants. The restriction appears to be aimed at preventing the use of government funds to support religious activities. However, the restriction is neither required by the Establishment Clause in light of the need for intervening private choice by an institution of higher education and an individual student participant before program funds could be linked with religious activity, *see Zelman*, 536 U.S. 639, 653–60 (2002), nor is it a compelling government interest for purposes of RFRA, as any remaining

“policy preference for skating as far as possible from religious establishment concerns” cannot qualify as a compelling government interest, *see Trinity Lutheran*, 137 S. Ct. at 2024. Thus, under RFRA the Department cannot enforce the FWSP restriction against any person whose exercise of religion is substantially burdened by such application. As a result, the Department has added language to that effect in the regulation to make clear how RFRA applies. Of course, even in the absence of such additional clarifying language, the Department interprets all of its statutes and regulations through the lens of RFRA because none of its statutes contains an explicit exemption from RFRA. 42 U.S.C. 2000bb–3(b).

To the extent that the FWSP restriction does not substantially burden a person’s exercise of religion, however, it does not appear to violate the Constitution or RFRA.

In otherwise amending the regulation to conform to the statute, the Department intends to provide as much clarity and flexibility as possible within the confines of the HEA and to ensure adherence to the statute. Chapels and other religious structures are often part of larger multi-use facilities on college campuses. The Department wishes to clarify that FWSP students may construct, operate, or maintain portions of multiuse structures that are not dedicated solely to religious purposes.

The Department disagrees with commenters who claimed that, under the statutory language, FWSP students would be involved in the construction, operation, or maintenance of facilities dedicated solely to religious functions. The statutory language precludes such opportunity by specifying that work performed under the FWSP may “not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship.” Therefore, if a building is used solely for sectarian instruction or as a place for religious worship, FWSP employment may not include the construction, operation, or maintenance of that building. For large, multi-use structures, however, FWSP employment may include the construction, operation, or maintenance of that building.

While neither the statute nor the current regulations define the term “sectarian instruction,” the Department follows a similar definition to that set forth in a published opinion by the Department of Justice’s Office of Legal Counsel. *See Religious Restrictions on Capital Financing for Historically Black Colleges and Universities*, 2019 WL

¹⁰ *See also Am. Jewish Congress v. Corp. for Nat’l & Cmty. Serv.*, 399 F.3d 351 (D.C. Cir. 2005) (government agency placing teachers in religious schools did not violate Establishment Clause when some teachers chose to teach religion as well as secular subjects).

4565486 O.L.C. at 18. In its opinion, the Office of Legal Counsel defined the word “sectarian” in the phrase “sectarian activities” to mean “devotional activities.” *Id.* According to *Black’s Law Dictionary*, sectarian instruction would ordinarily be defined as instruction that “supports a particular religious group and its beliefs,” 1557 (10th ed. 2014), and *Webster’s Third* would define it as instruction that has “the characteristics of one or more sects of a religious character,” *Webster’s Third New International Dictionary* 2052 (2002). Thus, instruction that is predominately devotional and religious is “sectarian instruction.” Sectarian instruction would include instruction such as Christian or Jewish homilies or Islamic khutbahs. Instruction related to the provision of generally secular services does not constitute sectarian instruction, including various types of counseling or educational instruction that may include some sectarian or religious content but that is not predominately religious or devotional in nature. Individuals or organizations may integrate religious ideas or teachings into otherwise secular instruction without engaging in sectarian instruction.

The Department concludes that this reading of the restriction is independently justified in light of the canon of constitutional avoidance. *See, e.g., Clark v. Martinez*, 543 U.S. 371, 381–82 (2005). A broad reading of the restriction could potentially cover all buildings where instruction takes place at a religious institution, potentially converting the restriction from a use-based restriction into the kind of status based restriction expressly prohibited in *Trinity Lutheran*, 137 S. Ct. at 2023. In order to avoid this potential Free Exercise Clause problem, the Department construes the restriction narrowly to only cover instruction that is predominately devotional and religious.

In addition, the Department’s interpretation of “sectarian instruction” is independently supported by RFRA. A broad reading of the restriction could cover all buildings where instruction takes place at a religious institution, potentially forcing the institution to choose between participation in the FWSP and continuing in its religious exercise. This would place a substantial burden on such institutions’ exercise of religion without advancing any compelling government interest by the least restrictive means and would therefore run counter to RFRA. *See, e.g., Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1141 (10th Cir. 2013) (en

banc), *aff’d sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). A denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion if such denial or condition exerts significant pressure on an adherent to modify his or her religious observance or practice. *See* U.S. Att’y Gen. Memorandum on Federal Law Protections for Religious Liberty (Oct. 6, 2017); *Sherbert v. Verner*, 374 U.S. 398, 405–06 (1963); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707, 717–18 (1981). And for the reasons explained above, such a broad restriction would neither be required by the Establishment Clause, nor justified by a compelling governmental interest. A narrower reading of “sectarian instruction” avoids these problems and, thus, would appear to be more consistent with congressional intent to impose this restriction without exempting it from RFRA.

Changes: The Department amends the proposed regulation to specify the narrow definition of sectarian instruction and to include the exception for situations involving a substantial burden on a person’s exercise of religion under RFRA.

Deferment (§ 682.210)

Comments: In response to a directed question in the NPRM, the Department received several comments stating that in order to provide consistent treatment of deferments across loan programs, we should remove § 682.210(m)(1)(iv), which states that certain FFEL loans cannot be deferred for volunteer work unless the borrower “does not as part of his or her duties give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities.” Commenters indicated that it would be unfair and inconsistent to treat eligibility for loan deferment under the FFEL program differently than under the Perkins and NDSL programs.

Discussion: The Department agrees with commenters that there should be consistent treatment of loan deferments across loan programs.

Changes: The Department has removed § 682.210(m)(1)(iv).

Public Service Loan Forgiveness Program (§ 685.219)

Comments: The Department received many comments on the proposed changes to § 685.219 relating to the PSLF program. In particular,

commenters were concerned about proposed § 685.219(c)(4), which would provide that time spent participating in religious instruction, worship services, or any form of proselytizing while employed by a non-profit organization under section 501(c)(3) of the Internal Revenue Code would not be included toward meeting the full-time requirement.

Many commenters asserted that both the original regulatory language and the proposed change violate RFRA, because the regulations force borrowers to choose between exercising their religion and obtaining a meaningful government benefit. Also, commenters stated that the proposed regulations would unlawfully continue to exclude those who are participating in religious exercise and speech from qualifying for the generally available benefit of loan forgiveness. Commenters believed that, under the proposed rules, borrowers could be compelled to work for secular organizations over religious organizations in order to obtain loan forgiveness. From a practical perspective, commenters noted that religious activities may be intertwined with secular work, making it difficult to clearly separate out the hours and creating uncertainty and confusion on the part of the applicants and employing organizations. These commenters indicated that religious activities should not be excluded in the calculation of work hours for PSLF.

Some commenters stated that the Establishment Clause does not require borrowers eligible for loan forgiveness to exclude religious activities from their full-time work hours. Commenters also contended that the proposed provision would raise a significant threat of entanglement under the Establishment Clause when the government tries to evaluate whether a religious organization’s employees are properly defining work that touches on religious education or worship.

Further, commenters asserted that because the proposed language is not the least restrictive means of advancing any government interest, the language also violates RFRA.

One commenter also raised concerns that the terms “religious instruction,” “worship services,” and “proselytizing” are not defined and are not workable. For example, the commenter argued that worship cannot be separated from the teaching of moral values, and that it is not clear whether proselytizing includes secular viewpoints. The commenter stated that use of these terms has the effect of excluding people engaged in religious speech. The commenter argued

that it would be more appropriate to treat all applicants for PSLF equally.

Other commenters expressed concern that it would violate the Establishment Clause if borrowers received loan forgiveness to work on inherently religious activities. One commenter argued that the Department's justification for this proposal misinterprets the decision in *Trinity Lutheran* and that RFRA does not apply to this situation in which the Government is not preventing the borrower from performing the desired religious activities and does not deny benefits to religious persons engaging in qualified work. These commenters urged the Department to maintain the proposed language as published in the NPRM.

Commenters stated that using RFRA to create a religious exemption for PSLF work requirements is at odds with the tailored approach required by RFRA, and that RFRA does not give the Department authority to adjudicate claims it anticipates might happen and create blanket exemptions. Instead, RFRA requires a "careful, individualized, and searching review."

Many commenters encouraged the Department to adopt the proposed language or to maintain the current regulatory language.

Discussion: The Department is persuaded that the proposed regulations requiring borrowers to exclude work spent on religious activities from full-time work is not required by the Establishment Clause and may pose unnecessary burdens. The Establishment Clause does not require that borrowers work solely for secular organizations to obtain loan forgiveness.¹¹

The Department also recognizes that there are practical difficulties associated with separating religious work from public service work, as the two may not always be cleanly divided. There would be burdens on both the borrowers in attempting to record the different time spent on religious activities and on the Department in overseeing such a restriction. Moreover, concerns about potentially overbroad interpretations of the religious activities that could not count toward full-time work could dissuade borrowers from working for religious organizations or pressure them to forgo the economic benefits that flow from loan forgiveness. And to the extent that the proposed language was interpreted broadly to disqualify from

loan forgiveness individuals who hold particular views about the religious nature of their public service—for example, those who view their service as a form of proselytization even if it contains no explicit call to conversion—would raise Free Exercise or RFRA concerns. As a result, the Department has not included proposed § 685.219(c)(4) in the final regulations. The final regulations will set religious individuals and entities on equal footing with their secular counterparts by allowing such individuals and entities to qualify for the same aid already available to nonreligious individuals and entities.

The Department does not agree with commenters who argued that RFRA is not implicated by the Department's current rules excluding religious individuals and entities from participation in generally available benefit programs. Nor does the Department agree with commenters who argued that the Department is using RFRA to create overly broad, blanket exceptions. The rule is designed to both correct existing RFRA violations under the current regulations and to prevent future violations. Congress has tasked the Department with the duty to ensure that the Department's regulations do not substantially burden a person's exercise of religion (absent a compelling government interest and a showing that the burden is the least restrictive means of furthering that interest). 42 U.S.C. 2000bb, *et seq.* This mandate, as previously discussed, applies to "all Federal law, and the implementation of that law, whether statutory or otherwise." 42 U.S.C. 2000bb-3(a). Thus, the Department's establishment of this regulation clearly falls under the mandate of RFRA.

Because the current regulations discriminate against religious groups and deny individuals the ability to participate in important government programs on the basis of their religious status, the current regulations likely amount to a substantial burden on those entities' exercise of religion.

RFRA defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. 2000bb-2(4) (citing 42 U.S.C. 2000cc-5). The current rules impose a "penalty" on these individuals' free exercise of religion, *Trinity Lutheran*, 137 S. Ct. at 2021—which they engage in by becoming members of religious orders, attending religious institutions, participating in or working at religious organizations, among other ways—by requiring them to "choose between their religious beliefs and receiving a government

benefit." *Id.* at 2023 (quoting *Locke*, 540 U.S. at 720-21); *see Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (finding a substantial burden where it was "apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion," forcing her "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand"); *see also* 42 U.S.C. 2000bb(b)(1) ("The purposes of this chapter are—(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened").

And the Department's status-based restrictions are neither necessary to further a compelling government interest, nor are they the least restrictive means of furthering any such interest. Therefore, RFRA would require the Department to alleviate any such substantial burden.

Some commenters believe that the Department's changes to eligibility requirements for certain aid would have the effect of advancing religion. The Department's aid will not advance religion, nor do the Department's changes require aid to be used for religious purposes. Rather, the Department's aid will advance public service generally, by eliminating a condition on eligibility for loan forgiveness that might have deterred individuals from performing such volunteer work, and it will accommodate the religious exercise of those who seek to perform volunteer work for a religious organization. Importantly, the Department's final regulations correct rules that singled out individuals employed by organizations that are engaged in religious activities for disfavored treatment.

Additionally, the Supreme Court has repudiated the suggestion, advanced by some commenters, that the Establishment Clause bars government aid from flowing from religiously neutral government programs to religious institutions. *See, e.g., Mitchell v. Helms*, 530 U.S. 793, 835 (plurality opinion) (overruling *Wolman v. Walter*, 433 U.S. 229 (1977) and *Meek v. Pittenger*, 421 U.S. 349 (1975)); *id.* at 837 (O'Connor, J., concurring in the judgment) (same); *Agostini v. Felton*, 521 U.S. 203, 235 (overruling *Aguilar v. Felton*, 473 U.S. 402 (1985) and *School District of the City of Grand Rapids v. Ball*, 473 U.S. 373 (1985)).

¹¹ *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002); *Mitchell v. Helms*, 530 U.S. 793, 829 (2000); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 839 (1995); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 17 (1947).

In addition, under the principle set forth in *Zelman*, a benefit program like PSLF need not exclude religious recipients to comply with the Establishment Clause where funding would only reach such recipients following the private choice of the individual using the benefit. See *Zelman*, 536 U.S. 639, 653–60 (2002). Likewise, in this case, the borrower receiving the benefit of PSLF under the regulation makes a private choice between different volunteer options in the community and does not create an Establishment Clause problem by choosing to volunteer with a religious entity that performs religious tasks. As a result of the intervening private choice of the borrower, “no imprimatur of state approval can be deemed to have been conferred on any particular religion, or on religion generally.” *Zelman*, 536 U.S. at 650 (internal citations, quotation marks omitted).

Although the current regulations do not raise an Establishment Clause problem, they do raise a Free Exercise Clause concern. In *Trinity Lutheran*, the Court reiterated that the Free Exercise Clause applies to government benefits and funding. The Court in that case rejected the State’s interest in “skating as far as possible from religious establishment concerns” as a basis for categorically excluding a religious organization from a generally available funding program. *Id.* at 2021. The Court applied “the most exacting scrutiny” to the government program, finding that it “expressly discriminate[d]” against an entity that would be otherwise eligible for the government grant but for that entity’s religious character. *Id.*

A materially similar fact pattern exists in the current regulations: But for the religious character of the public service organization that a borrower works for and the types of religious activities the organization performs, the borrower would have qualified for loan forgiveness under title IV. The benefit available under § 685.219 is generally available, except to borrowers who work for non-profit organizations that are engaged in religious activities. Such an exclusion is based on the religious status of an organization and, therefore, is unconstitutional. Some commenters argue that the Department errs in relying on *Trinity Lutheran*. They contend that, according to footnote 3 in the decision, *Trinity Lutheran* applies only to the narrow factual circumstance of a church-run school seeking to compete for a playground resurfacing grant.

As discussed above in the Department’s response to general comments on Faith-Based Entities, footnote 3 does not undermine the force

of the reasoning in *Trinity Lutheran* and was only joined by four Justices. *Trinity Lutheran*, 137 S. Ct. at 2016.

Changes: The Department has removed proposed § 685.219(c)(4), which would have prohibited PSLF applicants from counting hours spent on religious instruction, worship, proselytizing, and fund raising towards the full-time work requirement of the PSLF program.

How does a State administer its community service-learning job program? (§ 692.30)

Comments: Several commenters indicated that they have the same concerns about the proposed changes to § 692.30 relating to the LEAP program that they raised with respect to § 675.20 relating to the FWSP.

Discussion: See the discussion on § 675.20 above.

Changes: None.

Who may provide GEAR UP services to students attending private schools? (§ 694.6)

Comments: All commenters who opined on § 694.6 supported the Department’s proposal with respect to the treatment of private schools in the GEAR UP program. Commenters indicated that the proposal provides additional clarification and retains important protections and guidelines for serving GEAR UP students in private schools. Commenters noted that the proposal retains the requirement that government funded services be “secular, neutral, and nonideological” and thus maintains boundaries required by the Establishment Clause.

Discussion: The Department thanks commenters for their support.

Changes: None.

What are the requirements that a Partnership must meet in designating a fiscal agent for its project under this program? (§ 694.10)

Comments: Many commenters supported the proposed changes to § 694.10 to remove language prohibiting pervasively sectarian organizations from serving as fiscal agents in GEAR UP grants. Some noted that it is inappropriate for the government to make determinations as to whether an institution is pervasively sectarian. Others noted that the term “pervasively sectarian” is outdated and reflects an anti-religious bias. Commenters also noted that the proposed regulations reflect current case law regarding the Establishment Clause and the Free Exercise Clause. Others indicated that they support the proposed change in combination with the retention of the

requirement that benefits provided to GEAR UP students must be “secular, neutral, and nonideological.”

Discussion: The Department thanks commenters for their support.

Changes: None.

Teach Grant Program

General Comments

Comments: In general, commenters supported the proposed regulations. Commenters believed that, by simplifying the requirements, the proposed regulations would reduce the number of TEACH Grants inadvertently converted to Direct Unsubsidized Loans. They also felt that changes would be helpful for TEACH Grant recipients, including expanding and strengthening counseling and notification provisions, providing additional conditions under which the period for completing the teaching service obligation may be temporarily suspended, providing a reconsideration process for TEACH Grants inadvertently converted to loans, and expanding options for satisfying the teaching service obligation.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Some commenters expressed concerns about servicer and institutional accountability regarding the administration of the TEACH Grant program and recommended that the Department impose liabilities and escalating consequences on servicers and institutions that fail to properly carry out their responsibilities.

Discussion: We appreciate the commenters’ concerns. However, these concerns are outside the scope of this regulatory effort. The Department holds servicers accountable through contractual agreements and can impose escalating consequences and even terminate a contract of a servicer that has failed to properly carry out its responsibilities. Institutions can only disburse TEACH Grants if they maintain institutional eligibility to disburse Federal student aid. One requirement for institutional eligibility is that an institution must satisfy standards of administrative capability. Failure to do so can result in termination of the institution’s eligibility. In addition, we note that the Department’s Federal Student Aid (FSA) office maintains a Feedback System, which includes a formal process for borrowers to report issues or file complaints about their loan experiences, including problems with servicing. Borrowers may also elevate complaints to the FSA Ombudsman Group—a neutral and confidential resource available to

borrowers to resolve disputes related to their loans.

Changes: None.

Definitions (§ 686.2)

Highly Qualified

Comments: A couple of commenters expressed concern that a reference to section 602(10) of the Individuals with Disabilities Education Act (IDEA) was removed from the definition of “highly qualified.” The commenters stated that this section should continue to be referenced in the “highly qualified” definition.

Discussion: We agree with the commenters. The reference to section 602(10) of the IDEA was inadvertently removed.

Changes: We have restored the reference to section 602(10) of the IDEA.

Comments: A couple of commenters stated their belief that it was inappropriate for the TEACH Grant Program regulations to use language from the teacher loan forgiveness provisions in sections 428J(g)(3) and 460(g)(3) of the HEA to describe how private school teachers who are exempt from State certification requirements can meet the highly qualified teacher standards. The commenters noted that the TEACH Grant program is designed to incentivize highly qualified educators, who receive hundreds of hours of professionally supervised pre-service field experiences and undergo a comprehensive, standards-based curriculum to teach in the most underserved schools in the most undersupplied subject areas.

Discussion: We disagree with the commenters. As we explained in the NPRM, teaching in an eligible non-profit private school can be qualifying service for purposes of satisfying the TEACH Grant service obligation, but the definition of “highly qualified” in the Elementary and Secondary Education Act (ESEA) does not address private school teachers. Therefore, we are expanding the definition of “highly qualified” to include the language from sections 428J(g)(3) and 460(g)(3) of the HEA that describes how private school teachers who are exempt from State certification requirements can meet the highly-qualified teacher standards for teacher loan forgiveness purposes. We believe it is appropriate to incorporate this language, since student loan borrowers seeking teacher loan forgiveness must meet the same highly qualified teacher standards that apply to TEACH Grant recipients.

Changes: None.

Agreement To Serve or Repay (§ 686.12)

Comments: A couple of commenters expressed concern with § 686.12 based on their belief that a TEACH Grant recipient who completes a TEACH Grant-eligible educator preparation program in the middle of the academic year will lose a full calendar year of the eight-year period for satisfying the service obligation because of the requirement that a teacher teach full-time for a full school year.

Discussion: Under these conditions, a grant recipient who starts teaching mid-year would not lose a full calendar year of the eight-year period for completing the service obligation. The HEA requires that a grant recipient serve as a full-time teacher for a total of not less than four academic years within eight years after completing the course of study for which the TEACH grant was received. The current regulations, in part, define “academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year)” to be one complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period. To clarify this in the regulations, in the NPRM we proposed to replace the reference to “eight calendar years” with “eight years”.

Changes: None.

Comments: A couple of commenters felt that the grace period for seeking qualifying employment should be extended to the earlier of—(1) one year from the date a recipient is no longer enrolled in a qualifying TEACH Grant program, or (2) the date the recipient begins qualifying employment in a TEACH-eligible school and subject area.

Discussion: The regulations do not require a TEACH Grant recipient to begin qualifying teaching service within a certain timeframe after the recipient has ceased to be enrolled in the program of study for which he or she received a TEACH Grant. Rather, a grant recipient must begin and maintain qualifying teaching within a timeframe that will allow the recipient to complete the four-year service obligation within the eight-year service obligation period.

Changes: None.

Counseling Requirements (§ 686.32)

Comments: A couple of commenters disagreed with the policy reflected in the proposed regulations that prohibited the reversal of the conversion of a TEACH Grant to a loan if the grant recipient had requested the conversion. The commenters believed that the circumstances that led a grant recipient

to request a conversion could later change such that the grant recipient may now want to teach and satisfy the service obligation. In such cases, the commenters felt that the grant recipient should be able to have the conversion reversed so that the recipient could teach and help address the nation’s teacher shortages.

Discussion: We agree that a grant recipient who previously requested conversion should be able to have the conversion reversed, so that the recipient could perform qualifying teaching to satisfy the TEACH Grant service obligation. This cannot be an open-ended opportunity, however. The grant recipient must still be able to fulfill the service obligation within eight years from when the recipient ceased enrollment at the institution where the recipient received the TEACH grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution. The eight-year period for completing the required four years of teaching does not include periods of suspension, which the recipient could apply for retroactively, if applicable. However, the eight-year period will include the period when the grant was in loan status. If a grant recipient requests reversal of a prior voluntary conversion at a point when the recipient would no longer have enough time to complete the service obligation during the eight-year period unless he or she qualifies for a retroactive suspension, an application for suspension will need to be submitted and approved prior to reconversion. This option should be explained to the recipient during initial, subsequent, exit, and conversion counseling.

Changes: We have added new § 686.43(a)(8) to provide that, in the case of a grant recipient whose TEACH Grant was converted to a loan in accordance with § 686.43(a)(1)(i), the Secretary will reconvert the loan to a TEACH Grant if requested by the grant recipient, and restore the recipient’s TEACH Grant service obligation, if there is sufficient time remaining for the grant recipient to complete the required four academic years of qualifying teaching service within eight years from the date the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years of ceasing enrollment

at the other institution. New § 686.43(a)(8) further states that the eight-year period for completing the required four years of teaching does not include periods of suspension for which the recipient qualifies under § 686.41. It also provides that a period of suspension for which the recipient applies and is determined to be eligible may be applied retroactively. If the recipient would not have sufficient time remaining to complete the service obligation within the eight-year period the Secretary will not reconvert the recipient's loan to a TEACH Grant unless the recipient first requests and is determined to be eligible for a retroactive suspension.

We have removed the language in the proposed regulations addressing the initial, subsequent, and exit counseling requirements which state that the conversion of a TEACH Grant to a loan cannot be reversed if the grant recipient requested the conversion, and have revised the regulations governing the initial, subsequent, and exit counseling requirements in § 686.32(a), (b), and (c), respectively, and the new conversion counseling requirements in § 686.32(e) by adding for each type of counseling a requirement that the counseling explain the terms and conditions under which a grant recipient who voluntarily requested conversion of a TEACH Grant to a loan under § 686.43(a)(1)(i) may subsequently request and be approved for a reversal of the conversion, as described above. We have also added new paragraph § 686.12(b)(7) to provide that the contents of the agreement to serve or repay must include this same information.

We believe that the expanded counseling reflected in these regulations will help reduce the number of grants that are converted to loans. We note, however, that, consistent with the rules relating to the Direct Loan Program, a recipient's failure to receive or read the counseling materials is not a basis for reconverting the loan to a grant.

The proposed regulations describing the initial, subsequent, exit, and conversion counseling included language stating that the counseling must explain that a TEACH Grant that has been converted to a Direct Unsubsidized Loan may be reconverted to a grant if the Secretary determines that the grant was converted to a loan in error. For consistency with redesignated § 686.43(a)(5), we have revised this language to state that a grant that was converted to a loan may also be reconverted to a grant based on documentation showing that the recipient was satisfying the service

obligation within the required time frame.

We have deleted § 686.43(d), which stated that a TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant, consistent with the other changes to this section.

Comments: A couple of commenters recommended that all types of TEACH Grant counseling should provide grant recipients with information about the options of income-driven repayment plans and public service loan forgiveness for those whose TEACH Grants are converted to loans.

Discussion: In the NPRM, we proposed to provide information about income-driven repayment plans and public service loan forgiveness in the new conversion counseling for recipients whose grants are converted to loans. We do not believe it is necessary to include this information in initial, subsequent, or exit counseling, since the information is relevant only to recipients whose grants are being converted to loans.

Changes: None.

Documenting the Service Obligation (§ 686.40)

Comments: A couple of commenters expressed concern about removing the requirement for grant recipients to confirm their status within 120 days of ceasing enrollment in a program for which they received a TEACH Grant. The commenters felt that by removing the requirement for initial certification, grant recipients would lose track of the requirement to certify their progress toward satisfying the service obligation in subsequent years, despite seeking to obtain, or even working, in qualifying employment. Other commenters supported the proposed changes that were intended to simplify the procedures for grant recipients to certify that they are meeting the required service obligation, and the provisions for the Secretary to provide periodic notifications to grant recipients reminding them of their service obligation requirements.

Discussion: We continue to believe that the current 120-day certification requirement should be removed because it adds unnecessary complexity to the requirements for documenting the service obligation. That complexity may, in some cases, have resulted in grant recipients who were otherwise meeting the service obligation requirements having their grants converted to loans. Under § 686.42(a)(2), at least annually during the service obligation period the Secretary will provide the grant recipient with

information that includes the number of years of qualifying teaching that the recipient has completed and the remaining timeframe within which the grant recipient must complete the service obligation. We believe that these notifications will provide the information the grant recipient needs to stay on track to fulfill the service obligation.

Changes: None.

Periods of Suspension (§ 686.41)

Comments: A couple of commenters noted that there may be life circumstances that reasonably prohibit grant recipients from securing employment in eligible schools.

Discussion: While we appreciate the commenters' concern, it would be difficult for the Department to determine all the life circumstances that might reasonably prohibit grant recipients from securing employment in eligible schools, and any such determination could be considered arbitrary. We note that, under new § 686.41(d), the Secretary may provide temporary suspensions of the period for completing the service obligation on a case-by-case basis if the Secretary determines that a grant recipient was unable to complete a full academic year of teaching or begin the next academic year of teaching due to exceptional circumstances significantly affecting the operation of the school or educational service agency where the grant recipient was employed or the grant recipient's ability to teach.

Changes: None.

Obligation To Repay the Grant (§ 686.43)

Comments: None.

Discussion: After further review of the NPRM, the Department recognizes that there was substantial overlap between proposed § 686.43(a)(5) and § 686.43(a)(6) and that the latter section was not clear. Specifically, paragraph (a)(6) provided for reconversion of a grant that had been "involuntarily" converted (that is, a grant that had been converted for a reason other than a voluntary request for conversion from the grant recipient, which would include the circumstances described in paragraph (a)(5)), and it also provided for reconversion of a grant that had been "improperly" converted to a loan (that is, a grant that had been converted in error), based on documentation provided by the recipient or in the Department's records demonstrating that the recipient was satisfying the service obligation, or that the grant had been converted to a loan in error. The

Department has revised these sections to clarify the requirements.

Changes: The Department has removed proposed § 686.43(a)(5), redesignated paragraph (a)(6) as (a)(5), revised redesignated paragraph (a)(5) for greater clarity, and renumbered the remaining paragraphs in § 686.43(a).

Comments: Some commenters felt that, to strengthen the effectiveness of provisions regarding incorrect grant-to-loan conversions, the Department should automatically provide any recipient with a written “statement of error” when a grant that was incorrectly converted is reconverted to a TEACH Grant. Under the proposed regulations, this statement of error would have been provided at the recipient’s request.

Discussion: We agree with the commenters. Automatically providing the grant recipient with a written statement confirming that the TEACH Grant had been converted to a loan in error when the loan is reconverted to a TEACH grant would ensure that the grant recipient has documentation that the Department determined that the conversion was incorrect without further inconveniencing the affected individual.

Changes: Proposed § 686.43(a)(7)(iv), which stated that a statement of error would be provided to a grant recipient at the recipient’s request, has been redesignated as § 686.43(a)(6)(vi) and revised to provide that the Secretary will automatically send a statement of error to the recipient when a TEACH Grant that was converted to a loan in error is reconverted to a TEACH Grant.

Comments: Some commenters believed that there should be a formalized process for a TEACH Grant recipient to request reconsideration of other adverse actions that impact the recipient’s ability to complete the service obligation, stating that grant recipients should have the opportunity to request reconsideration by the Secretary of any adverse action taken against them by the Secretary in connection with the servicing of their grant. Such adverse actions would include, but would not be limited to, the rejection of a certification of teaching service, a determination that the recipient’s employment does not meet the service obligation requirements, or a denial of a request for suspension or discharge. The commenters recommended that if the Secretary determines that the adverse action was taken in error, the Secretary should reverse the adverse action and take all other actions necessary to correct the adverse action. The commenters believed that implementing this type of process would likely result in fewer

erroneous grant-to-loan conversions resulting from wrongfully rejected certifications or other types of erroneous actions.

Discussion: We are not aware of widespread problems involving “wrongful” rejections of certifications or other erroneous actions such as those cited by the commenters. The Department rejects a certification form or a suspension/discharge request if information needed to confirm the qualifying service or approve the suspension/discharge is missing, or if the information provided on the certification or the suspension/discharge request does not confirm qualifying service or establish eligibility for the suspension/discharge (e.g., if the dates of teaching are missing or incomplete, or if the school listed on the certification form is not listed in the Teacher Cancellation Low Income Directory). These situations are generally resolved by the recipient providing the missing or additional information. If information is missing, a letter is sent to the recipient explaining what information the recipient needs to submit so the certification or request can be processed. If the information provided does not confirm that the individual has performed qualifying service or does not support the recipient’s eligibility for suspension/discharge, the recipient receives a letter explaining the reason for the rejection and has an opportunity to provide information documenting the qualifying service or suspension/discharge eligibility. In addition, if recipients continue to disagree with the decision, they may contact the Department’s Federal Student Aid Ombudsman’s office to try to resolve the issue. Thus, we do not believe it is necessary to establish a formalized process for grant recipients to request reconsideration of actions such as rejections of certification forms or denials of suspension or discharge requests. Processes are already in place for recipients to be notified of any problems with a certification form or suspension/discharge request, and to provide an opportunity for the recipient to submit corrected or missing information. We further note that the simplified requirements for documenting the service obligation in these final regulations should significantly reduce the number of grant-to-loan conversions.

Changes: None.

Directed Questions

Comments: In response to the directed questions that were included in the NPRM, a commenter supported the suggestion that a student’s service

obligation period be extended by the number of years their TEACH grants were incorrectly in loan status, regardless of whether the student completed one or more years of qualifying service during the period during which the grant was treated as a loan as described in the first directed question, or did not complete any qualifying service during the erroneous conversion period as described in the second directed question. The commenter felt that, in either scenario, the TEACH recipient may have left qualifying service at some point after the grant-to-loan conversion. The commenter further stated that re-entering qualifying service is not a simple undertaking, noting that grant recipients may have relocated to an area without qualifying service positions or made other life choices that would hinder their ability to immediately re-enter a qualifying position. The commenter felt that extending the timeframe for completing the service obligation would give these individuals sufficient time to find qualifying positions to establish their eligibility for TEACH grants with minimal disruption to their lives and would mitigate the harm they have already suffered from the erroneous grant-to-loan conversion.

Discussion: We agree with the commenter that the eight-year service obligation period should not include the period of time that the TEACH Grant was incorrectly in loan status, and that individuals whose grants were converted to loans in error may have stopped teaching because they believed that they would no longer receive credit for their service or for other reasons, and that after the erroneous conversion has been corrected it may take a significant period of time for these recipients to find qualifying teaching positions. However, because it provides more time for a recipient to find qualifying employment and to complete the teaching service obligation, we believe it would be more appropriate to adopt the alternative approach described in the directed question scenarios. That is, after the correction of the erroneous conversion we would provide the grant recipient with an additional period of time, equal to eight years minus the number of full academic years of qualifying teaching that the recipient had completed prior to the reconversion of the recipient’s loan to a TEACH Grant (including any years of qualifying teaching that the recipient completed during the period when the grant was incorrectly in loan status), to complete the remaining portion of the service

obligation. This approach is illustrated by Example 1 below.

Example 1

- A grant recipient completes the program for which he or she received a TEACH Grant and enters the service obligation period.
- The recipient receives no suspensions and does not begin qualifying teaching until the start of the fifth year of the eight-year service obligation period.
- The recipient completes two academic years of qualifying teaching during the fifth and sixth years of the eight-year service obligation period. At the beginning of the seventh year of the service obligation period, the recipient's TEACH Grant is converted to a loan in error and remains incorrectly in loan status for three years.
- During the period when the grant is incorrectly in loan status, the recipient completes one additional academic year of qualifying teaching service.
- After the erroneous conversion is reversed and the recipient's loan is reconverted to a TEACH Grant, the three years of completed service (including the year of teaching completed while the grant was incorrectly in loan status) is subtracted from eight years, giving the recipient an additional five years following the correction of the erroneous conversion to complete the remaining one year of teaching required under the service obligation.

In contrast to the approach described in the directed question and illustrated by the above example, under the proposed regulations the grant recipient in Example 1 would have had only two years following the correction of the erroneous conversion to complete the remaining one year of the service obligation.

Changes: We have redesignated proposed § 686.43(a)(7) as § 686.43(a)(6), and now address this issue in § 686.43(a)(6)(ii) and (iii), which provide that after the Secretary reconverts an incorrectly converted loan to a TEACH Grant, the Secretary (1) applies any full academic years of qualifying teaching that the recipient completed during the period when the grant was incorrectly in loan status toward the grant recipient's four-year service obligation requirement, and (2) provides the recipient with an additional period of time to complete the remaining portion of the service obligation equal to eight years, minus the number of full academic years of qualifying teaching that the recipient completed prior to the correction of the erroneous conversion.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by 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.

Under Executive Order 12866, section 3(f)(1), the changes proposed in this regulatory action would materially alter the rights and obligations of recipients of Federal financial assistance under title IV of the HEA. Therefore, OMB has determined that this is a significant regulatory action subject to review by OMB.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The final regulations are a significant regulatory action under Executive Order 12866. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries. Because the portion of the regulatory changes relating to the TEACH Grant Program and PSLF are a transfer rule and the remaining proposed regulatory changes impose minimal estimated costs of approximately \$1.27 million in

annualized net PRA costs at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon, the requirement to offset new regulations in Executive Order 13771 does not apply to this final regulation. Accordingly, the Department is not required to identify deregulatory actions under Executive Order 13771.

We have also reviewed these final 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 on 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. 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 does not unduly interfere with State, local, or 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, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Regulatory Action

In 2007, Congress established the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program to increase the number of teachers in high-need fields in low-income schools. In exchange for receiving a TEACH Grant, recipients agree to teach in a high-need field¹² such as reading, mathematics, or science, at a low-income school for at least four years in an eight-year period and annually certify that they intend to meet this requirement. If a recipient does not meet the grant requirements or the annual certification requirements, the grant converts to a Federal Direct Unsubsidized Loan with interest charged from the date of each TEACH Grant disbursement.

A 2015 Government Accountability Office (GAO) report found that around 36,000 out of more than 112,000 TEACH Grant recipients had not fulfilled TEACH Grant requirements and had their grants converted to loans (GAO, 2015).¹³ GAO concluded that the Department needs to explore ways to increase awareness among students of how the TEACH Grant program operates and improve program management, especially with respect to the grant-to-loan conversion dispute process. GAO further noted that the Department should take steps to understand why teachers often do not meet the TEACH program requirements. GAO reiterated that the goal of reducing grant-to-loan conversions and increasing program completion should help drive the Department's efforts. GAO cited inconsistent and confusing external guidance regarding grant to loan conversions and the dispute process available to recipients as a failure of "Federal internal control standards that highlight effective external communication." The revised

regulations help to address GAO's concerns by improving the administration of the program and providing clearer information to recipients earlier in their service to prevent future problems, and more thoroughly explaining the dispute process if issues do arise.

A 2018 study conducted for the Department by the American Institutes for Research (U.S. Department of Education, 2018)¹⁴ found that as of June 2016, 63 percent of TEACH Grant recipients who started their eight-year service obligation period before July 2014 had their grants converted to Unsubsidized Loans because they did not meet the service obligation requirements or the annual certification requirements. For instance, the study reported that 39 percent of recipients who were in loan status cited teaching in a position that did not qualify for TEACH Grant service and 33 percent cited not working as a certified teacher. Thirty-two percent said they did not understand the service requirements. Other factors related to teachers having grants converted to loans included not knowing about annual certification (19 percent), challenges related to the certification process (13 percent), forgetting about annual certification (9 percent) and other factors made up 24 percent, such as recipients who were never certain of their intention to teach or who changed their employment to a nonteaching position prior to meeting their service obligation.

To address the concerns raised by these studies, we are changing the regulations to facilitate the process of documenting satisfaction of the service obligation requirements and ensure that recipients who fulfill their service obligation receive credit for it. Additionally, these regulations create a process to remediate conversions caused by life events (including on a case-by-case basis as determined by the Secretary) or administrative error to facilitate the completion of service obligation requirements for those who seek to do so. This will help reduce the percentage of TEACH Grants that erroneously convert to Direct Unsubsidized Loans and fulfill the TEACH Grant Program's intended outcomes.

The regulations also ensure that faith-based entities, students who are members of religious orders, and borrowers fulfilling service obligations are not further burdened by their

religious beliefs, and instead have equal access to broadly available programs and government funding. In response to the Supreme Court's decision in *Trinity Lutheran* and Executive Order 13798 (U.S. Attorney General Memorandum on Federal Law Protections for Religious Liberty (October 6, 2017)), the Department engaged in a full review of its regulations related to title IV, HEA programs in order to identify provisions that may discriminate against otherwise eligible students and faith-based entities by disqualifying them from title IV, HEA programs due to their religious beliefs in violation of the Free Exercise Clause of the First Amendment to the United States Constitution (Free Exercise Clause). The Department proposes to make changes to regulatory provisions that may discriminate against students or faith-based entities as a result of their religious beliefs to ensure compliance with the Free Exercise Clause.

Discussion of Costs, Benefits and Transfers

The Department has analyzed the costs and benefits of complying with these final regulations and our estimates are a function of the uncertainty and limitations of relevant data. As discussed below, we believe that these final regulations will result in modest transfers from the Federal government and will benefit recipients of support under the affected programs.

Benefits of the Final Regulations

With respect to the TEACH Grant Program, we anticipate that by simplifying and clarifying certification procedures and providing greater flexibility to recipients to meet their service obligation, the final regulations will result in a decrease in the number of TEACH Grant recipients that have their grants converted to loans. We further anticipate that this outcome and the expansion of opportunities that students can use to fulfill the service obligation will result in more teachers teaching in high-need fields at low-income schools as well as in authorized teacher shortage areas.

The final regulations related to other programs will also reduce the potential for discrimination against students and faith-based institutions due to their religious beliefs in violation of the Free Exercise Clause.

Net Budget Impacts

Regarding changes to the TEACH Grant Program, the changes improve the reporting and documentation process for grant recipients and could lead to a reduction in the number of grant-to-loan conversions. According to Department

¹² Section 420N(b)(1)(C) of the HEA describes high-need fields as mathematics, science, foreign languages, bilingual education, special education, reading specialist, or another field documented as high-need by the Federal Government, State government, or LEA, and approved by the Secretary.

¹³ Government Accountability Office. (2015). Higher Education: Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes (GAO 15-314). Washington, DC: United States Government Accountability Office.

¹⁴ U.S. Department of Education. (2018). Study of the Teacher Education Assistance for College and Higher Education (TEACH) Program. Respondents could select more than one option.

data, the percentage of TEACH Grant recipients demonstrating effort to fulfill their service requirement by performing one or more years of qualified teaching service after six or more years following their last TEACH award has been increasing steadily. The improvements to the process for recipients to document their teaching service included in these final regulations will help prevent or resolve unintended grant to loan conversions.

For FY 2020, The Department estimates that approximately 32,000 recipients will receive \$92 million in TEACH Grants with an average award of slightly over \$3,000. Over the past five years from fiscal year 2014 through fiscal year 2019, the Department has provided a total of \$524.6 million in TEACH grant funding to 190,686 students. Based on program data through FY 2019, the Department estimates that 64 percent of students receiving TEACH Grants will fail to complete their required service commitment and will have their grants converted to Direct Unsubsidized Stafford Loans.

Using a sensitivity analysis of grant-to-loan conversions, we estimate that for the 2020 cohort, a one percentage point reduction in the grant-to-loan conversion would result in a transfer from the Federal Government of \$727,034, since each grant that is not converted to a loan where the student is obligated to pay it back remains a grant. The Department recognizes that the percentage change that the final regulations would have on the percentage of conversions is uncertain. The Department intends that these regulatory changes will reduce the loan conversion rate. However, students fail to meet the TEACH Grant service requirements for many reasons, including teaching in positions that do not qualify or changing to non-teaching employment. For instance, the PPSS/AIR study cited earlier reported that approximately 39 percent of TEACH recipients whose grants had been converted to loans reported teaching in a position that did not qualify for the TEACH program, 33 percent reported not teaching or not completing the teaching certificate program, 32 percent stated they did not understand the service requirements, and about 44 percent of respondents reported factors related to the annual certification process as influencing them to not complete the program requirements. Since respondents could select more than one response category, the total percentage does not add to 100 percent. Of those that indicated the annual certification process was a problem, the

distribution revealed that about 19 percent said they did not know about the annual certification process; 13 percent reported not certifying because of challenges to the certification process; 9 percent reported not certifying because they forgot, and about 2 percent listed other reasons.

While predicting how recipients might change their behavior due to the final regulations is speculative, the PPSS/AIR responses give us reason to assume that there will be improvement based on the recipients who cited the certification process as a factor in their conversion. Such improvement would logically lead to some reduction in the grant-to-loan conversion rate.

Given an estimated grant-to-loan conversion rate, it is possible to identify a series of transfers for a series of percentage reductions that give context to the potential impact that the proposed regulations would have.

FIVE PERCENTAGE POINT INTERVAL GRANT-TO-LOAN CONVERSION IMPACTS

Percentage point reduction (%)	Cost (\$millions)
5	3.6
10	7.3
15	10.9
20	14.6
25	18.2

The above table suggests that if the grant-to-loan conversion rate were reduced from the estimated 64 percent to 59 percent—a five percentage point reduction—the Federal Government would incur additional transfers of approximately \$3.6 million based on the 2020 cohort. And, if the projected 64 percent rate were reduced by 10 percentage points to 54 percent for the same 2020 cohort, there would be a cost of about \$7.3 million. However, this transfer from the Federal Government would also result in a benefit to student TEACH Grant recipients who would not have to repay their TEACH Grants which would not be converted to loans. Note that these are five percentage percentage-point intervals, and not percentage decreases of the current rate.

Currently, a TEACH Grant recipient may not satisfy the service obligation by teaching in a geographic region of a State that has been designated in the Nationwide List (at <https://tsa.ed.gov>) as having a shortage of teachers, or by teaching at a particular grade level not associated with a high-need field that has been designated in the Nationwide List as having a shortage of teachers. Instead, the recipient must teach in a

high-need field listed in the Nationwide List.

The final regulations remove this limitation. For example, under the final regulations, a grant recipient could satisfy the service obligation by serving as a full-time highly qualified general elementary school or secondary school teacher at a low-income school in a State that has reported a general shortage of elementary or secondary teachers in the Nationwide List. This is not currently allowed. Therefore, the final regulations allow grant recipients who are unable to find qualifying teaching jobs in a high-need field to meet the service obligation by teaching at a low-income school located in a geographic teacher shortage area or at a grade level where there is a shortage of teachers. This could facilitate increased opportunities for TEACH recipients toward meeting the service obligation and perhaps impact the conversion rate to loans. More importantly, it could serve as an important incentive to attract highly qualified teachers to serve in higher need areas and fields. It would be speculative to assume any specific amount of change in the conversion rate attributable to potential expanded teaching opportunities. Also, the proposed change might result in some grant recipients simply transferring from one low-income school to another low-income school to accept a teaching position that might previously have not been eligible.

Based on available data from the Department's Teacher Shortage Area listing,¹⁵ there are about 10 States, including California, Idaho, Illinois, Maine, Michigan, North Dakota, South Dakota, Pennsylvania, Virginia, West Virginia, and the District of Columbia, that appear to have teacher shortages, particularly in the elementary education area, that could potentially expand the eligible teaching opportunities for TEACH Grant recipients. According to National Center for Education Statistics data, these States represented approximately 27 percent of teachers in public elementary and secondary schools in the 2011–12 Schools and Staffing Survey data, both for overall teachers and for those in their first 10 years of teaching.¹⁶ As indicated in the PPSS/AIR responses, approximately 15

¹⁵ <https://tsa.ed.gov/#/reports>.

¹⁶ U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics 2017, Table 209.30. Highest degree earned, years of full-time teaching experience, and average class size for teachers in public elementary and secondary schools, by state: 2011–12. Data not reported for 5 states, including the District of Columbia, so percentage is adjusted to be total of those reporting.

percent of those respondents whose grants converted to loans said they were unable to find a job in a high-need field and, adjusting for the nationwide percentage of public schools with 30 percent or more of students receiving a free and reduced lunch of approximately 70 percent,¹⁷ we estimate that the changes removing the high needs field requirement in qualifying States will reduce the overall grant-to-loan conversion rate by approximately 3 percent, so relieving that requirement for those States would have some net budget impact. Nevertheless, while the changes expand options for grant recipients to meet the service obligation by allowing grant recipients who are not teaching in a high-need subject area to qualify by teaching at a low-income school in a geographic shortage area or in a grade-level shortage area, we do not believe the final regulations would lead to a significant increase in the actual number of TEACH grant recipients.

Overall, the final regulations have the potential to improve some aspects of the certification process and opportunities for recipients to meet their service requirements, which would benefit recipients, in keeping with the original goal of the program. As several provisions are expected to decrease the grant-to-loan conversion rate and result in additional cost to the Federal Government, we have estimated a net budget impact of that change.

In addition to the 3 percent decrease attributed to the changes to the high needs field requirements, we assume that the additional changes to the TEACH Grant program described in this preamble will decrease grant-to-loan conversions. We expect this effect will be lower for existing cohorts as improved counseling is provided to future participants and participants who took out TEACH Grants several years ago may be established in jobs that may not qualify or may have moved on from the profession, possibly limiting the ways those with older TEACH grants may respond to the changes made by these regulations. As a result, we applied the decreases shown in Table [2] to the grant-to-loan conversion rate to the President’s Budget 2021 baseline. For past cohorts, the changes are applied only to future years of activity.

¹⁷ United States Department of Education, National Center for Education Statistics, Condition of Education—Characteristics of Traditional Public Schools and Charter Schools, Figure 3. Percentage of traditional public schools and public charter schools, by percentage of students eligible for free or reduced-price lunch: School year 2016–17. Available at https://nces.ed.gov/programs/coe/indicator_cla.asp.

TABLE 2—GRANT-TO-LOAN CONVERSION RATE DECREASE FACTOR

Cohorts	Decrease (%)
2008–2012	4
2013–2019	9
2020–2029	15

The estimated net budget impact is a cost of \$141.4 million, including a modification to existing cohorts of \$16.6 million and a cost for cohorts 2020 to 2029 of \$124.8 million.

A number of the changes to the regulations relate to the eligibility of certain entities and recipients to participate in the title IV programs. The final regulations remove language prohibiting borrowers with Perkins loans made before July 1, 1993 and National Defense Student Loans (NDSL) made between October 1, 1980 and July 1, 1993 from obtaining deferments during periods of otherwise eligible full-time volunteer work that includes providing religious instruction, conducting religious services, proselytizing, or engaging in fundraising to support religious activities. Due to the small group of borrowers expected to benefit from these changes and the heavy discounting effect that would apply to any deferment costs on such old loans, we do not estimate any budget impact from these changes.

The final regulations remove current provisions that state that a member of a religious order pursuing a course of study in an institution of higher education has no financial need for purposes of the Pell Grant Program, Federal Perkins Loan Program, FWSP, FSEOG, FFEL Program, or the Direct Loan Program.

Despite this change, the additional eligibility for student aid for a very small group of participants in a given religious order would not, in our estimation, result in any additional significant financial aid costs to the government. We have little firm data on the number of members in religious orders subject to these changes who would actually choose to accept the financial aid for which they are eligible. For instance, the Franciscans are perhaps the largest and most well-known mendicant religious order, which means the priests take a vow of poverty. According to a 2013 reference,¹⁸ there are around 14,000 first order Franciscan members, including 9,700 priests. Even considering other orders within the Franciscans and additional smaller monastic sects such

¹⁸ *Annuario Pontificio 2013* (Libreria Editrice Vaticana 2013 ISBN 978–88–209–9070–1), p. 1422.

as the Benedictines and Dominicans, the membership estimates would not be large. Thus, the Department believes that the pool of members potentially impacted by this regulatory change is already small to begin with and the final regulations are not going to induce changes in member practices and would not result in measurable financial aid estimates. Note that there are already many postsecondary institutions with a faith-based mission that are title IV eligible and are not affected by these final regulations. Therefore, the changes would allow our regulations to be consistent with the Supreme Court decision in *Trinity Lutheran* without involving a significant economic impact.

The regulatory changes would also affect PSLF. Under the final regulations, certain institutions that are tax-exempt under section 501(c)(3) of the Internal Revenue Code that are religious organizations would be considered public service eligible employers for purposes of PSLF. The application form for PSLF (OMB No. 1845–0110) specifically states that a qualifying employer includes a “not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code” but makes no exclusion for religious purposes. The current application makes it clear that, in performing job duties toward the full-time requirement, a borrower’s qualifying employment at a 501(c)(3) organization or a not-for-profit organization does not include time spent participating in religious instruction, worship services, or any form of proselytizing. This provision is changed in the final regulations in response to concerns that such provisions would violate RFRA. There is little to no existing data within the Department to isolate the potential population that may be newly eligible after this changed rule. The Department’s assumption under the NPRM was that eligible 501(c)(3) employers and workers would cooperate in the structure of their work responsibilities to allow all potentially eligible workers not engaging in exclusively religious activity to meet the existing qualification requirements. However, there may have been previously ineligible workers, primarily clergy, who will be eligible under the changed rule. While their employers may have met the 501(c)(3) criteria, they were prohibited from receiving forgiveness due to the ineligibility of their work activities under the existing regulation. Based on an analysis of Bureau of Labor Statistics (BLS) data,

the percentage of workers at non-profit religious organizations as a proportion of the total population of workers potentially eligible for Public Service Loan Forgiveness is very small, approximately 0.50% of total workers. This high-level potential population is further reduced by isolating the BLS occupation clergy, a proxy for our analysis purposes of workers engaged in exclusively previously ineligible activity at otherwise eligible 501(c)(3) employers. Further characteristics that filter this population are the percentage who borrow, percentage who work full-time, and finally, the percentage who the Department estimates will successfully complete the requirements for PSLF, that is 120 qualifying payments and 10 years of service. These estimated adjustments to the currently eligible PSLF population for this newly eligible potential population results in a 0.06% increase in the population qualifying for PSLF from the current baseline. Transfers in the Direct Loan Program for subsidy costs related to this potential group of newly eligible potential population may be as much as \$213 million, \$122 million for existing cohorts and \$91 million for future cohorts.

The changes to the GEAR UP program regulations would clarify that providers of GEAR UP services to students enrolled in private schools must be contracted independently of the private schools and would allow pervasively sectarian institutions of higher education to serve as fiscal agents for GEAR UP grants. In general, the Department does not estimate costs associated with changes to regulations governing competitive grant programs as participation in such programs is voluntary and funding still must be limited to what is appropriated by Congress. However, it is possible that certain changes in the regulatory framework governing a competitive grant program could produce transfers in program benefits among entities or recipients of services.

Regarding the provision requiring providers of services to students enrolled in private schools to be independent of the school, the Department first assessed the extent to which GEAR UP services are currently provided to students enrolled in such schools. During the most recent reporting period, GEAR UP grantees reported serving students in 4,033 schools. Of those schools, the Department was able to identify only

five private schools in which students received GEAR UP services. In total, private schools represented only 0.1 percent of schools served by the program and, even among the grantees serving such schools, private schools represented 0.9 percent of the total schools they served. As such, we do not believe that the requirement relating to the employment relationship between individuals providing services in such schools and the schools themselves is likely to have a large impact on the administration of the program.

Regarding who may serve as a fiscal agent for a GEAR UP Grant, as noted above, the final regulations would allow pervasively sectarian institutions of higher education to serve in such a capacity. However, nothing in the current GEAR UP regulations precludes a pervasively sectarian institution of higher education from being a member of a GEAR UP partnership. As such, pervasively sectarian institutions can currently participate in and provide services under a GEAR UP grant. The Department does not have readily available data to identify all members of GEAR UP partnerships and whether they are pervasively sectarian. With such information, the Department could more easily quantify the potential number of partnerships affected by the change. However, even without such information, given that pervasively sectarian institutions are already eligible members of partnerships, we do not believe the change to allow them to serve as fiscal agents would dramatically change the makeup of the GEAR UP applicant pool. Any pervasively sectarian institution that currently wishes to participate in the GEAR UP program may do so and this change would only result in a shift in who has primary fiscal liability for the grant.

Alternatives Considered

With respect to the TEACH Grant program, we considered maintaining the current regulations as is, that is not including provisions related to the current reconsideration process in the final regulations, maintaining the current counseling requirements without adding a separate conversion counseling requirement, maintaining, instead of expanding, the current regulations related to qualifying teacher shortage areas for fulfilling the service obligation, and not expanding allowable suspensions beyond those that are currently available. As we describe in

previous sections, making these changes gives the Department the opportunity to address GAO concerns specifically, and generally provide from more information and clarity to recipients of the TEACH Grant program.

For the faith-based provisions, we considered not making the changes and leaving the current regulatory language in place as written.

Regulatory Flexibility Act Certification

The Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities. In fact, the primary entities who are affected by the final regulations are individual students, not organizations, businesses, or governmental units. This holds true for the faith-based component of the final regulations that address individuals participating in religious orders, or student borrowers applying for PSLF. Similarly, the changes to the TEACH Grant Program regulations primarily affect students who are interested in teaching and apply for a TEACH grant.

Of the entities that would be affected by the final regulations, many institutions, especially institutions with a faith-based mission, would be considered small. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various higher education sectors considered to be small entities, as shown in Table [6].¹⁹ This size classification was described in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). Under the Department's proposed size standards, "small entities" have an enrollment of 1,000 students or less at 4-year schools or 500 students or less at 2-years schools. The Department has discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

¹⁹ U.S. Department of Education, National Center for Education Statistics. Integrated Postsecondary Education Data System 2016 Institutional Characteristics: Directory Information survey file downloaded March 3, 2018. Available at nces.ed.gov/ipeds/datacenter/DataFiles.aspx.

TABLE 6—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total		3,996	6,951	57

The final regulations would affect students who belong to religious orders and those students most likely attend institutions with a religious mission. In general, we believe faith-based institutions are more likely to be small institutions. However, the final regulations do not affect the title IV eligibility of such institutions.

Accordingly, The Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities. Nothing in the final regulations would compel institutions, small or not, to engage in substantive changes to their programs. Therefore, there is no estimated associated institutional burden.

Even if the affected institutions were considered small entities, the final regulations are designed to permit them to participate in title IV programs without jeopardizing their religious mission. Nothing in the final regulations would require institutions to expand their enrollment, take on additional students, or to participate in title IV aid programs, but the final regulations would give them that opportunity.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the

general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Part 686 contains information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by

OMB to any collection requirements adopted in the final regulations.

Section 686.12—Agreement to serve or repay.

Requirements: Under final § 686.12, the TEACH Grant agreement to serve or repay will be expanded and updated with revised definitions, requirements, and explanations of the program and participant conditions, and options as discussed in the preamble.

Burden Calculation: These final regulations will require changes to the TEACH Grant agreement to serve form currently approved under OMB Control Number 1845–0083. We do not believe those changes will impact the current burden associated with this form. We estimate that, on average, it will take a grant recipient 30 minutes (.50 hours) to review and complete the updated agreement, which is done electronically. We continue to anticipate 50,793 TEACH applicants will annually utilize the agreement accepting the program terms, including the required teaching service, or the conversion of the grant to a Direct Unsubsidized Loan if such service is not met or the applicant does not otherwise comply with the terms of the agreement. Based on one response per applicant, we continue to estimate an annual reporting burden for individuals of 25,397 hours (50,793 × .50 hours).

§ 686.12—AGREEMENT TO SERVE OR REPAY

[OMB control number 1845–0083]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	50,793	50,793	.50	25,397
Total	50,793	50,793		25,397

Section 686.32—Counseling requirements.

Requirements: The final regulations in § 686.32 will expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling. The final

regulations will add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.

Burden Calculation: Currently there is burden of 24,459 hours assessed to 37,749 respondents for the counseling

requirements of § 686.32 in the regulatory information collection 1845–0084 as filed in January 2018. These figures do not include the new conversion counseling that will be required under the final regulations. The expansion and revision of the

required program counseling will require changes to the counseling currently available. We anticipate that approximately 1,520 TEACH Grant recipients will either voluntarily convert their grant to a loan or will run out of time to complete the teaching obligation and have the grant converted to a loan. This is based on the number of voluntary and out of time conversions noted for 2019. We do not believe there

will be a significant increase or decrease in such activity.

We believe that it will take a TEACH Grant recipient the same approximate 20 minutes (.33 hours) to review the new conversion counseling materials as it takes them to review the other required counseling materials. We estimate the total burden of 502 hours (1,520 × .33 hours) for recipients to

review the conversion counseling material.

The changes to the initial, subsequent, exit, and new conversion counseling information collection will be completed and a full public clearance filing will be made after publication of the final rule and before being made available for use by the effective date of the regulations.

§ 686.32—COUNSELING REQUIREMENTS

[OMB control number 1845–0084 new conversion counseling figures only]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	1,520	1,520	.33	502
Total	1,520	1,520	.....	502

Section 686.40—Documenting the service obligation.

Requirements: The final regulations clarify the requirements regarding the documentation of completion of the teaching service obligation in the TEACH Grant Program and how it is reported. To support the requirement, we provided a draft “TEACH Grant Certification of Completed Teaching” form with the Notice of Proposed Rulemaking. While no public comments were received regarding the form, we have determined that we need to add to the form. We are modifying the “TEACH Grant Certification of Completed Teaching” form by adding an option to allow TEACH Grant recipients to certify that they have begun qualifying teaching service within a timeframe that will allow them to complete the service obligation within the eight year service

obligation period, to avoid having their TEACH Grants converted to loans in accordance with Section 686.43(a)(1)(ii). This form continues to require both TEACH grant recipient and eligible school official information.

Burden Calculation: The changes to the regulations relating to the required service obligation will require a new certification form. During the 2018 calendar year, Department records indicate we received documentation for 52,989 grantees regarding yearly service obligation completion. We estimate that to meet the requirements of § 686.40 each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate the total burden of 17,486 hours (52,989 × .33 hours) for completion of this form.

We believe that the second certification option on the “TEACH Grant Certification of Completed

Teaching” form is needed to allow TEACH Grant recipients who have not yet completed any qualifying teaching, but who have sufficient time remaining in the eight-year service obligation period to complete the required four-years of teaching, to certify that they have begun qualifying teaching to avoid conversion of the TEACH Grants to loans under Section 686.43(a)(1)(ii). We estimate that to meet the certification requirements each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate that approximately 24 TEACH Grant recipients will submit the certification form for this purpose. We estimate a total burden of 8 hours (24 × .33 hours = 8 hours) for completion of the form.

We estimate the total burden of 17,494 hours (53,013 × .33 hours) under OMB Control Number 1845–0158.

§ 686.40—DOCUMENTING THE SERVICE OBLIGATION

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual documenting service obligation	52,989	52,989	.33	17,486
Individual documenting beginning eligible teaching	24	24	.33	8
Total	53,013	53,013	.....	17,494

Section 686.41—Periods of suspension.

Requirements: The final regulations add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the period for completing the service obligation.

Burden Calculation: The final regulations added new conditions that

will allow a TEACH Grant recipient to receive a temporary suspension of the period for completing the service obligation. These new conditions, including completion of licensure requirements, military orders for the grantee’s spouse, and residing or being employed in a federally declared major disaster area require new temporary

suspension forms. The qualifying leave under the Family and Medical Leave Act of 1993, and the call to military service are retained in the regulations.

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 589 grantees for enrollment to complete licensure

requirements. We estimate that to meet the requirements in final § 686.41(a)(1)(ii), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 194 hours (589 × .33 hours).

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 334 grantees for qualifying leave under the Family and Medical Leave Act of 1993. We estimate that to meet the requirements in final § 686.41(a)(1)(iii), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a

total burden of 110 hours (334 × .33 hours).

Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 24 grantees for call to military service. We estimate that to meet the requirements in final § 686.41(a)(1)(iv), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 8 hours (24 × .33 hours).

We anticipate that we will receive documentation supporting suspension of 25 grantees based on military orders for the grantee’s spouse. We estimate that to meet the requirements in final § 686.41(a)(1)(v), each respondent will

need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 8 hours (25 × .33 hours).

We anticipate that we will receive documentation supporting suspension of 500 grantees based on residing or being employed in a federally declared major disaster area. We estimate that to meet the requirements in final § 686.41(a)(1)(vi), each respondent will need 20 minutes (.33 hours) to complete the certification form. We estimate a total burden of 165 hours (500 × .33 hours).

We estimate the total burden of 485 hours (1,472 × .33 hours) under OMB Control Number 1845–0158.

§ 686.41—PERIODS OF SUSPENSION

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual (a)(1)(ii)	589	589	.33	194
Individual (a)(1)(iii)	334	334	.33	110
Individual (a)(1)(iv)	24	24	.33	8
Individual (a)(1)(v)	25	25	.33	8
Individual (a)(1)(vi)	500	500	.33	165
Total	1,472	1,472	.....	485

Section 686.42—Discharge of agreement to serve or repay.

Requirements: The final regulations revise the conditions under which a TEACH Grant recipient may discharge an agreement to serve or repay based on military service.

Burden Calculation: Department records indicate that, during the 2018 calendar year, we received documentation supporting suspension of 10 grantees for discharge due to an extended call to military service. We estimate that to meet the requirements

in final § 686.42(c), each respondent will need 20 minutes (.33 hours) to complete the new certification form also used for military service suspension.

We estimate a total burden of 3 hours (10 × .33 hours) under OMB Control Number 1845–0158.

§ 686.42—DISCHARGE OF AGREEMENT TO SERVE OR REPAY

[OMB control number 1845–0158]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual	10	10	.33	3
Total	10	10	.....	3

Section 686.43—Obligation to repay the grant.

Requirements: The final regulations simplify the rules governing when a TEACH Grant will be converted to a Direct Unsubsidized Loan and provide for annual notifications from the Secretary to the recipient regarding the status of a recipient’s TEACH Grant service obligation. Under the final regulations, a TEACH Grant recipient can request conversion of the grant to a loan if the recipient decides not to fulfill the TEACH Grant obligations for any reason or if the recipient fails to begin

or maintain qualifying teaching service within a timeframe that would allow the recipient to complete the service obligation in the requisite eight-year period. Additionally, the final regulations describe the notifications the Secretary will annually send to all TEACH Grant recipients regarding the service obligation requirements.

Burden Calculation: We believe that the final regulations will require action on the part of TEACH grant recipients. Based on Department data, during the 2018 calendar year there were 52,989 TEACH Grant recipients who submitted

evidence of completed teaching service. We estimate that an additional 25 percent of that figure or about 13,247 grant recipients will be working toward their teaching obligation for a total of 66,236 grant recipients who will receive the annual notice from the Secretary as required under final § 686.43(a)(2). We estimate that grant recipients will require 10 minutes (.17 hours) to review the information provided in each annual notice. We estimate the total burden of 11,260 hours (66,236 × .17 hours).

There will be burden on those recipients who are notified that their

TEACH Grant will be converted to a loan if the recipient does not submit required documentation to show that they are satisfying the service obligation. Based on the Department's data, during calendar year 2018 there were a total of 10,591 TEACH Grant recipients whose grants were converted to loans based on the recipients' voluntary request, or because the recipient was out of time to perform the service obligation or because the recipient did not provide evidence of

meeting the service obligation as required under § 686.43(a)(4). We estimate that grant recipients will require 10 minutes (.17 hours) to review the information in the notice. We estimate a total burden of 1,800 burden hours (10,591 × .17 hours).

Additionally, there will be burden on any TEACH Grant recipient whose grant was involuntarily converted to a Direct Unsubsidized Loan to request reconsideration from the Secretary. Based on the Department's data, during

calendar year 2018 there were 282 correctable conversions of TEACH Grants into loans. We estimate that a recipient will require 15 minutes (.25 hours) to gather documentation to present to the Secretary and make such a request as required under § 686.43(a)(5). We estimate a total burden of 71 burden hours (282 × .25 hours).

We estimate a total burden of 13,131 burden hours under OMB Control Number 1845-0157.

§ 686.43—OBLIGATION TO REPAY THE GRANT
[OMB control number 1845-0157]

Entity	Respondent	Responses	Time to respond (hours)	Burden hours
Individual (a)(2)	66,236	66,236	.17	11,260
Individual (a)(4)	*	10,591	.17	1,800
Individual (a)(5)	*	282	.25	71
Total	66,236	77,109	.....	13,131

* These respondents will be part of the universe of respondents who receive the annual notifications and are not summed to avoid duplication of respondents.

The estimated cost to the recipients is \$1,680,714, based on the \$29.48 per hour averaged for 2018 elementary, middle school and high school teacher salaries from the 2019 Bureau of Labor Statistics Occupational Handbook.

Regulatory section	Information collection	OMB control No. and estimated burden (change in burden)	Estimated costs
§ 686.12 Agreement to serve or repay.	Under final § 686.12 the TEACH Grant agreement to serve or repay will need to be expanded and updated with revised definitions, requirements, and explanations of the program and participant conditions, and options as discussed in the preamble.	1845-0083 +25,397 hours.	\$748,704
§ 686.32 Counseling requirements.	The final regulations in § 686.32 will expand the information that is provided to TEACH Grant recipients during initial, subsequent, and exit counseling. The final regulations add a new conversion counseling requirement for grant recipients whose TEACH Grants are converted to Direct Unsubsidized Loans.	1845-0084 +502 hours	14,799
§ 686.40 Documenting the service obligation.	The final regulations will clarify the requirements regarding the documentation of completion of the teaching service obligation in the TEACH Grant Program and how it is reported.	1845-0158 +17,494 hours.	515,723
§ 686.41 Periods of suspension.	The final regulations will add new conditions under which a TEACH Grant recipient may receive a temporary suspension of the period for completing the service obligation.	1845-0158 +485 hours	14,298
§ 686.42 Discharge of agreement to serve or repay.	The final regulations will revise the language for conditions under which a TEACH Grant recipient may discharge an agreement to serve or repay based on military service.	1845-0158 +3 hours	88
§ 686.43 Obligation to repay the grant.	The final regulations will simplify the rules governing when a TEACH Grant will be converted to a Direct Unsubsidized Loan, as well as provide for annual notifications from the Secretary to the recipient regarding the status of a recipient's TEACH Grant service obligation. Under the final regulations, TEACH Grant recipients can request conversion if the recipient decides not to fulfill the TEACH Grant obligations for any reason or if the recipient fails to begin or maintain qualifying teaching service within a timeframe to complete the service obligation in the requisite eight-year period. Additionally, the final regulations describe the notifications the Secretary will annually send to all TEACH Grant recipients regarding the service obligation requirements.	1845-0157 +13,131 hours.	387,102

Collections of Information

The total burden hours and change in burden hours associated with each OMB

control number affected by the final regulations follows:

Control No.	Total burden hours	Change in burden hours
1845-0083 ..	25,397	No change.
1845-0084 ..	37,175	+502.
1845-0158 ..	17,982	+17,982.
1845-0157 ..	13,131	+13,131.
Total	93,685	31,615.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the regulations would require transmission of information that any other 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, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping, Student aid.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—

education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 676

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

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

34 CFR Part 685

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

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 674, 675, 676, 682, 685, 686, 690, 692, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 2. Section 674.9 is amended by:
■ a. In the introductory text, adding the words “Prior to October 1, 2017,” at the beginning of the sentence, removing “A” and adding “a” in its place. , and

removing the word “is” and adding in its place the word “was”; and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

* * * * *

§ 674.35 [Amended]

■ 3. Section 674.35 is amended by removing paragraph (c)(5)(iv) and redesignating paragraph (c)(5)(v) as (c)(5)(iv).

■ 4. Section 674.36 is amended by revising paragraph (c)(4) to read as follows:

§ 674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993.

* * * * *

(c) * * *

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following four criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower has agreed to serve on a full-time basis for a term of at least one year.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 5. The authority citation for part 675 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted.

■ 6. Section 675.9 is amended by revising paragraph (c) to read as follows:

§ 675.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

■ 7. Section 675.20 is amended by revising paragraph (c)(2)(iv) to read as follows:

§ 675.20 Eligible employers and general conditions and limitation on employment.

* * * * *

(c) * * *
(2) * * *

(iv) Involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for instruction that is predominantly devotional and religious or as a place for religious worship, except to the extent that excluding such work would impose a substantial burden on a person's exercise of religion.

* * * * *

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 8. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

■ 9. Section 676.9 is amended by revising paragraph (c) to read as follows:

§ 676.9 Student eligibility.

* * * * *

(c) Has financial need as determined in accordance with part F of title IV of the HEA.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 10. The authority citation for part 682 continues to read as follows:

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

§ 682.210 [Amended]

■ 11. Section 682.210 is amended by removing and reserving paragraph (m)(1)(iv).

§ 682.301 [Amended]

■ 12. Section 682.301 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

§ 685.200 [Amended]

■ 14. Section 685.200 is amended by removing and reserving paragraph (a)(2)(ii).

■ 15. Section 685.219 is amended in paragraph (b) by revising the definition of “public service organization” and by revising paragraph (c)(1)(ii) to read as follows:

§ 685.219 Public Service Loan Forgiveness Program.

* * * * *

(b) * * *

Public service organization means:

- (i) A Federal, State, local, or Tribal government organization, agency, or entity;
- (ii) A public child or family service agency;
- (iii) A non-profit organization under section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code;
- (iv) A Tribal college or university; or
- (v)(A) A private organization that provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated child care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services; and

(B) Is not a business organized for profit, a labor union, or a partisan political organization.

* * * * *

(c) * * *
(1) * * *

(ii) Is employed full-time by a public service organization or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower makes the 120 monthly payments described under paragraph (c)(1)(iii) of this section;

(B) At the time of application for loan forgiveness; and

(C) At the time the remaining principal and accrued interest are forgiven.

* * * * *

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 16. The authority citation for part 686 continues to read as follows:

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

■ 17. Section 686.1 is revised to read as follows:

§ 686.1 Scope and purpose.

The TEACH Grant program awards grants to students who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field in a school serving low-income students, or as a full-time teacher in a high-need field for an educational service agency serving low-income students, for at least four academic years within eight years of ceasing enrollment at the institution where the student received the grant or, in the case of a student who receives a TEACH Grant at one institution and subsequently transfers to another institution and enrolls in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution. The eight-year period for completing the required four years of teaching does not include periods of suspension in accordance with § 686.41. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Direct Unsubsidized Loan and must be repaid with interest charged from the date of each TEACH Grant disbursement. A TEACH Grant that has been converted to a Direct Unsubsidized Loan can be reconverted to a grant only in accordance with § 686.43.

■ 18. Section 686.2 is amended:

- a. In paragraph (b), by adding in alphabetical order and entry for “Free application for Federal student aid (FAFSA)”; and
- b. In paragraph (d) by:
 - i. Removing the definition of “Agreement to serve (ATS)” and adding in alphabetical order a definition for “Agreement to serve or repay”;
 - ii. Adding in alphabetical order a definition for “Educational service agency”;
 - iii. In paragraph (5) of the definition of “High-need field”, adding “, including, but not limited to, computer science” after the word “Science”;
 - iv. In paragraph (7) of the definition of “High-need field”, removing the words “in accordance with 34 CFR 682.210(q)”;

- v. Revising the definition of “Highly qualified”;
- vi. Removing the definition of “School serving low-income students (low-income school)” and adding in alphabetical order a definition for “School or educational service agency serving low-income students (low-income school)”;
- vii. Revising the definition of “TEACH Grant-eligible program”;
- viii. Adding in alphabetical order a definition for “Teacher Shortage Area Nationwide Listing (Nationwide List)”.

The additions and revisions read as follows:

§ 686.2 Definitions.

* * * * *

(b) * * *

Free application for Federal student aid (FAFSA).

* * * * *

(d) * * *

Agreement to serve or repay: An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation or repay the loan as described in § 686.12 and to comply with notification and other provisions of the agreement.

* * * * *

Educational service agency: A regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies (LEAs).

* * * * *

Highly qualified: Has the meaning set forth in paragraphs (i) through (iv) of this definition, or the meaning set forth in section 602(10) of the Individuals With Disabilities Education Act.

(i) When used with respect to any public elementary school or secondary school teacher in a State, means that—

(A) The teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

(B) The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

(ii) When used with respect to—

(A) An elementary school teacher who is new to the profession, means that the teacher—

(1) Holds at least a bachelor’s degree; and

(2) Has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

(B) A middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

(1) Passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(2) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

(iii) When used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor’s degree and—

(A) Has met the applicable standard in paragraph (ii) of this definition, which includes an option for a test; or

(B) Demonstrates competence in all the academic subjects in which the teacher teaches based on a highly objective uniform State standard of evaluation that—

(1) Is set by the State for both grade-appropriate academic subject matter knowledge and teaching skills;

(2) Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

(3) Provides objective, coherent information about the teacher’s attainment of core content knowledge in the academic subjects in which a teacher teaches;

(4) Is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(5) Takes into consideration, but is not based primarily on, the time the teacher has been teaching in the academic subject;

(6) Is made available to the public upon request; and

(7) May involve multiple, objective measures of teacher competency.

(iv)(A) When used with respect to any public, or other non-profit private, elementary or secondary school teacher who is exempt from State certification requirements means that the teacher is permitted to and does satisfy rigorous subject knowledge and skills tests by taking competency tests in the applicable grade levels and subject areas.

(B) For purposes of paragraph (iv)(A) of this definition, the competency tests taken by a private school teacher must be recognized by five or more States for the purpose of fulfilling the highly qualified teacher requirements as described in paragraphs (i) through (iii) of this definition, and the score achieved by the teacher on each test must equal or exceed the average passing score of those five States.

* * * * *

School or educational service agency serving low-income students (low-income school): An elementary school, secondary school, or educational service agency that is listed in the Department’s Teacher Cancellation Low-Income (TCLI) Directory. The Secretary considers all elementary and secondary schools and educational service agencies operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian Tribal groups under contract or grant with the BIE to qualify as schools or educational service agencies serving low-income students.

* * * * *

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, is a program of study at a TEACH Grant-eligible institution that is designed to prepare an individual to teach as a highly qualified teacher in a high-need field and leads to a baccalaureate or master’s degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

* * * * *

Teacher Shortage Area Nationwide Listing (Nationwide List): A list of teacher shortage areas, as defined in 34 CFR 682.210(q)(8)(vii), in each State.

* * * * *

■ 19. Section 686.10 is revised to read as follows:

§ 686.10 Application.

To receive a grant under this part, a student must—

(a) Complete and submit the Free application for Federal student aid (FAFSA) in accordance with the instructions in the FAFSA;

(b) Complete and sign an agreement to serve or repay in accordance with § 686.12; and

(c) Provide any additional information requested by the Secretary and the institution.

§ 686.11 [Amended]

■ 20. Section 686.11 is amended:

■ a. In paragraph (a)(1)(i), by removing the words “submitted a completed application” and adding in their place the words “met the application requirements in § 686.10”;

■ b. By removing paragraph (a)(1)(ii);

■ c. By redesignating paragraphs (a)(1)(iii), (iv), and (v) as paragraphs (a)(1)(ii), (iii), and (iv), respectively;

■ d. In paragraph (b) introductory text, by removing the words “submitted a completed application” and adding in their place the words “met the application requirements in § 686.10”;

■ e. By removing paragraph (b)(1); and

■ f. By redesignating paragraphs (b)(2) and (3) as paragraphs (b)(1) and (2), respectively.

■ 21. Section 686.12 is revised to read as follows:

§ 686.12 Agreement to serve or repay.

(a) *General.* A student who meets the eligibility requirements in § 686.11 may receive a TEACH Grant only after he or she signs an agreement to serve or repay provided by the Secretary and receives counseling in accordance with § 686.32.

(b) *Contents of the agreement to serve or repay.* The agreement to serve or repay—

(1) Provides that, for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by serving—

(i) As a full-time teacher for a total of not less than four elementary or secondary academic years within eight years after the date the recipient ceased to be enrolled at the institution where the recipient received the TEACH Grant, or in the case of a student who receives a TEACH Grant at one institution and subsequently transfers to another institution and enrolls in another TEACH Grant-eligible program, within eight years of ceasing enrollment at the other institution;

(ii) In a low-income school as defined in § 686.2(d) and subject to the requirements under § 686.40(a)(3);

(iii) As a highly qualified teacher as defined in § 686.2(d); and

(iv) In a high-need field in the majority of classes taught during each

elementary and secondary academic year;

(2) Requires the grant recipient to submit, upon completion of each year of service, documentation of the service in the form of a certification by a chief administrative officer of the school;

(3) Explains that the eight-year period for completing the service obligation does not include periods of suspension in accordance with § 686.41;

(4) Explains the conditions under which a TEACH Grant may be converted to a Direct Unsubsidized Loan, as described in § 686.43;

(5) Explains that, if a TEACH Grant is converted to a Direct Unsubsidized Loan, the grant recipient must repay the loan in full, with interest charged from the date of each TEACH Grant disbursement; and

(6) Explains that to avoid further accrual of interest as described in paragraph (b)(5) of this section, a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan so that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii); and

(7) Explains that a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan based on a request from the recipient in accordance with § 686.43(a)(1)(i) may request that the Secretary reconvert the recipient's loan to a TEACH Grant as provided in § 686.43(a)(8); and

(8) Requires the grant recipient to comply with the terms, conditions, and other requirements consistent with §§ 686.40 through 686.43 that the Secretary determines to be necessary.

(c) *Completion of the service obligation.* (1) A grant recipient must complete one service obligation for all TEACH Grants received for undergraduate study, and one service obligation for all TEACH Grants received for graduate study. Each service obligation begins when the grant recipient ceases enrollment at the institution where the TEACH Grants were received, or, in the case of a grant recipient who receives a TEACH Grant at one institution and subsequently transfers to another institution, within eight years from the date the grant recipient ceases enrollment at the other institution. However, creditable teaching service, a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)

may apply to more than one service obligation.

(2) Unless paragraph (c)(3) of this section applies—

(i) In the case of a TEACH Grant recipient who withdraws from an institution before completing a baccalaureate or post-baccalaureate program of study for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same baccalaureate or post-baccalaureate program or in a different TEACH Grant-eligible baccalaureate or post-baccalaureate program prior to the date that his or her TEACH Grants are converted to Direct Unsubsidized Loans under § 686.43(a)(1)(ii) and receives additional TEACH Grants or the Secretary otherwise confirms that the grant recipient has re-enrolled in a TEACH Grant-eligible program, the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled; and

(ii) In the case of a TEACH Grant recipient who withdraws from an institution before completing a master's degree program of study for which he or she received TEACH Grants, but later re-enrolls at the same institution or at a different institution in either the same master's degree program or in a different TEACH Grant eligible master's degree program prior to the date that his or her TEACH Grants are converted to Direct Unsubsidized Loans under § 686.43(a)(1)(ii) and receives additional TEACH Grants or the Secretary otherwise confirms that the grant recipient has re-enrolled in a TEACH Grant-eligible program, the Secretary adjusts the starting date of the period for completing the service obligation to begin when the grant recipient ceases to be enrolled at the institution where he or she has re-enrolled.

(3) In the case of a TEACH Grant recipient covered under paragraph (c)(2)(i) or (ii) of this section who completed one or more complete academic years of creditable teaching service as described in § 686.12(b) during the period between the grant recipient's withdrawal and re-enrollment—

(i) The Secretary does not adjust the starting date of the period for completing the service obligation unless requested by the recipient;

(ii) The completed teaching service counts toward satisfaction of the grant recipient's service obligation under paragraph (c)(2)(i) of this section; and

(iii) If the grant recipient continues to perform creditable teaching service after re-enrolling in a TEACH Grant-eligible program, the grant recipient may receive credit toward satisfaction of the service obligation for any complete academic years of creditable teaching performed while the recipient is concurrently enrolled in the TEACH Grant-eligible program only if the recipient does not request and receive a temporary suspension of the period for completing the service obligation under § 686.41(a)(1)(i).

(d) *Teaching in a high-need field listed in the Nationwide List.* For a grant recipient's teaching service in a high-need field listed in the Nationwide List to count toward satisfying the recipient's service obligation, the high-need field in which he or she prepared to teach must be listed in the Nationwide List for the State in which the grant recipient teaches—

(1) For teaching service performed before July 1, 2010, at the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010—

(i) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(ii) At the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field.

§ 686.21 [Amended]

- 22. Section 686.21 is amended:
- a. In paragraphs (a)(2)(i) and (ii), by removing the word “aggregate” and adding in its place the word “total”; and
- b. In paragraph (a)(2)(ii), by removing the words “a master's degree” and adding in their place the words “graduate study”.

§ 686.31 [Amended]

- 23. Section 686.31 is amended:
- a. In paragraph (a)(3), by adding the words “or repay” after the word “serve” and
- b. In paragraph (e)(2)(ii), by removing the word “Federal” before the words “Direct Unsubsidized Loan”.
- 24. Section 686.32 is amended by revising paragraphs (a)(3), (b)(3), (c)(4), and (d) and adding paragraph (e) to read as follows:

§ 686.32 Counseling Requirements.

(a) * * *

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12;

(ii) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(iii) Inform the grant recipient that, for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field that is listed in the Nationwide List for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that State before the grant recipient begins teaching in that field;

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the agreement to serve or repay and the conditions under which a suspension may be granted in accordance with § 686.41;

(v) Explain to the grant recipient that conditions, such as conviction of a felony, could preclude the grant recipient from completing the service obligation;

(vi) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(viii) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be

converted to a loan under the condition described in § 686.43(a)(1)(ii);

(ix) Emphasize that, once a TEACH Grant is converted to a Direct Unsubsidized Loan, it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8);

(x) Review for the grant recipient information on the availability of the Department's Federal Student Aid Ombudsman's office;

(xi) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xii) Inform the grant recipient of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) * * *

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12;

(ii) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(iv) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii);

(v) Emphasize that, once a TEACH Grant is converted to a Direct Unsubsidized Loan, it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8); and

(vi) Review for the grant recipient information on the availability of the Department's Federal Student Aid Ombudsman's office.

(c) * * *

(4) The exit counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve or repay as described in § 686.12 and emphasize to the grant recipient that the four-year service obligation must be completed within the eight-year period described in § 686.12;

(ii) Explain the treatment of a grant recipient who withdraws from and then reenrolls in a TEACH Grant-eligible institution as described in § 686.12(c);

(iii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service obligation and the conditions under which a suspension may be granted in accordance with § 686.41;

(iv) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(v) Inform the grant recipient that, for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field that is listed in the Nationwide List for the State in which the grant recipient teaches—

(1) At the time the grant recipient begins teaching in that field, even if that field subsequently loses its high-need designation for that State; or

(2) For teaching service performed on or after July 1, 2010, at the time the grant recipient signed the agreement to serve or repay or received the TEACH Grant, even if that field subsequently loses its high-need designation for that

State before the grant recipient begins teaching in that field;

(vi) Emphasize to the grant recipient that if the grant recipient fails or refuses to complete the service obligation contained in the agreement to serve or repay or fails to meet any other condition of the agreement to serve or repay—

(A) The TEACH Grant must be repaid as a Direct Unsubsidized Loan; and

(B) The grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain to the grant recipient that the Secretary will, at least annually during the service obligation period, send the recipient the notice described in § 686.43(a)(2);

(viii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Direct Unsubsidized Loan;

(ix) Explain that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in § 686.43(a)(1)(ii);

(x) Emphasize that once a TEACH Grant is converted to a Direct Unsubsidized Loan it may be reconverted to a grant only if—

(A) The Secretary determines, based on documentation provided by the recipient or in the Secretary's records, that the grant recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error; or

(B) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), the grant recipient requests that the Secretary reconvert the loan to a grant and is determined to be eligible for reconversion in accordance with § 686.43(a)(8); and

(xi) Explain to the grant recipient how to contact the Secretary.

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

* * * * *

(d) *Compliance.* The institution must maintain documentation substantiating the institution's compliance with paragraphs (a) through (c) of this section for each TEACH Grant recipient.

(e) *Conversion counseling.* (1) At the time a TEACH Grant recipient's TEACH Grant is converted to a Direct Unsubsidized Loan, the Secretary conducts conversion counseling with the recipient by interactive electronic means and by mailing written counseling materials to the most recent address provided by the recipient.

(2) The conversion counseling—

(i) Informs the borrower of the average anticipated monthly repayment amount based on the borrower's indebtedness;

(ii) Reviews for the borrower available repayment plan options, including standard, graduated, extended, income-contingent, and income-based repayment plans, including a description of the different features of each plan and the difference in interest paid and total payments under each plan;

(iii) Explains to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;

(iv) Provides information on the effects of loan consolidation including, at a minimum—

(A) The effects of consolidation on total interest to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities; and

(C) The options of the borrower to prepay the loan and to change repayment plans;

(v) Includes debt-management strategies that are designed to facilitate repayment;

(vi) Explains to the borrower the availability of Public Service Loan Forgiveness and teacher loan forgiveness;

(vii) Explains how the borrower may request reconsideration of the conversion of the TEACH Grant to a Direct Unsubsidized Loan if the borrower believes that the grant was converted to a loan in error, or if the borrower can provide documentation showing that he or she was satisfying the service obligation as described in § 686.12;

(viii) Describes the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(ix) Informs the borrower of the grace period as described in § 686.43(c);

(x) Provides—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of the loan (including under the Public Service Loan Forgiveness Program), defer repayment of the loan, or be granted a forbearance on repayment of the loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(xi) Requires the borrower to provide current information concerning name, address, Social Security number, and driver's license number and State of issuance, as well as the borrower's permanent address;

(xii) Reviews for the borrower information on the availability of the Federal Student Aid Ombudsman's office;

(xiii) Informs the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;

(xiv) Provides a general description of the types of tax benefits that may be available to borrowers;

(xv) Informs the borrower of the amount of interest that has accrued on the converted TEACH Grants and explains that any unpaid interest will be capitalized at the end of the grace period; and

(xvi) In the case of a borrower whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with § 686.43(a)(1)(i), explains that the borrower may request that the Secretary reconvert the loan to a grant as provided in § 686.43(a)(8).

■ 25. Section 686.40 is revised to read as follows:

§ 686.40 Documenting the service obligation.

(a) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve or repay, or agreements to serve or repay if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient is teaching. The documentation must show that the grant recipient—

(1) Taught full-time in a low-income school as a highly qualified teacher as defined in § 686.2(d); and

(2)(i) Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in another high-need field designated by that State and listed in the Nationwide List, in accordance with § 686.12(d).

(b) For purposes of completing the service obligation, the elementary or secondary academic year may be counted as one of the grant recipient's four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2612(a)(1) and (3));

(2) A call or order to Federal or State active duty, or Active Service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5); or

(3) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(c)(1) A grant recipient who taught in more than one qualifying school or qualifying educational service agency during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools or educational service agencies involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(2) If the school or educational service agency at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school or educational service

agency fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of satisfying the service obligation described in § 686.12(b).

■ 26. Section 686.41 is revised to read as follows:

§ 686.41 Periods of suspension.

(a)(1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools;

(ii) Receiving State-required instruction or otherwise fulfilling requirements for licensure to teach in a State's elementary or secondary schools;

(iii) A condition that is a qualifying reason for leave under the FMLA;

(iv) A call to order to Federal or State active duty or Active Service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5);

(v) Military orders for the recipient's spouse for—

(A) Deployment with a military unit or as an individual in support of a call to Federal or State Active Duty, or Active Service; or

(B) A change of permanent duty station from a location in the continental United States to a location outside of the continental United States or from a location in a State to any location outside of that State; or

(vi) Residing in or being employed in a federally declared major disaster area as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(2) A grant recipient may receive a suspension described in paragraphs (a)(1)(i) through (vi) of this section in one-year increments that—

(i) Does not exceed a combined total of three years under paragraphs (a)(1)(i) through (iii) of this section;

(ii) Does not exceed a total of three years under paragraph (a)(1)(iv) of this section;

(iii) Does not exceed a total of three years under paragraph (a)(1)(v) of this section; or

(iv) Does not exceed a total of three years under paragraph (a)(1)(vi) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iv) or (vi) of this section, must apply for a suspension on a form approved by the Secretary, prior to being subject to any of the conditions under § 686.43(a)(1) through (5) that would cause the TEACH Grant to convert to a Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iv) or (vi) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(d) On a case-by-case basis, the Secretary may grant a temporary suspension of the period for completing the service obligation if the Secretary determines that a grant recipient was unable to complete a full academic year of teaching or begin the next academic year of teaching due to exceptional circumstances significantly affecting the operation of the school or educational service agency where the grant recipient was employed or the grant recipient's ability to teach.

(e) The Secretary notifies the grant recipient regarding the outcome of the application for suspension.

■ 27. Section 686.42 is amended:

■ a. In the section heading by adding the words "or repay" after the word "serve";

■ b. In paragraphs (a)(1) introductory text and (a)(2), by adding the words "or repay" after the word "serve";

■ c. By revising paragraph (b); and

■ d. In paragraph (c)(4), by removing the words "and the Coast Guard" and adding in their place the words "the Coast Guard, a reserve component of the Armed Forces named in 10 U.S.C. 10101, or the National Guard".

The revision reads as follows:

§ 686.42 Discharge of agreement to serve or repay.

* * * * *

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve or repay is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 685.102(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

(2) If at any time the Secretary determines that the grant recipient does

not meet the requirements of the three-year period following the discharge as described in 34 CFR 685.213(b)(7), the Secretary will notify the grant recipient that the grant recipient's obligation to satisfy the terms of the agreement to serve or repay is reinstated.

(3) The Secretary's notification under paragraph (b)(2) of this section will—

(i) Include the reason or reasons for reinstatement;

(ii) Provide information on how the grant recipient may contact the Secretary if the grant recipient has questions about the reinstatement or believes that the agreement to serve or repay was reinstated based on incorrect information; and

(iii) Inform the TEACH Grant recipient that he or she must satisfy the service obligation within the portion of the eight-year period that remained after the date of the discharge.

(4) If the TEACH Grant made to a recipient whose TEACH Grant agreement to serve or repay is reinstated is later converted to a Direct Unsubsidized Loan, the recipient will not be required to pay interest that accrued on the TEACH Grant disbursements from the date the agreement to serve or repay was discharged until the date the agreement to serve or repay was reinstated.

* * * * *

■ 28. Section 686.43 is revised to read as follows:

§ 686.43 Obligation to repay the grant.

(a)(1) The TEACH Grant amounts disbursed to the recipient will be converted into a Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

(i) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or educational service agency, or not to teach in a high-need field, or for any other reason; or

(ii) The grant recipient does not begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under § 686.12.

(2) At least annually during the service obligation period under § 686.12, the Secretary notifies the grant recipient of—

(i) The terms and conditions that the grant recipient must meet to satisfy the service obligation;

(ii) The requirement for the grant recipient to provide to the Secretary, upon completion of each of the four required elementary or secondary academic years of teaching service, documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school or educational service agency in which the grant recipient taught and emphasizes the necessity to keep copies of this information and copies of the recipient's own employment documentation;

(iii) The service years completed and the remaining timeframe within which the grant recipient must complete the service obligation;

(iv) The conditions under which the grant recipient may request a temporary suspension of the period for completing the service obligation;

(v) The conditions as described under paragraph (a)(1) of this section under which the TEACH Grant amounts disbursed to the recipient will be converted into a Direct Unsubsidized Loan;

(vi) The potential total interest accrued;

(vii) The process by which the recipient may contact the Secretary to request reconsideration of the conversion, the deadline by which the grant recipient must submit the request for reconsideration, and a list of the specific documentation required by the Secretary to reconsider the conversion; and

(viii) An explanation that to avoid further accrual of interest as described in § 686.12(b)(4)(ii), a grant recipient who decides not to teach in a qualified school or field, or who for any other reason no longer intends to satisfy the service obligation, may request that the Secretary convert his or her TEACH Grant to a Direct Unsubsidized Loan that the grant recipient may begin repaying immediately, instead of waiting for the TEACH Grant to be converted to a loan under the condition described in paragraph (a)(1)(ii) of this section.

(3) On or about 90 days before the date that a grant recipient's TEACH Grants would be converted to Direct Unsubsidized Loans in accordance with paragraph (a)(1)(ii) of this section, the Secretary notifies the grant recipient of the date by which the recipient must submit documentation showing that the recipient is satisfying the obligation.

(4) If the TEACH Grant amounts disbursed to a recipient are converted to a Direct Unsubsidized Loan, the Secretary notifies the recipient of the conversion and offers conversion counseling as described in § 686.32(e).

(5) Except as provided in paragraph (a)(8) of this section, if a grant recipient's TEACH Grant was converted to a Direct Unsubsidized Loan, the Secretary will reconvert the loan to a TEACH Grant based on documentation provided by the recipient or in the Secretary's records demonstrating that the recipient was satisfying the service obligation as described in § 686.12 or that the grant was converted to a loan in error.

(6) If a grant recipient who requests reconsideration demonstrates to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Reconverts the loan to a TEACH Grant;

(ii) Applies any academic years of qualifying teaching service that the grant recipient completed before or during the period when the grant was incorrectly in loan status toward the grant recipient's four-year service obligation requirement;

(iii) Upon reconversion of the loan to a TEACH Grant, provides the grant recipient with an additional period of time, equal to eight years minus the number of full academic years of teaching that the recipient completed prior to the reconversion of the loan to a TEACH Grant, including any years of qualifying teaching completed during the period when the TEACH Grant was incorrectly in loan status, to complete the remaining portion of the service obligation.

(iv) Ensures that the grant recipient receives credit for any payments that were made on the Direct Unsubsidized Loan that was reconverted to a TEACH Grant;

(v) Notifies the recipient of the reconversion to a grant and explains that the recipient is once again responsible for meeting all requirements of the service obligation under § 686.12; and

(vi) Requests deletion of any derogatory information reported to the consumer reporting agencies related to the grant while it was in loan status and furnishes a statement confirming that the grant was converted to a loan in error that the recipient may provide to creditors until the recipient's credit history has been corrected.

(7) If a grant recipient who requests reconsideration does not demonstrate to the satisfaction of the Secretary that a TEACH Grant was converted to a loan in error, the Secretary—

(i) Notifies the recipient that the loan cannot be converted to a TEACH Grant;

(ii) Explains the reason or reasons why the loan cannot be converted to a TEACH Grant; and

(iii) Explains how the recipient may contact the Federal Student Aid Ombudsman if he or she continues to believe that the TEACH Grant was converted to a loan in error.

(8) In the case of a grant recipient whose TEACH Grant was converted to a Direct Unsubsidized Loan in accordance with paragraph (a)(1)(i) of this section, the Secretary will reconvert the loan to a grant and restore the recipient's service obligation if—

(i) The grant recipient submits a request to the Secretary to reconvert the loan to a TEACH Grant;

(ii) Excluding any periods of suspension granted under § 686.41, there is sufficient time remaining for the grant recipient to complete the required four academic years of qualifying teaching service within eight years from the date the grant recipient ceased enrollment at the institution where the recipient received the grant or, in the case of a student who received a TEACH Grant at one institution and subsequently transferred to another institution and enrolled in another TEACH Grant-eligible program, within eight years from the date the recipient ceased enrollment at the other institution; and

(iii) In the case of a recipient who would not have sufficient time remaining to complete the service obligation within the eight-year period as described in paragraph (a)(8)(ii) of this section unless the recipient qualifies for a suspension under § 686.40, which may be granted retroactively, the recipient requests and is determined to be eligible for the suspension.

(9) A TEACH Grant recipient remains obligated to meet all requirements of the service obligation under § 686.12, even if the recipient does not receive the notices from the Secretary as described in paragraph (a)(2) of this section.

(b) A TEACH Grant that is converted to a loan, and is treated as a Direct Unsubsidized Loan, is not counted against the grant recipient's annual or aggregate loan limits under 34 CFR 685.203.

(c) A grant recipient whose TEACH Grant has been converted to a Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all of the benefits of the Direct Loan Program.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 29. The authority citation for part 690 continues to read as follows:

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

§ 690.75 [Amended]

■ 30. Section 690.75 is amended by removing paragraph (d).

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 31. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

■ 32. Section 692.30 is amended by revising paragraph (c)(5) to read as follows:

§ 692.30 How does a State administer its community service-learning job program?

* * * * *

(c) * * *

(5) Not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 33. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

■ 34. Section 694.6 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 694.6 Who may provide GEAR UP services to students attending private schools?

* * * * *

(b) When providing GEAR UP services to students attending private schools, the employee, individual, association, agency, or organization must be employed or contracted independently of the private school that the students attend, and of any other organization affiliated with the school, and that employment or contract must be under the control and supervision of the public agency.

§ 694.10 [Amended]

■ 35. Section 694.10 is amended in paragraph (b) by removing the words “that is not pervasively sectarian”.

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